



*W.P.(MD)No.3705 of 2025*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 06.03.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**Writ Petition(MD)No.3705 of 2025**

Tamil Selvan

: Petitioner

Vs.

1. The Sub Registrar,  
Office of the Sub Registrar,  
Rajapalayam.
2. The Authorised Officer,  
Assistant General Manager and Clo-1,  
State Bank of India,  
Stressed Assets Management Branch,  
1112, Raja St, Avinashi Road,  
Coimbatore 641 037.
3. The Recovery Officer,  
Employees Provident Fund Organization,  
District Office,  
AKM Complex,  
Old Virudhunagar Road,  
Sivakasi 626 189,  
Virudhunagar District.

: Respondents



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**PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, by directing the first respondent to raise the attachment made in the encumbrance register as arbitrary and against the principles of natural justice over the petitioner property to an extent of 7.21 Acres as per document and 6.615 acres land actual with building in SF. No. 667/1B, 3A, 3B, 3C, 697/1, 2, 700/1A, 6, 1B at D.No. 5/361 and 5/362, Muthukudi to Ramco Nagar - Samusigapuram Main road, Samusigapuram Village, Rajapalayam Taluk, Virudhunagar District, within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.Saravanan for Mr.A.Sivaji

For Respondents : Mr.R.Suresh Kumar

Additional Government Pleader  
for R1

Mr.Jagadeesan  
for Mr.N.Dilip Kumar for R2

Mr.R.Ravikumar for R3

### **ORDER**

The writ petitioner is a SARFAESI auction purchaser. He seeks for a writ of mandamus to raise the attachment over the property situated at S.F.Nos.667/1B, 3A, 3B, 3C, 697/1, 697/2, 700/1A, 6, 700/1B, to an extent of 7.21 acres of Samusigapuram Village, Rajapalayam Taluk, Virudhunagar District.



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2. The properties had been mortgaged by the previous owner with the State Bank of India. The mortgagor defaulted in payments of amounts. This constrained the second respondent to invoke the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) and the Rules made thereunder. The property was brought for sale by e-auction on 24.08.2022. The writ petitioner participated and he was successful. The second respondent Bank also issued a sale certificate to that effect. The petitioner presented the sale certificate for registration with the first respondent. The first respondent demanded the payment of 7% as stamp duty and 4% as registration charges. Aggrieved by the same, the petitioner filed W.P(MD) No.1033 of 2023. The said writ petition was allowed. It is pleaded by the petitioner that against the order dated 20.04.2023, an appeal has been preferred by the first respondent in W.A.SR (MD) No.34328 of 2024.

3. In the meantime, when he approached the first respondent for registration, he was informed that on 09.01.2023, an endorsement was made that the property has been attached by the third respondent. The



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third respondent claimed that the defaulter/borrower had left dues to an extent of Rs.8,25,752/- (Rupees Eight Lakhs Twenty Five Thousand Seven Hundred and Fifty Two) with the EPFO and hence, they attached the property as a prelude for recovery. Aggrieved by the same, the petitioner has filed this writ of mandamus to raise the attachment.

4. When the matter came up for admission, Mr.R.Suresh Kumar, took notice for the first respondent and Mr.N.Dilip Kumar, for the second respondent. I ordered private notice to the third respondent. Mr.R.Ravikumar, has entered appearance for the third respondent. He requested time to go on the record by way of a counter. The counter having been filed, I have taken up the writ petition for final disposal.

5. Mr.Saravanan, appearing for Mr.A.Sivaji, urges that as the petitioner has purchased the property pursuant to a SARFAESI notification sale, he is entitled to the benefit of Section 26(E) of the SARFAESI Act. According to him, all debts and other dues in the form of taxes, cesses and other rates payable to the Central Government or the State Government or a local authority, are subject to the security interest, created in favour of the mortgagee. He relies upon a judgment of a



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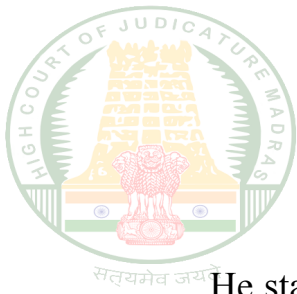
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Division Bench of this Court in *Tamilnadu Mercantile Bank Ltd., Vs. The Sub Registrar, Rajakilpakkam and another, [2024-5-L.W.502]*, to press home this point.

6. Mr.Suresh Kumar, states that being a registering authority, the first respondent is duty bound to register any encumbrance that is brought to their notice by a statutory authority. In the present case, all that the first respondent has done is to bring on record the attachment that has been effected by the third respondent.

7. Mr.Jegadeesan, appearing for Mr.N.Dilip Kumar, states that the writ petitioner is a purchaser in a SARFAESI auction sale held by the second respondent. He supports the plea of the writ petitioner that security interest created in favour of a mortgagee will have a priority, by virtue of Section 26(E) over the claims of the third respondent.

8. The only villain in the game is Mr.Ravikumar, who strongly opposes the writ petition. Relying upon his counter-affidavit, he states that the property was attached invoking Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act of 1952.



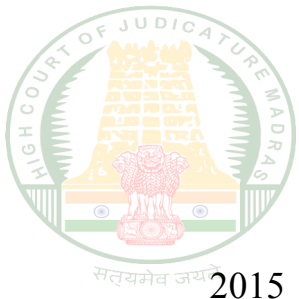
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He states it is an Act to provide for benefits like provident fund, pension and insurance benefits for employees at the lower realms and by virtue of Section 11(2) of the EPF Act of 1952, EPF dues get priority over the security interest created in favour of the second respondent Bank. Therefore, he pleads that the attachment that had been effected on 09.01.2023 is valid. He states this “First Charge” in favour of the establishment should be given priority even though the security interest had been created in the year 2015. For this submission, he relies upon the judgment of the learned Single Judge in ***UCO Bank, Asset Recovery Management Branch Vs. The Recovery Officer, Puducherry and Others, [(2020) 4 MLJ 256]*** and that of Justice R.Subbiah, in ***State Bank of India, SAM Branch Vs. Tax Recovery Officer and Others, [W.P.No. 6685 of 2016, dated 12.04.2016]***.

9. I have carefully considered the submissions of all sides and gone through the records.

10. It is not in dispute that the original owner, as a debtor, had created a mortgage over the property on 16.07.2015. The said mortgage has been evidenced by its registration in Document No.2777 of



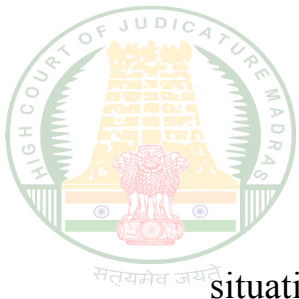
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2015 on the file of the first respondent. It is also not in dispute that in exercise of powers under the SARFAESI Act, the second respondent Bank brought the property for e-auction. In the said e-auction, the petitioner was successful. A sale certificate was also issued to him on 21.11.2022. On the payment of the entire auction amount, when a sale certificate is issued, it has a twin effect of merging the mortgage with the sale and transferring the title from the debtor in favour of the auction purchaser.

11. It is not in dispute that the third respondent EPFO did not intimate the bank at any point of time from 2015 till 21.11.2022 about any dues from the debtor to EPFO or about any attachment. The first step that was taken by the EPFO was on 09.01.2023. By that time, the debtor had lost his title and the writ petitioner had become the owner of the property.

12. When there is a transfer of title from the debtor to the auction purchaser, had the attachment by the EPFO preceded the court auction sale, most certainly, the auction purchaser can be held liable for payment of the amount. Unfortunately, for Mr.Ravikumar, that is not the



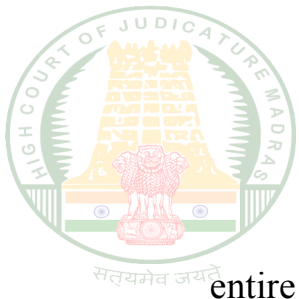
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situation in the present case. The attachment came into force nearly three months after the sale. Therefore, I cannot call upon the auction purchaser, to make good the amount due to the third respondent, at the instance of the debtor.

13. Moving to the next and interesting point that has been raised by Mr.Ravikumar, that by virtue of Section 11(2) of the EPF Act, he argues EPFO gets priority over the security interest created in favour of the second respondent Bank. As rightly contended by Mr.Saravanan, this specific issue had been dealt with by the Division Bench in ***Tamilnadu Mercantile Bank Vs. Sub Registrar*** case.

14. In paragraph No.15 of the said judgment, the Division Bench following the Supreme Court in ***Kotak Mahindra Bank Ltd., Vs. Girnar Corrugators and Others, [2023 3 SCC 2010]***, held that in view of the mandate under Section 26(E) of the SARFAESI Act of 2002, the asset secured in favour of the Bank would have a priority and prevail over any other dues and recovery proceedings. The Division Bench further held it was in exercise of the priority charge that the property had been brought for public auction and the auction purchaser had paid the



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entire sale consideration. Thus, they concluded the right, title and interest in respect of the subject matter of the property rightfully vested with the purchaser on and from the date of auction.

15. Insofar as the judgment relied upon by Mr.Ravikumar, in *State Bank of India Vs. Tax Recovery Officer, [W.P.No.6685 of 2016, dated 12.04.2016]* is concerned, I should point out that in the facts of that case, the attachment preceded the sale and the auction purchaser had taken the property subject to the attachment. Following the settled position of law, the Court held that a sale pending the attachment was not void for all practical purposes, but it is void insofar as the claims enforceable under the order of attachment. This judgment does not help Mr.Ravikumar, for the simple reason the sale was held on 21.11.2022 and the attachment was on 09.01.2023.

16. With respect to the judgment of the *UCO Bank's* case, the discussion was with respect to Section 11(2) of the EPF Act, viz-a-viz, Section 31(B) of Recovery of Debts Due to Banks and Financial Institutions Act of 1993. The texture of Section 31(B) and Section 26(E) are fundamentally different. Hence, this judgment too does not help



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**Mr.Ravikumar.**

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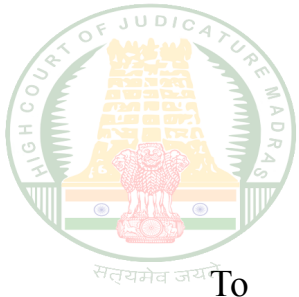
17. In the light of the above discussion, I am left with no other option than to give the direction as sought for. The writ petition is ordered. There shall be a direction to the first respondent to delete the entry of attachment made with respect to property situated in S.F.Nos. 667/1B, 3A, 3B, 3C, 697/1, 697/2, 700/1A, 6, 700/1B, Muthukudi to Ramco Nagar – Samusigapuram Main road, Samusigapuram Village, Rajapalayam Taluk, Virudhunagar District, within a period of three (3) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

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**V.LAKSHMINARAYANAN, J.**

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