IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.36457 of 2023

Tamil Nadu Mercantile Bank Ltd.,
rep. By its Authorised Officer,
Adayalampattu Branch, Plot No.5,
School Road, Millenium Town Phase II
Near Vanagaram,
Adayalampattu, Chennai 95 : Petitioner

versus

1.The Chief Commissioner of Income Tax,
Chennai.

2.The Sub Registrar,
Kodambakkam, Chennai

3.The Commercial Tax Department
Asst. Commissioner (ST)(FAC)
Vadapalani Assessment Circle,
No.1, Greams road, Ground Floor,
PAPJM Annex Building, Chennai 6 : Respondents

(R-3 impleaded as per order dated 05.02.2024)

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the second respondent to register the sale certificate dated 20.07.2022 in respect of the schedule mentioned property mortgaged with the petitioner bank on 25.10.2017 notwithstanding the attachment No.7/2022 dated 08.02.2022 created by the first respondent and consequently delete the said entry of attachment from the encumbrance certificate.

For Petitioner	:	Ms.R.Suvithra
For Respondent No.1	:	Dr.B.Ramaswamy
For Respondent No.2	:	Mr.K.Karthik Jegannath, Government Advocate
For Respondent No.3	:	Mr.Venkateswaran, Special Government Pleader (Taxes)

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Ms.R.Suvithra, learned counsel for the petitioner, Dr.B.Ramaswamy, learned counsel for the first respondent, Mr.K.Karthik Jegannath, learned Government Advocate for the second respondent and Mr.Venkateswaran, learned Special Government Pleader for the third respondent.

2. The issue involved in the present writ petition is priority of charge.

3. The secured creditor claims priority of charge as against the Commercial Tax and Income Tax dues. The secured creditor relies upon the provisions of Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, hereinafter referred to as “the SARFAESI Act, 2002”).

4. *Per contra*, according to the learned counsel for the first respondent, the crown debt has the priority charge. He relies upon the judgment of the Division Bench of the Bombay High Court in the case of *Medineutrina Pvt. Ltd. vs District Industries Centre and Ors (AIR 2021 Bom 135).*

5. A Full Bench of this Court in the case of *Assistant Commissioner (CT) Anna Salai-III Assessment Circle vs Indian Overseas Bank and Another (AIR 2017 MAD 67 (FB))* has framed the following issues for consideration:

> "a) 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.
> b) As to the status and the rights of a third party purchaser of the mortgaged property in question."

6. The Full Bench answered the reference and held that the rights of the secured creditor to realise secured debts, due and payable to them, by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes,

cesses and rates due to the Central Government, State Government or Local Authority.

7. A Full Bench of the Bombay High Court in the case of *Jalgaon Janta Sahakari Bank Ltd. and Anr vs Joint Commissioner of Sales and Anr (2022 Online SCC Bom1767)* held that the secured creditor would have the priority charge, as contemplated under Section 26E of the SARFAESI Act, 2002, in case the same is registered under Section 26B of the SARFAESI Act, 2002. The secured creditor, claims that their security is registered under Section 26B of the SARFAESI Act, 2002.

8. In view of the Full Bench judgments, as referred to above, it is held that the secured creditor has priority charge over the claims of the Commercial Tax and Income Tax.

9. If the sale certificates are not placed and/or registered, then the Registering Authority may register the same, notwithstanding the attachment of Income Tax or Commercial Tax Departments.

10. The learned counsel for the petitioner submits that the amount

recoverable by the secured creditor is more than Rs.3,97,83,804.56; whereas the property is sold for Rs.73,25,000/-. Since the secured creditor has not received amount in excess of the amount due and payable to them, they are not required to remit any amount to the Departments and the Departments cannot sustain prosecution against the Authorised Officer or the Officer of the secured creditor for not remitting the amount.

11. The writ petition stands disposed of in the above term. There will be no order as to costs.

(S.V.G., CJ.) **(D.B.C., J.)**
20.03.2024

Index : Yes/No
Neutral Citation : Yes/No
tar

To

1.The Chief Commissioner of Income Tax,
Chennai.

2.The Sub Registrar,
Kodambakkam, Chennai

3.The Commercial Tax Department
Asst. Commissioner (ST)(FAC)
Vadapalani Assessment Circle,
No.1, Greams road, Ground Floor,
PAPJM Annex Building, Chennai 6

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(tar)

WP No.36457 of 2023

20.03.2024