IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2025

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Writ Petition No.36505 of 2024
and
W.M.P.No.39350 of 2024

Sarulatha Mani Mudaliyar

Petitioner

Vs

1. The Tax Recovery Officer,
Income Tax Department, Puducherry.

2.The Sub Registrar,
O/o.Sub-Registrar Puducherry,
Saram, Puducherry.

3.JM Financial Asset Reconstruction
Company Ltd., 7th Floor, Cnergy,
Appasaheb Marathe Marg, Prabadevi,
Mumbai- 400 025.

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to impugned letter dated 17.12.2015 issued by the 1st respondent which was registered as document No.2356/2015 on the file of 2nd respondent and quash the same as highly illegal, arbitrary and in violation of the principles of natural justice and consequently direct the 2nd respondent to register the sale certificate dated 03.07.2024 issued by the 3rd Respondent in favour of the petitioner.

For Petitioner : Mr.P.Sudagar

For Respondents : Mrs.S.Premalatha,
Standing Counsel [R1]
Mr.A.Tamilvanan
Additional Government Pleader (P) [R2]
Mr.Surya Teja [R3]

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O R D E R

This writ petition has been filed challenging the impugned letter dated 17.12.2015 issued by the first respondent to the second respondent and for a consequential direction to the second respondent to register the sale certificate dated 03.07.2024 issued by the third respondent in favour of the petitioner.

2. Heard Mr.P.Sudagar, learned counsel for petitioner, Mrs.S.Premalatha, learned Standing Counsel appearing for first respondent, Mr.A.Tamilvanan, learned Additional Government Pleader (P) appearing for second respondent and Mr.Surya Teja, learned counsel for third respondent.

3. The only ground that has been put against the petitioner is that the Income Tax Department has attached the property in the year 2015 and therefore, the sale certificate presented for registration was refused to be registered by the second respondent.

4. The issue involved in the present writ petition is squarely covered by various orders passed by this Court. One such order is the order passed by the Division Bench of this Court in W.P.Nos.19742 of 2021 *etc.* dated 27.09.2023. The relevant portions are extracted hereunder:

> "4. The 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."
>
> 5. The Full Bench of this Court, answered the reference and held that the rights of the secured creditors 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.

6. The 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 Bom 1767]* 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 creditors, in these petitions claims that their security is registered under Section 26B of the SARFAESI Act, 2002.

7. 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 Sales Tax, Commercial Tax and Income Tax.

8. In case auction is held by the secured creditors and the sale certificates are not placed and/or registered, then the Registering Authority may register the same, notwithstanding the attachment of Sales Tax, Income Tax or Commercial Tax Departments.

9. In case the auction sale is conducted by the secured creditor and they have received excess amount than their dues, then they are liable to remit the excess amount to the Departments. However, if they have not received the amount in excess of the amount due and payable to them, then 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."

5. In the case in hand, the mortgage over the property was created on 16.11.2011, whereas, the property was attached by the Income Tax Department only in the year 2015. Hence, the mortgage being prior to the attachment, the same will not bind the third respondent, who has initiated proceedings under the SARFAESI Act. That apart, the secured creditor has a

priority of charge over the claim made by the revenue. Hence, the communication dated 17.12.2015 made by the first respondent to the second respondent will not stand in the way of the sale certificate executed by the third respondent in favour of the petitioner, being registered.

6. In the result, there shall be a direction to the second respondent to register the sale certificate dated 03.07.2024 issued by the third respondent in favour of the petitioner, if it is otherwise in order.

This writ petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

23.04.2025

Neutral citation : Yes/No
Index : Yes/No
Speaking Order / Non Speaking Order
gm

N. ANAND VENKATESH, J.

gm

To

1. The Tax Recovery Officer,
Income Tax Department, Puducherry.

2.The Sub Registrar,
O/o.Sub-Registrar Puducherry,
Saram, Puducherry.

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