



2025:DHC:1184



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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on : 24.02.2025+ W.P.(C) 15237/2023 and CM APPLs.60975/2023, 17044/2024

FASTTRACK TIEUP PVT. LTD.

.....Petitioner

Through: Mr. Rana Mukherjee, Sr. Advocate  
along with Mr. Siddharth Mehta, Mr.  
Samarth Mohanty, Ms. Amrita  
Kumari, Ms. Dindrilla and Ms.  
Jasleen Kaur, Advs.

versus

UNION OF INDIA &amp; ORS.

.....Respondents

Through: Ms. Nidhi Banga, Sr. Panel Counsel  
along with Mr. Nishant Kumar,  
Advocates for R-1/UOI.  
Mr. R. P. Vats, Mr. Apoorv Sarvaria,  
Ms. Yashika Sarvaria, Mr. Sahaj  
Aggarwal and Ms. Simran Chadha,  
Advs. for R-3/PNB.  
Mr. Puneet Rai, Sr. Standing Counsel  
along with Mr. Ashvini Kumar, Mr.  
Rishabh Nangia, Jr. Standing Counsel  
for Income Tax Department.

+ W.P.(C) 15238/2023 & CM APPLs.60981/2023, 17039/2024,  
17040/2024

FASTTRACK TIEUP PVT LTD

.....Petitioner

Through: Mr. Rana Mukherjee, Sr. Advocate  
along with Mr. Siddharth Mehta, Mr.  
Samarth Mohanty, Ms. Amrita  
Kumari, Ms. Dindrilla and Ms.

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Signing Date: 27.02.2025  
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W.P.(C) 15237/2023 & W.P.(C) 15238/2023

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Jasleen Kaur, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through:

Ms. Nidhi Banga, Sr. Panel Counsel  
along with Mr. Nishant Kumar,  
Advocate for UOI.

Ms. Usha Singh, Adv. for R-3.

Mr. Puneet Rai, Sr. Standing Counsel  
along with Mr. Ashvini Kumar, Mr.  
Rishabh Nangia, Jr. Standing Counsel  
for Income Tax Department.

**CORAM:**

**HON'BLE MR. JUSTICE SACHIN DATTA**

### **JUDGMENT**

1. At the outset, it is pertinent to note that the material facts underlying these petitions are identical. The parties in both petitions are the same, except for respondent no.3. In W.P.(C) 15237/2023, respondent no. 3 is Punjab National Bank, whereas, in W.P.(C) 15238/2023, respondent no. 3 is Phoenix ARC Private Limited, a financial institution. Given the substantial similarity in facts and issues involved, it is deemed appropriate to address and dispose of both petitions through a common order.

2. The petitioner has filed W.P.(C)-15237/2023, inter alia, praying as under:

*“A. Allow the present Petition;*

*B. Issue the writ of Certiorari quashing the prohibitory order dated 18.11.2019 bearing no. ITBA/COM/F/2019-20/1020400042(1);*

*C. Issue the writ of Mandamus directing the Respondent No.1 and 2 to*



*forthwith intimate the DGCA and maintenance agencies i.e. M/s Yathi Air Services located at RZ-97A, Street No.9, Road No.5, NH- 8, Mahipalpur, New Delhi-110037 and SAR Aviation Services Ltd. located at Q-23, Jangpura Extension, New Delhi-110014 regarding release of (i) Bell 407, Helicopter VT NBB Serial No. 53696 Metallic Red Faun with Golden Strips and (ii) Bell 407, Helicopter VT NBA Serial No. 53083, Dark Metallic Blue with Golden Strips and withdrawal of prohibitory order dated 14.11.2019 bearing no. ITBA/COM/F/2019-20/1020400042(1)”*

3. The petitioner has filed W.P.(C)-15238/2023, inter alia, praying as under:

*“A. Allow the present Petition;*

*B. Issue the writ of Certiorari quashing the prohibitory order dated 18.11.2019 bearing no. ITBA/COM/F/2019-20/1020400042(1);*

*C. Issue the writ of Mandamus directing the Respondent No.1 and 2 to forthwith intimate the DGCA and maintenance agencies i.e. M/s Yathi Air Services located at RZ-97A, Street No.9, Road No.5, NH-8, Mahipalpur, New Delhi-110037 and SAR Aviation Services Ltd. located at Q-23, Jangpura Extension, New Delhi-110014 regarding release of Helicopter-Model No. AS 350 B3 VT-NBC and withdrawal of prohibitory order dated 18.11.2019 bearing no. ITBA/COM/F/2019-20/1020400042(1)”*

4. It is apparent from the above that the petitioner is essentially, seeking quashing of the prohibition order dated 18.11.2019 in both the petitions. This order restrained the maintenance agency i.e., M/s Yathi Air Services Private Limited, from releasing the helicopters originally owned by M/s Summit Aviation Private Limited. The prohibitory order is reproduced as under –

**“PROHIBITORY ORDER**

*[See rule 26(1)(iii) of the Second Schedule to the Income -tax Act, 1961]*



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*Whereas M/s Summit Aviation Private Limited, PAN: AAACS4206M, has failed to pay the outstanding arrears due from it in respect of certificate No. 46/2019 dated 15.10.2019, drawn up by this office, amounting to Rs. 2783.73 lacs (excluding interest) and the interest payable under section 220(2) of the Income-tax Act, 1961, for the period commencing immediately after the said date;*

*It is ordered that M/s Summit Aviation Private Limited, PAN: AAACS4206M be, and is hereby, prohibited and restrained, until the further order of the undersigned, from receiving from you namely, M/s. Yatih Air Services Pvt Ltd the following property in the possession of the said M/s. Yatih Air Services Pvt Ltd that is to say : to which the said M/s Summit Aviation Private Limited, PAN: AAACS4206M is entitled, subject to your claim of immediate possession thereof;*

| <b>Sr. No.</b> | <b>Name, Model &amp; Registration no. of Helicopter</b> |
|----------------|---------------------------------------------------------|
| 1.             | VT-NBA, BELL 407, S. No. 53083                          |
| 2.             | VT-NBB, BELL 407, S No. 53696                           |
| 3.             | VT-NBC, AS350B3, S No. 4978                             |

*And that you are hereby prohibited and restrained, until the further order of the undersigned, from delivering the said property to any person or person whomsoever.*

*Given under my hand and seal at this office on 18.11.2019."*

5. Helicopters bearing no. VT-NBA, BELL 407, S. No. 53083 and VT-NBB, BELL 407, S No. 53696 are the subject matter of W.P.(C)-15237/2023 and helicopter bearing no. VT-NBC, AS350B3, S No. 4978 is the subject matter of W.P.(C)-15238/2023.

6. In view of the above, for consideration of these petitions, W.P.(C)-15237/2023 captioned as *Fasttrack Tieup Pvt. Ltd. v. Union of India & ors.*, is taken up as the lead matter. The reference to the facts as noted, unless the context indicates otherwise, are the facts as obtaining in the said petition.



7. The factual background is that in 2008, Summit Aviation Private Limited obtained financial assistance from respondent no.3, Punjab National Bank, for the purchase of helicopters. This financial assistance was secured through a hypothecation agreement dated 12.05.2008. As per the hypothecation agreement three helicopters were hypothecated, two existing helicopters namely VT-NBA, BELL 407, S. No. 53083 and VT-NBB, BELL 407, S No. 53696 and one proposed helicopter that was to be purchased by the original owner (Summit Aviation Private Limited), out of the fresh term loan. The relevant portion of the hypothecation agreement is reproduced as under –

*“PUNJAB NATIONAL BANK, (hereinafter called “the Bank”) having at request of M/s Summit Aviation Pvt. Ltd. Having its registered Office at E-55, Greater Kailash Enclave, Part-I, New Delhi (hereinafter called “the Borrower”), agreed to advance Term Loan of Rs.22.12 Crores (Rupees Twenty Two Crores & Twelve Lacs Only) in the name of Borrower M/s Sumit Aviation Pvt. Ltd. At BO- Large Corporate Branch, Tolstoy House, Tolstoy Marg, New Delhi-110001, secured or to be secured by hypothecation of Assets with the Bank, and further by way of hypothecation of Helicopters, Two existing namely VT-NBA & VT-NBB and One Proposed Helicopter to be Purchased out of Fresh Term Loan and Borrower jointly and severally agrees as under:-*

*1. The Borrower hereby hypothecated with the Bank the assets described in general terms in the schedule hereto hereinafter referred to as ‘the hypothecated assets’ which expressions shall include all assets and moveable property of any kind belonging to them which now or hereafter from time to time during the continuance of this agreement shall be brought in stored, or to be in or about their premises or hangar or godown at Delhi or any other godown or godowns or be in course of transit from one godown to another or wherever else the same may be, as security for payment of the balance due to the Bank by them at any time or ultimately found due on the closing payment of the balance due to the Bank by them at any time or ultimately found due on the closing of the said Loan Account and for payment of all debts and liabilities mentioned*



*in clause 17 hereof. The expression the balance due to the Bank in this and the subsequent clauses shall be taken to include the principal moneys due on the said Loan Account from time to time and also all interest thereon calculated from day to day at the rate the Bank may have paid or incurred in any way in connection with the hypothecated assets or the sale or disposal thereon.*

*13. That the Bank and its officers and agents shall be entitled at any time as if they were the absolute owners and without notice at the Borrower's risk and expenses and if so required by the Bank or its officers or agents as attorney for and in the name of the Borrower to enter and remain at any place where the hypothecated assets shall be and to take possession of or recover and receive the same and/or appoint any officer or officers of the bank as receiver or receivers of the hypothecated assets and/or by public auction or private contract or otherwise dispose of or deal with all or any part of the hypothecated assets and to enforce, realise settle, compromise and deal with all or any loss in the aforesaid without being bound to exercise any of these powers or being liable for any loss in the exercise thereof and without prejudice to the Bank's rights and remedies of suit against the Borrower and to apply the net proceeds of such sales in or towards liquidation of the balance due to the bank and the Borrower hereby agree to accept the Bank's account of sales and realization therefore as correct and fully binding on them and to pay any short fall or deficiency shown thereon.*

*15. That if the Borrower fail to maintain the margin as aforesaid as and when called upon by the Bank or fail or neglect to repay on demand such balance of principal and interest as may be then due to the bank on the said account or in the event of the Borrower becoming bankrupt or insolvent or executing any deed or agreement of composition, insolvency or go in liquidation or if the Borrower commit breach of any of the terms and conditions of this agreement or in the opinion of the Bank there is danger of the loss of the security by any reason whatsoever, it shall be lawful for the bank forthwith or at any time thereafter and without any notice to the Borrower (without prejudice to the Bank's right or suit against the Borrower) either by public auction or private contract absolutely to sell or otherwise dispose of all or any of the security and to apply the net proceeds of such sale towards liquidation of the balance due to the Bank on the said account as shown by the statement of account prepared from the books of the bank and signed by the Accountant or other duly authorized officer of the Bank, which the Borrower hereby agree to accept as sufficient proof of the correctness thereof without the production of any book voucher or paper. The Borrower shall not be*



*entitled to raise any objection as to the regularity of the sale or as to the rate or the time at which the goods are sold as aforesaid or in respect of costs, charges and expenses incurred in connection therewith.”*

8. Subsequently, when the borrower defaulted on repayment obligations and failed to maintain financial discipline, in terms of hypothecation agreement dated 12.05.2008, respondent no.3 decided to take over the assets of the original owner (Summit Aviation Private Limited) including helicopters bearing no. VT-NBA, BELL 407, S. No. 53083 and VT-NBB, BELL 407, S No. 53696 (hereinafter referred as ‘the two helicopters’).

9. In the meantime, on 18.11.2019, respondent no.2 issued a prohibitory order due to outstanding liabilities amounting to Rs. 2783.73 lacs owed by Summit Aviation Private Limited to respondent no.1 and respondent no.2.

10. On 06.09.2023, the respondent no. 3 issued a communication to the Income Tax department expressing its intention to auction the two helicopters on account of it being classified as NPA and also stating that its charge over the assets had priority over the income tax dues. The said communication is reproduced as under –

*“Sir/Madam,*

*This has reference to the captioned letter containing Prohibitory Order and restraining M/s Yathi Air Services and M/s SAR Aviation Services Ltd from delivering the possession of helicopters to any person or persons whomsoever.*

*It is informed that credit facilities were advanced by the bank to M/s Summit Aviation Private Limited and the said loan account had been classified as Non-Performing Asset. The said credit facilities were granted against hypothecation of helicopters and hypothecation agreement executed on 12.05.2008 empowering the hypothecatee to take possession of the goods and sell the same in the event of default in the payment, in such a case bank can proceed ahead without*



*intervention of the court. As the account has been classified as NPA, the bank is intending to enforce the securities i.e. hypothecated helicopters by taking possession and by sale of these helicopters.*

*Further with regard to your outstanding arrears due from it in respect of Certificate No 46/2019 amounting Rs.2783.73 lacs from captioned borrower. It is informed that the bank's charge on the hypothecated assets have been created on 12.05.2008 and as such the bank is a secured creditor and secured creditor has priority of charge/prior Charge over the income tax dues. The said has been reiterated by below mentioned High Court and Supreme Court Judgements:-*

*Hon'ble SC in Bombay Stock Exchange Vs. V.S. Kandalgaokar (2015) 2 SCC 1 has held that "Government debts have precedence only over unsecured creditors. The IT Act 1961 does not provide for any paramounting of dues by way of income tax, the moment the stock exchange has a lien over the members' securities, it would have precedence over income tax dues".*

*Further Hon'ble Bombay High Court in the case of State Bank of India Vs State of Maharashtra (2020) SCC online Bom 419 quoting the above judgement has affirmed that the Income Tax Act does not provide for paramountcy of income tax dues. Hon'ble Court has also held that secured debt has priority over tax dues and therefore, Petitioner as secured creditor has a prior superior charge over the Income Tax dues.*

*As such, bank is at liberty to proceed as per law to take possession and sell of these hypothecated assets to recover its dues and if any remaining amount left after adjustment of our dues, the same shall be shared as per priority of Charges."*

11. Subsequently, respondent no.3 published a notice in Financial Express and Jansatta newspapers on 20.09.2023, announcing the auction of two helicopters. The notice outlined the details of the auction, inviting interested bidders to participate.
12. A corrigendum was also issued by respondent no.3 on 22.09.2023 to provide additional information to the bidders. The corrigendum highlighted



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applicable hangar charges on the helicopters and brought to the notice of prospective bidders the existence of a prohibitory order issued by the Income Tax Department.

13. The petitioner participated in the auction conducted on 30.09.2023 and emerged as the highest bidder for the two helicopters. For Bell 407 VT NBA, the bid amount was ₹59,00,000 and for Bell 407 VT NBB, the bid amount was ₹53,00,000. Respondent no.3 communicated the auction results to the petitioner on 03.10.2023, confirming the petitioner as the highest bidder and requesting the payment of the balance amounts as per the auction terms.

14. The petitioner fulfilled all auction terms by making full payments for both helicopters. Respondent no.3 acknowledged the payments and issued sale certificates dated 04.10.2023 for the two helicopters.

15. Following the successful completion of the auction, respondent no.3 communicated with respondent no.2 on multiple occasions (06.09.2023, 29.09.2023, and 03.10.2023) to request the withdrawal of the prohibitory order. These communications emphasized the legal and procedural necessity to release the helicopters in light of the completed sale. However, no response or action was received from respondent no.2.

16. The petitioner made a separate representation to respondent no.2 on 12.10.2023, urging the withdrawal of the prohibitory order dated 18.11.2019. Despite this, respondent no.2 failed to act or provide any response.



17. The petitioner submits that the continued existence of the prohibitory order has prevented the DGCA, M/s Yathi Air Services and SAR Aviation Services from releasing the helicopters to the petitioner.

18. In the above backdrop, the present petition has been filed by the petitioner challenging the said prohibition order.

19. It is the case of the petition that respondent no.3 is the secured creditor and is having precedence over the dues of revenue. In order to substantiate the said averments of the petitioner, reliance has been placed on ***Bombay Stock Exchange v. V.S. Kandalgaokar (2015) 2 SCC*** and ***Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. & Ors. (2000) 5 SCC 694***. These cases affirm that the rights of secured creditors prevail over revenue dues.

20. The petitioner submits that that the hypothecation of the helicopters by respondent no. 3 and the default by M/s Summit Aviation Pvt. Ltd. were established and well-documented before the issuance of the prohibitory order dated 18.11.2019. The Income Tax Authorities were aware of the hypothecation arrangement. Respondent no. 3, as the secured creditor, lawfully exercised its rights under the hypothecation agreement to take possession of and sell the helicopters. This sequence of events underscores the precedence of respondent no.3's charge over the tax authorities' claims.

21. The petitioner submits that the Income Tax Act, 1961, does not contain any provision that accords priority to tax dues over secured creditors. Accordingly, respondent no. 3's claim as a secured creditor prevails over the tax authorities' demands.



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22. It has further been submitted that despite receiving prior intimation and public notices, the tax authorities failed to raise any objections or take timely action, indicating their acquiescence to the sale process. Having had knowledge of the auction and choosing not to oppose it, the tax authorities are now estopped from contesting the validity of the sale. Their conduct amounts to tacit approval of the proceedings, and they cannot now reverse their position to the petitioner's detriment.

23. The respondent no. 2 has however, objected the present petition by submitting as under –

- i. The Income Tax Department conducted a survey operation under Section 133A of the Income Tax Act, 1961, at the premises of M/s Summit Aviation Pvt. Ltd. on 05.07.2017. Due to non-payment of taxes by the assessee, a provisional attachment order under Section 281B was issued on 03.08.2018 to secure the revenue's interest. The attached assets included three helicopters.
- ii. The reassessment proceedings under Section 148 of the Act led to the determination of outstanding dues amounting ₹2783.73 lakhs (excluding interest) for Assessment Years 2011-12 to 2016-17. Despite attempts by the Assessing Officer and subsequent referral to the Tax Recovery Officer, the assessee failed to pay the dues. As a result of which the prohibitory order was issued on 18.11.2019, restraining the delivery or sale of the helicopters.
- iii. It is the case of the respondent no. 2 that the Income Tax Department was not adequately informed prior to the auction, and



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the sale ignored the existing prohibitory order, causing a reported revenue loss of ₹40.63 crore.

- iv. The Income Tax Department contends that the auctions conducted by respondent no. 3 are illegal as they violated the prohibitory order and failed to prioritize tax recovery. The department seeks to safeguard the outstanding revenue demand of ₹40.63 crore, including interest and penalties.

24. Respondent no. 3 in its affidavit dated 05.07.2024 has averred that as a secured creditor, the respondent no 3's rights over the helicopters take precedence over the claims of the income tax authorities. The Bank, under the provisions of the Hypothecation Agreement, exercised its legal right to sell the helicopters to recover the outstanding dues from the borrower. Following the sale and issuance of the sale certificates, the petitioner is now the legal owner of the helicopters and is entitled to take possession of them.

25. It is further submitted that given the completed sale of the helicopters and the issuance of sale certificates in favor of the petitioner, the respondent no.3 requests respondent No. 2 to remove the prohibitory order. The respondent no.3's position is that the prohibitory order is obstructing the petitioner's lawful possession of the helicopters, now that the sale has been completed and ownership transferred.

26. Having considered the rival contentions of the respective counsel, this Court finds no merit in the objections raised by respondent no. 2. It is a well-settled principle of law that, unless specifically stipulated by statute, the dues of a secured creditor take precedence over government debts. In this



regard, the respondent no. 3, as a secured creditor, had priority over the revenue's claims and, accordingly, was entitled to exercise its rights over the secured assets and subsequently sell the concerned helicopters.

27. In the case of ***Dena bank v. Bhikhabhai Prabhudas Parekh & Co. and others***, (2000) 5 Supreme Court Cases 694, the Court has observed as under -

*“10. However, the Crown's preferential right to recovery 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 pledgee 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 King 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 pledgee of goods. In Bank of Bihar v. State of Bihar the principle has been recognised 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. Rashbehary 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.”*

28. While referring to the observations of the Court in ***Dena Bank*** (Supra), the Apex Court, in ***Bombay Stock Exchange v. V.S. Kandalgaokar and Others*** (2015) 2 SCC 1, observed as under -

*“27. What has been argued before us is that the moment the Stock Exchange has a lien over the member's securities, it would have precedence over income tax dues. We find there is force in this submission.*



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39. *The first thing to be noticed is that the Income Tax Act does not provide for any paramountcy of dues by way of income tax. This is why the Court in Dena Bank case<sup>6</sup> held that Government dues only have priority over unsecured debts and in so holding the Court referred to a judgment in Giles v. Grover<sup>7</sup> in which it has been held that the Crown has no precedence over a pledgee of goods. In the present case, the common law of England qua Crown debts became applicable by virtue of Article 372 of the Constitution which states that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed by a competent legislature or other competent authority. In fact, Collector v. Central Bank of India<sup>17</sup> after referring to various authorities held that the claim of the Government to priority for arrears of income tax dues stems from the English common law doctrine of priority of Crown debts and has been given judicial recognition in British India prior to 1950 and was therefore “law in force” in the territory of India before the Constitution and was continued by Article 372 of the Constitution (AIR pp. 1835-36, para 7 : SCR at pp. 861-62).*

40. *In the present case, as has been noted above, the lien possessed by the Stock Exchange makes it a secured creditor. That being the case, it is clear that whether the lien under Rule 43 is a statutory lien or is a lien arising out of agreement does not make much of a difference as the Stock Exchange, being a secured creditor, would have priority over Government dues.”*

29. In light of the above, it is clear that in the present case, the hypothecation agreement between M/s Summit Aviation Pvt. Ltd. and the respondent no. 3 was executed on 12.12.2008, well before the issuance of the prohibitory order. This establishes the legal foundation for the respondent no.3's rights over the helicopters, which predate any action taken by the Income Tax Authorities.

30. Furthermore, the objection raised by the Income Tax Department regarding inadequate prior notice of the auction is without merit. It is well-documented that, on 06.09.2023, the respondent no.3 formally



communicated its intention to auction the helicopters to the Income Tax Department. However, despite receiving this communication, respondent no. 2 failed to respond. Moreover, on 03.10.2023, respondent no. 3 informed the tax authorities about the successful auction and requested the lifting of the prohibitory order. This was followed by a subsequent communication on 12.10.2023, wherein the confirmation of the sale was again conveyed. Despite being duly notified, the tax authorities neither raised any objection to the auction nor initiated any proceedings to challenge it.

31. Section 222 of the Income Tax Act has also been brought to the attention of this Court. The same is reproduced as under –

*“222. Certificate to Tax Recovery Officer.—(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee (such statement being hereafter in this Chapter and in the Second Schedule referred to as “certificate”) and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—*

*(a) attachment and sale of the assessee’s movable property;*

*(b) attachment and sale of the assessee’s immovable property;*

*(c) arrest of the assessee and his detention in prison;*

*(d) appointing a receiver for the management of the assessee’s movable and immovable properties.*

*Explanation.—For the purposes of this sub-section, the assessee’s movable or immovable property shall include any property which has been transferred, directly or indirectly on or after the 1st day of June, 1973, by the assessee to his spouse or minor child or son’s wife or son’s minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property so transferred to his minor child*



*or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date.*

*(2) The Tax Recovery Officer may take action under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken."*

(emphasis supplied)

32. This section empowers the Tax Recovery Officer to proceed with the "attachment and sale of the assessee's movable property" to recover the due taxes. However, in the present case, while respondent no. 2 initiated attachment proceedings by issuing the prohibitory order, no further action has been taken by respondent no. 2 towards the recovery of the outstanding amount. It is impermissible to keep the properties attached indefinitely without pursuing subsequent steps to resolve the matter.

33. Section 222(1)(a) explicitly states "attachment and sale," signifying a sequential process where the property, once attached, must subsequently be sold to recover the arrears. Despite this, respondent no. 2 failed to take any action beyond the issuance of the prohibitory order.

34. This Court finds merit in the petitioner's contention that the absence of any objection or legal challenge from the tax authorities regarding the auction conducted by respondent no. 3, despite their prior knowledge of it, signifies their acquiescence to the sale. In this regard, reliance has been rightly placed on the judgments of the Supreme Court in ***Union of India v.***



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*N Murugesan* (2022) 2 SCC 25 and *State Bank of India v. M J James* (2022) 2 SCC 301.

35. It is noted that the respondent no. 2 was clearly informed about respondent no. 3's intention to auction the petitioner's two helicopters through a communication dated 06.09.2023. However, respondent no. 2 did not raise any objection at that time.

36. It was only after duly informing respondent no.2 the intention of the respondent no. 3, a notice regarding the auction of the two helicopters was published in the *Financial Express* and *Jansatta* newspapers on 20.09.2023.

37. Further, on 22.09.2023, respondent no. 3 issued a corrigendum to furnish additional information to bidders regarding applicable hangar charges on the helicopters and the existence of a prohibitory order.

38. Even after the successful auction and the subsequent sale of the two helicopters, respondent no. 2 was informed about the same. Despite being duly informed at every step, respondent No. 2 failed to raise any objection/s to the auction. In any event, in view of the legal position that the dues of Respondent no.3/ secured creditor takes precedence over the dues of respondent no.2, the attachment order issued by respondent no.2 cannot be construed to be an impediment to the auction sale in favour of the petitioner.

39. Accordingly, the present petitions are allowed in terms of the prayers made. All pending applications also stand disposed of.

**SACHIN DATTA, J**

**FEBRUARY 24, 2025/sv**