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W.P.No.11616 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.11616 of 2020

The Authorised Officer
Union Bank of India
(E Corporation Bank),
Asset Recovery Branch,
Arul Manai Building,
Whites Road, Rayapattah,
Chennai – 600 014.

...Petitioner

-Vs-

1. The Sub Registrar,
Office of the Sub Registrar,
Annur – 641 653.

2. The Assistant Commissioner,
Commercial Tax Department,
Avinashi Division,
Avinashi.

(R2 Impleaded vide order
dated 17.09.2020 made in
W.M.P.No.15873/2020
in W.P.No.11616/2020)

3. Kra Durga Rao
(R3 impleaded vide order dated 19.03.2024
made in W.M.P.No.8248/2024
in W.P.No.11616/2020)

...Respondents



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Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to communication bearing No.Na.Ka.No. 161/2018 dated 03.08.2020 issued by the Registrar, Annur and quash the same as illegal and arbitrary and consequently direct the Sub Registrar, Annur to Register the sale certificate dated 21.07.2020 issued by the Petitioner bank in favour of the auction purchaser Mrs.KRA Durga Rao.

For Petitioner	: Mr.N.Sivabalan for Mr.S.Sethuraman
For R1	: Mr.L.S.M.Hasan Fizal Additional Government Pleader
For R2	: Mr.M.Venkateswaran Special Government Pleader (Taxes)

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 03.08.2020, thereby refused to register the sales certificate presented by the petitioner for registration.

2. One M/s Lalith Subha Manufacturing Pvt.Ltd had availed various credit facilities to the tune of Rs.9 Crores from the petitioner. To secure the credit limits, the said company had mortgaged several



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properties to an extent of 4.75 acres and the factory building situated in Kuppanur Village, Coimbatore, by depositing the title deeds, registered vide Document No.9012 of 2013 dated 06.09.2013. Thereafter, the said company was declared as non performing asset on 09.12.2013 and the petitioner had initiated SARFAESI proceedings under the SARFAESI Act. However, there was no response and issued sale notice. Accordingly, the property was auctioned for a sum of Rs.453 lakhs in favour of the third respondent and issued sale certificate dated 21.07.2020. The said sale certificate was presented in the office of the first respondent for registration, on 24.07.2020. However, the first respondent refused to register the sale certificate, on the ground that there is an arrear of commercial tax to the tune of Rs.34,09,400/- by the borrower viz., the said Company and there is a prohibitory order/attachment and a No Objection Certificate has to be obtained from the concerned office for registering the document.

3. This issue has already been dealt with by the Hon'ble First Bench of this Court in W.P.No.19742 of 2021 and etc., and this Court, by



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an order dated 27.09.2023, framed the issue as to whether the financial institution, which is a secured creditor, or the department of the Government concerned, would have the “Priority Charge” over the mortgaged property in question, with regard to the tax and other dues. After considering various Judgments, it was held that the secured creditor has priority charge over the claims of the Sales Tax, Commercial Tax and Income Tax.

4. In view of the above, the order passed by the first respondent asking for No Objection Certificate from the office concerned cannot be sustained and is liable to be quashed. Accordingly, the communication bearing Na.Ka.No.161/2018 dated 03.08.2020 issued by the first respondent is hereby quashed. The petitioner is directed to present the sale certificate for registration before the first respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent is directed to register the sale certificate, if it is otherwise in order, forthwith.



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5. Accordingly, this writ petition is allowed. There shall be no order as to costs.

30.04.2024

Internet: Yes
Index : Yes/No
Neutral Citation: Yes/No
Speaking/Non Speaking order
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To

1. The Sub Registrar,
Office of the Sub Registrar,
Annur – 641 653.
2. The Assistant Commissioner,
Commercial Tax Department,
Avinashi Division,
Avinashi.



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G.K.ILANTHIRAIYAN. J,

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