IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P No.842 of 2019

Tamilnad Mercantile Bank Limited
Rep. by its Chief Manager
Tirunelveli Main Branch
No.20/15, and 16, First Floor
S.N. High Road,
Tirunelveli-627 001. ...Petitioner

Vs

1.The Commercial Tax Officer
Office of the Commercial Tax
Tirunelveli

2.The Sub Registerar
Office of the Sub Registrar
Virugambakkam, Chennai.

3.Jothi(Guarantor)
4.Jagur Enterprises (Borrower)
Rep. by its Partners Mr.Gurusamy,
Mrs.Metilda Poovalagi and Mr.A.Anbalagan
No.9, LIC Colony, Thiagaraja Nagar
Tirunelveli-627 007.

5.K.Raguraman
6.K.Selvaraj
7.N.Venkatraman
8.J.Balachandar ...Respondents

PRAYER: This writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to refusal check slip date 18.12.2018 bearing No.RFL/Virugambakkam/5/2018 on the file of the 2nd respondent and quash the same as illegal, arbitrary and unlawful and consequently, raise the order of attachment dated 26.09.2018 in ROC No.A3 3033/2016 passed by the first respondent and direct the 2nd respondent to register the sale certificate issued by the petitioner in favour of the respondents 5 to 8.
(Prayer amended vide order dated 28.02.2019, made in W.M.P No.6707 of 2019)

For Petitioners	:	Mr.S.Sethuraman
For R1	:	Ms.Anitha Government Advocate
For R2	:	Mr. Stalin Abimanu Additional Government Pleader
For R3, 5 to 8	:	No Appearance
For R4	:	Not ready in notice

ORDER

This writ petition has been been filed, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to refusal check slip date 18.12.2018 bearing No.RFL/Virugambakkam/5/2018 on the file of the second respondent and quash the same as illegal, arbitrary and unlawful and consequently, raise the order of attachment dated 26.09.2018 in ROC No.A3 3033/2016 passed by the first respondent and direct the second respondent to register the sale certificate issued by the petitioner in favour of the respondents 5 to 8.

2. The case of the petitioner is that one M/s.Jagur Enterprises, a constituent of Tirunelveli Main Branch had availed certain credit facilities for its business purpose from the petitioner Bank. To secure the credit facilities, the guarantor, Mrs.Jothi, the third respondent herein had given her property situated at Valasarawakkam, Chennai. On 03.03.2014, the mortgage has been created by way of Memorandum of Deposit of Title Deeds in favour of the petitioner Bank registered as Doc.No.1374/2014. The said account became a Non Performing Asset. Thereafter, the petitioner Bank had initiated proceedings under SARFAESI Act by issuing a notice under Section 13(2) dated 04.08.2015 calling upon the borrower to pay a sum of Rs.2.73 crores to be paid within a period of 60 days. Thereafter, the borrowers/guarantors failed to pay the amount and hence, possession notice under Section 13(4) dated 19.10.2015 was issued. As there was no response, the sale notice dated 21.10.2018 was issued fixing auction sale on 14.11.2018. The property was sold for a sum of Rs.1,03,75,000/- and the respondents 5 to 8 were declared as a successful bidders. Thereafter, the petitioner Bank issued a sale certificate dated 18.12.2018 to the successful bidders. When the sale certificate was

produced before the second respondent for registration of the same, the second respondent by refusal check slip dated 18.12.2018 refused to register the sale certificate on the ground that there is an attachment of the property by the first respondent Commercial Tax Department for arrears of tax to the tune of Rs.6,53,252/- payable by the borrower (4th respondent) vide attachment in Commercial Tax Department dated 26.09.2018. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner would submit that earlier, this Court passed an interim order directing the petitioner Bank to set apart Rs.7,00,000/- out of the sale consideration and kept it in a separate interest bearing account until further orders from this Court, so as to enable the first respondent to get such money, in the event of their success in the writ petition; the petitioner shall communicate the first respondent after opening such account; on receipt of such communication from the petitioner about the opening of account and keeping the said amount of Rs.7,00,000/- therein as directed supra, the first respondent shall raise the attachment and inform the same to the second respondent; and on receipt of such communication from the first respondent, the second respondent shall register the sale certificate without loss of any further time. The learned counsel would further submit

that the issue in the present writ petition is no longer res integra and the issue is covered by the judgement of the Division Bench of this Court and accordingly, he prayed for allowing the writ petition.

4. Per contra, the learned Government Advocate appearing for the first respondent would submit that the second respondent did not dispute the fact and the submission made by the learned counsel for the petitioner with regard to the covered judgment of the Division Bench of this Court.

5. Heard the learned counsel on either side and perused the materials on record.

6. Considering the facts and circumstances of the case, it would reveal that the present writ petition is filed as against the refusal check slip issued by the second respondent, refusing to register the sale certificate on the ground that there was an attachment order passed by the first respondent and the present issue is covered by the order of the Division Bench of this Court. It is relevant to extract the portion of the order which reads as follows:

> *"7. A Full Bench of the Bombay High Court in the case of Jalgon 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 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.

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

In view of the decision rendered by the Division Bench of this Court, the impugned order passed by the second respondent is liable to be set aside and hence, it is hereby set aside. Pursuant to the same, this Court directs the second respondent to register the sale certificate issued by the petitioner Bank in favour of the auction purchasers/respondents 5 to 8. However, liberty is granted to the petitioner Bank to realise the amount of Rs.7,00,000/- which was already deposited by them before this Court, pursuant to the interim order passed by this Court.

7. Accordingly, this writ petition is allowed. No costs.

10.09.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

1.The Commercial Tax Officer
Office of the Commercial Tax
Tirunelveli

2.The Sub Registerar
Office of the Sub Registrar
Virugambakkam, Chennai.

M.DHANDAPANI, J.

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