2025:PHHC:173173-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6083-2024 (O&M)
Date of decision : 10.12.2025

State Bank of India
.......Petitioner

Versus

The Tax Recovery Officer-1, Income Tax Department and others
.......Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. Gaurav Goel, Advocate,
for the petitioner.

Ms. Urvashi Dhugga, Senior Standing Counsel,
with Mr. Vidul Kapoor, Junior Standing Counsel,
for respondent No.1-Income Tax Department.

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SHEEL NAGU, CHIEF JUSTICE (Oral)

1. The petitioner-Bank has come before this Court in this writ petition praying for the following relief:

> (i) Writ in the nature of Certiorari for quashing the mutation entries/lien marked in Revenue Record by respondent Nos.1 to 3 for dues of respondent No.1 (if any) against the respective mortgaged proprieties enumerated in Jamabandi 2017-2018 (Annexure P-6).
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> (ii) For issuance of direction to respondent Nos. 2 and 3 to make necessary corrections in the revenue record, whereby the entries regarding the lien of respondent No.1 may be deleted/expunged against the respective entries qua the mortgaged property.

2. Grievance of the petitioner-Bank is essentially against the charge created by Income Tax Department vide Annexure P-6 over the secured asset, against which, petitioner-Bank had extended loan of Rs.23 crores to the borrowers i.e. respondent Nos. 4 to 7.

3. In repayment of the loan, defaults took place and the loan account was declared as Non Performing Asset (NPA), which commenced the proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act) by issuance of notices u/ss 13 (2) and 13 (4) on 30.07.2014 and 04.11.2014 (Annexures P-3 and P-4 respectively) and passing of order u/s 14 of the SARFAESI Act on 27.11.2014 (Annexure P-5). However, the auction could not take place since the charge was created and the secured asset was claimed by Income Tax Department vide Annexure P-6.

4. Pertinently, the facts prevailing in the present case reveal that charges in favour of the Bank as well as the Income Tax Department were all created prior to the amendment, which incorporated Section 26E in the SARFAESI Act w.e.f. 24.01.2020.

5. Learned counsel for the respondent-Income Tax Department has relied upon a Full Bench decision of Bombay High Court in the case of ***Jalgaon Janta Sahakari Bank Ltd. and another vs. Joint Commissioner of Sales Tax Nodal 9, Mumbai and another,*** 2022 (5) AIR Bom. R 667, rendered on

30.08.2022, whereby the Full Bench laid down that the provisions of Section 26E of SARFAESI Act are prospective in nature and while doing so, certain other findings were rendered, which for the ready reference and convenience are reproduced below:-

> "86. A debt that is secured or which, by reason of the provisions of a statute, becomes a 'first charge' on the property, in view of the plain language of Article 372 of the Constitution, must be held to prevail over a Crown debt, which is an unsecured one. The law, as it stands even today, is that a Crown debt enjoys no priority over secured debts. This principles has been repeatedly reaffirmed including, inter alia, in the decision of the Supreme Court reported in **(2000) 5 SCC 694 (Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co.)** where the Court observed:
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> > "10. However, the Crown's preferential right to recover of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pleadgee of goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that of the Kind commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. In ***Giles v. Grover*** it has been held that the Crown has no precedence over a pledge of goods. In ***Bank of Bihar v. State of Bihar*** the principle has been recognized by this Court holding that the rights of the pawnee who has parted with money in favour of the pawnor on the security of the goods cannot be extinguished even by lawful seizure of goods by making money available to other creditors of the pawnor without the claim of the pawnee being first fully satisfied. Rashbeharry Ghose states in Law of Mortgage (TLL, 7th Edn., p.386)- 'It

seems a government debt in India is not entitled to precedence over a prior secured debt."

6. From the aforesaid, it is obvious that since time immemorial, in view of plain language of Article 372 of the Constitution of India, the debt of a secured creditor takes priority even over the State debts, which concept was later on, modified in the shape of Section 26E in SARFAESI Act.

7. In view of the above, this Court is bolstered in its view by decision of the Apex Court in ***Jalgaon Janta Sahakari Bank Ltd.*** (supra), relevant extract of which, is reproduced above and also of this Court in CWP-15258-2023 (***Punjab National Bank vs. State of Haryana and others)***, rendered on 02.12.2025.

8. Considering the aforesaid, it is obvious that the bank, being the secured creditor, has the prior right over the secured asset, including a prior right to liquidate the said asset to recover the dues in the loan account.

9. Consequently, this petition stands allowed to the following extent:

(i) Charge created by the Income Tax Department vide Annexure P-6 over the secured asset, stands quashed.

(ii) The petitioner-Bank is free to liquidate the secured asset to recover the outstanding dues in the loan account.

(iii) The Income Tax Department, however, has liberty to recover the tax dues out of the proceeds of the secured asset (left after satisfying the due amount of the bank) or if that falls short, by any other legitimate means.

10. The writ petition stands disposed accordingly.

11. Pending application(s), if any, shall also stand disposed of.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

December 10, 2025
Ajay Prasher

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No