BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.14581 of 2021

M/s.City Union Bank Ltd.,
Rep. by its Manager (Legal),
R.M.Renganath .. Petitioner

v.

1.Tax Recovery Officer – 2,
Income Tax Department,
No.44, Williams Road,
Cantonment, Trichy – 620 001.

2.The Sub Registrar – I,
Woraiyur,
Tiruchirappalli.

3.M/s.Vasan Medical Centre (India) Pvt Ltd.,
15A, Thillai Nagar Main Road,
Trichy – 620 018.

4.Meera Arun

5.Lavanya Devi .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in C.No.Rule 13/TRC No.01/17-18 TRO 2 /TRY/2017-18, quash the order of attachment in F.O.R.M. No.I.T.C.P.16 insofar as Item 10 of the schedule of property attached to the said form dated 04.01.2018, namely, in the property measuring about 3750 sq.ft. vacant land at New TS.No.48 (Plot No.C-30/Door No.35) of Thillai Nagar West 3rd Cross, Chinthamani Village Trichy Corporation New Ward D, New Block 5, New TS No.48 (Old Ward No.3 / Old TS No.88 Part) and consequently, directing the second respondent to register the property as per the sale certificate issued by the petitioner.

For Petitioner	:	Mr.R.Sivaraman
For Respondents	:	Mr.N.Dilip Kumar for R.1
		Mr.S.Shanmugavel, Additional Government Pleader for R.2
		No appearance for R.3 to R.5

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ORDER

M/s.Vasan Medical Centre (India) Pvt. Ltd. / third respondent herein borrowed money from the petitioner Bank by mortgaging their property. The third respondent failed to repay the loan. Therefore, the petitioner Bank initiated proceedings under the SARFAESI Act and has brought the property of the third respondent for auction. The fifth respondent has taken the property in the auction conducted on 30.04.2021 and she approached the second respondent for registering the document. The second respondent / Sub Registrar informed the fifth respondent / auction purchaser that the first respondent / Income Tax Department has attached the mortgaged property on 04.01.2018 for the liability towards the Department to be paid by the third respondent. Hence, the petitioner Bank has filed this writ petition as against the order of attachment passed by the first respondent and also for a consequential direction to the second respondent to register the sale certificate issued by the petitioner Bank.

2.Learned Counsel for the petitioner Bank, by relying on the decision of the Division Bench of this Court in ***State Bank of India, RACPC, Chennai***

and Others v. Tax Recovery Officer, Coimbatore and Others [***WA.No.1521 of 2021, etc., batch, dated 01.09.2022***], submitted that the issue has already been settled and the petitioner Bank, being the secured creditor, is having the first charge over the mortgaged property and not the Income Tax Department. He has also referred to yet another decision of this Court in ***M/s.City Union Bank Ltd, Trichy v. Tax Recovery Officer – 2, Trichy*** [***WP(MD)No.14573 of 2021, dated 28.11.2023***].

3.Learned Counsel for the first respondent / Income Tax Department fairly agreed the same. However, he insisted that after the public auction and after settling the Bank's due, if any amount is available, then the same may be adjusted towards the Department's due.

4.In response, learned Counsel for the petitioner Bank submitted that this aspect has also been decided in a catena of decisions as against the Department. He further submitted that in this case, the charge towards the Bank is around Rs.23 Crore and during the auction, the property was sold only for a sum of Rs.3 Crore. Therefore, there is no balance amount.

5.In view of the above submissions and following the ratio laid down by the Division Bench of this Court in ***State Bank of India***'s case (supra) that the secured creditors are having the first charge, this writ petition is allowed and the order of attachment dated 04.01.2018 insofar as the subject property is quashed. The second respondent is directed to register the sale certificate produced by the petitioner Bank forthwith, if it is otherwise in order.

There shall be no order as to costs.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

14.02.2024

To

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B.PUGALENDHI, J.

gk

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