(2010) 12 MAD CK 0301

In the Madras High Court

Case No : Writ Petition No. 9928 of 2009

A. Senthil Kumar and Another — APPELLANT

Vs

Assistant Commissioner (CT) and Others — RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Companies Act, 1956 — Section 529A
Debts Recovery Tribunal Act, 1993 — Section 24, 34
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11
Estate Duty Act, 1953 — Section 74
Mines and Minerals (Development and Regulation) Act, 1957 — Section 25
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 35, 35, 37
State Financial Corporations Act, 1951 — Section 46
Tamil Nadu General Sales Tax Act, 1959 — Section 24, 26, 36
Transfer of Property Act, 1882 — Section 13, 69, 69A
Workmens Compensation Act, 1923 — Section 14A

Citation : (2011) 1 CTC 828 : (2011) 2 MLJ 127

Hon'ble Judges : N. Kirubakaran, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : P.B. Balaji, for the Appellant; R. Tholgappian and V. Raghavachari, for the Respondent

Judgement

N. Kirubakaran, J.—The Petitioners who are the purchasers the property in the auction conducted by the third Respondent under the provisions of SARFAESI Act have approached this Court challenging the auction notice dated 24.4.2009 issued by the first Respondent for recovery of arrears of commercial tax, which are payable by M/s. Ploneer Cashew Limited to which the property originally belonged to.

2. The case of the Petitioners is that the third Respondent advertised for tender-cum-auction for sale of the property of one Pioneer Cashew Limited u/s 13(4) of the SERF AESI Act 2002. The said property is land and building bearing No. 300, Poonamallee High Road, Maduravoyal, Chennai-600 095. The said auction was

conducted by the third Respondent for recovery of loan availed by Pioneer Cashew Industries Limited. The Petitioners were successful bidder and the sale was concluded in their favour by way of sale certificate dated 19.5.2008 and subsequently physical possession was also given.

3. When things stand so, the Petitioners received a communication dated 29.9.2008 issued u/s 36 of the TNGST Act from the first Respondent stating that for arrears of sale tax due and payable by Pioneer Cashew Industries Limited, the properties purchased by the Petitioner were sought to be auctioned by the first Respondent on 24.12.2008. A suitable reply was given by the Petitioners on 20.12.2008. Subsequently, another notice dated 24.4.2009 was served on the Petitioners by the first Respondent intimating about the proposed auction of the said property on 11.6.2009 for recovery of arrears of sales tax payable by the said Pioneer Cashew Industries Limited. The said auction notice is challenged before this Court.

4. Mr. Lakshminarayanan and Mr. P.B. Balaji, the learned Counsel appearing for the third Respondent and Petitioner contended that:

1) The purchase of the property by the Petitioners is under the provisions of SARFAESI Act 2002 from the bank, which is a secured creditor.

2) The said auction sale conducted by the third Respondent bank is valid.

3) The sale by the third Respondent was concluded as early as on 19.5.2008 by issuance of sale certificate and handing over possession of the property to the Petitioners.

4) SARFAESI Act 2002 is a special Act and it would override the provisions of Tamilnadu General Sales Tax Act 1959.

5) There is no "First charge" created over the property regarding arrears of tax u/s 24 of the TNGST Act.

6) There is no non-obstante clause in TNGST Act.

7) In the absence of any specific statutory provisions, creating first charge for the tax arrears in the TNGST Act, the claim of the secured creditors (third Respondent bank) would prevail over crowns debt (Sales Tax arrears).

He relied on the following judgments in support of his contentions:

1) Union of India (UOI) and Others Vs. SICOM Ltd. and Another, .

2) Central Bank of India Vs. State of Kerala and Others, .

3) AI Champdany Industries Limited Vs. The Official Liquidator and Another, .

4) Indian Bank Vs. The Commercial Tax Officer, Tajura Leathers and Surya Leather Export, .

5) M. Nagarajan v. Deputy Commercial Tax Officer; and Deputy Commercial Tax

Officer and State of Tamilnadu MANU TN/1292/2009 (DB).

6) Indian Bank Kiipauk Branch v. The Sub Registrar, Periyamet Sub Registration Office and Ors. CD J 2009 MHC 2265(DB).

7) Tamilnad Mercantile Bank Ltd. Vs. The Commercial Tax Officer, .

5. Relying upon the above judgments, the learned Counsel submitted that the claim of the secured creditor will prevail over the crowns debt (Sales tax arrears) and therefore the sale conducted by the third Respondent bank is valid and the Respondents 1 and 2 cannot bring the property for sale for the alleged tax arrears payable by Pioneer Cashew Industries Limited.

6. On the other hand, Mr. Tholkappiyan, learned Government advocate submitted that:

1) The tax arrears would have priority over all other claims. He referred to Section 24 of the TNGST Act, which states that the tax due would have priority over all other claims.

2) The crowns debt would have priority over all other claims;

3) Though SARFAESI Act is a special Act it cannot override provisions of TNGST Act, as charge is created, over the property statutorily. He relied upon the following judgments:

1) Central Bank of India Vs. State of Kerala and Others, ,

2) Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, .

3) Central Bank of India and Anr. v. State of Tamil Nadu and Another 1999 (113) STC 145 (DB).

4) Punjab National Bank, Assets Recovery Branch v. Commercial Tax Offtcer-II, Theni and Anr. (2006) 3 MLJ 919 (DB).

5) Unreported judgment in Indian Bank v. Tamil Nadu Industrial Investment Corporation Limited and 9 Others O.S.A. No. 164 of 2001.

In fine, referring to the above judgments, he submitted that the statutory dues will have priortiy over all other debts including the claim of the Secured Creditor. He particularly -relied upon judgment in Central Bank of India v. State of Kerala and Ors. (supra).

7. Heard the respective counsel for the parties and perused the records. Both the parties relied upon different paragraphs of the very same judgment in Central Bank of India v. State of Kerala and Ors. (supra). Hence, it is useful to refer the law declared by 3 Judge Bench of the Apex Court. In the said judgment the point for consideration was whether of the Kerala General Sales Tax Act 1963 and Section 38(c) of the Bombay Sales Tax Act 1959 and similar provisions contained in other legislations by which first charge has been created on the property of

the dealer or such other persons, who is liable to pay sales tax etc., are not inconsistent or overlapping between the provisions of the DRT Act, Securitisation Act etc., The Apex Court thread bear considered DRT Act, SARFAESI Act and other Acts and gave dictum on various points including scheme, scope and purpose of DRT Act and SARFAESI Act.

8. After elaborately dealt with various provisions of the DRT Act and Securitization Act, especially Section 24(i) of the DRT Act and Sections 35 and 37 of the SARFAESI Act and the provisions contained in the Bombay Sales Tax Act, 26(B) of the Kerala Act; Section 14(A) of the Workmen''s Act 1923; Section 74(1) of Estate Duty Act 1953; Section 25(2) of Mines and Minerals (Development and Regulations) Act 1957, Section 30 of Gift-Tax '' Act, Section 529-A of Industries Act 1956, Section 46(5) of State Finance Corporation Act 1951, the Hon''ble Supreme Court held as follows:

(a) However what is most significant to be noted in that there is no provisions in either DRT Act or SARFAESI Act by which first charge has been created in favor of banks, financial institutions or secured creditors qua, the property of the borrower.

(b) In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the non obstante clause in Section 13 and gave primacy to the right of secured creditor vis-a-vis other mortgagees who could exercise rights under Sections 69 or 69-A of the Transfer of Property Act. However, this primacy has not been extended to other provisions like Section 38-C of the Bombay Act and Section 26-B of the Kerala Act by which first charge has been created in favor of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc. Sub-section (7) of Section 13 which envisages application of the money received by the secured creditor by adopting any of the measures specified under Sub-section (4) merely regulates distribution of money received by the secured creditor. It does not create first charge in favor of the secured creditor.

(c) While enacting the DRT Act and Securitizations Act. Parliament was aware of the law laid down by the Court wherein privity of the State dues was recognized. If Parliament intended to create first charge in favor of banks, financial institutions or other secured creditors on the property of the borrower, then it would have incorporated provisions like Section 529-A of the Companies Act or Section 11(2) of the EPF Act and ensured that not with standing series of judicial pronouncement, dues of banks, financial institutions and other secured creditors should have priority over the State''s statutory first charge in the matter of recovery of dues of sales tax etc. However, the fact of the matter is that no such provision has been incorporated in either of these enactments despite conferment of extraordinary power upon the secured creditors to take possession and dispose of the secured assets without intervention of the Court or Tribunal" The reasons for this omission appears to be that new legal regime envisages transfer of secured assets to private companies.

(emphasis supplied)

(d) if the provisions of the DRT Act and the Securitization Act are interpreted keeping in view the background and context in which these legislations were enacted and the purpose sought to be achieved by their enactment, it becomes clear that the two legislations, are intended to create a new dispensation for expeditious recovery of dues of banks, financial institutions and secured creditors and adjudication of the grievance made by any aggrieved person qua the procedure adopted by the banks, financial institutions and other secured creditors, but the provisions contained therein cannot be read as creating first charge in favor of banks, etc.

(e) If Parliament intended to give priority to the dues of banks, financial institutions and other secured creditors over the first charge created under State legislations then provisions similar to those contained in Section 14A of the Workmen''s Compensation Act, 1923. Section 11(2) of the EPF Act. Section 74 of the Estate Duty Act, 1953, Section 25(2) of the Mines and Minerals (Regulation and Development) Act, 1957, Section 30 of the Gift Tax Act, and Section 529-A of the Companies Act, 1956 would have been incorporated in the DR TA ct and the Securitization Act.

(emphasis supplied)

(f) Undisputedly, the two enactments do not contain provision similar to the Workmen''s Compensation Act, etc. In the absence of any specific provision to that effect, it is not possible to read any conflict or inconsistency or overlapping between the provisions of the DRT Act and the Securitization Act on the one hand and Section 38-C of the Bombay Act and Section 26-B of the Kerala Act on the other and the non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitization Act cannot be invoked for declaring that the first charge created under the State legislation will not operate qua or affect the proceedings initiated by banks, financial institutions and other secured creditors for recovery of their dues or enforcement of security interest, as the case may be.

(g) The Court could have given effect to the non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitization Act vis-a-vis Section 38-C of the Bombay Act and Section 26-B of the Kerala Act and similar other State legislations only if there was a specific provision in the two enactments creating first charge in favor of the banks, financial institutions and other secured creditors but as Parliament has not made any such provision in either of the enactments, the first charge created by the State legislations on the property of the dealer or any other person, liable to pay sales tax, etc.. cannot be destroyed by implication or inference, notwithstanding the fact that banks, etc. fall in the category of secured creditors.

(emphasis supplied)

(h) On the basis of the above discussion, we hold that the DRT Act and the Securitization Act do not create first charge in favor of banks, financial institutions and other secured creditors and the provisions contained in Section 38-C of the Bombay Act and Section 26-B of the Kerala Act are not inconsistent with the provisions of the DRT Act and the Securitization Act so as to attract non obstante clauses contained in Section 34(1) of the DRT Actor Section 35 of the Securitization Act.

9. The Hon''ble Supreme Court clearly held in the above case, viz. Central Bank of India that:

1) There is no provision either in DRT Act or SARFAESI Act by which first charge is created in favor of Banks, Financial Institutes etc.

2) Section 13(7) of SARFAESI merely regulates distribution of money and does not create first charge in favor of secured creditor.

3) Non-obstane clause in Section 13 of SARFAESI Act gives primacy to the right of Secured creditor over other creditors who could exercise rights u/s 69(A) of the Transfer of Property Act.

4) Non-obstante clause contained in Section 34(1) of the DRT Act and Section 35 of the Securitsation Act would be given effect only if there was a specific provision in those two Acts creating first charge in favor of Banks.

In the light of the said judgment, Section 24 of TNGST Act 2002 is required to be considered. Section 24(1) states that the tax payable under the Act shall be a "charge" on the property of the person liable to pay tax. Section 24 of the TNGST Act is extracted hereunder:

Section 24. Payment and recovery of tax-(1) Save as otherwise provided for in Sub-section (2) of Section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such installments, if any and within such time as may be specified in the notice of assessment, not being less than twenty one days from the date of service of the notice. The tax under Sub-section (2) of Section 13 shall be paid without any notice of demand. In default of such payment the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.

Section 24(2): Any tax assessed on or has become payable by. or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the Government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it u/s 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered,--

(a) as land revenue, or

(b) on application to any Magistrate, by such Magistrate as if were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 31, 31-A, 33, 36, 37 or 38.

24(3) On any amount remaining unpaid after the date specified for its payment as referred to in Sub-section (1) or in the order permitting payment in installments, the dealer or person shall pay, in addition to the amount due, interest at one and half percent per month of such amount for the first three months of default and at two percent per month of such amount for subsequent period of default:

Provided that if the amount remaining unpaid isy less than one hundred rupees and the period of default is not more than a month, no interest shall be paid;

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this Sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment as the case may be.

Section 26(6) of the Act is reproduced as follows:

26(6) Any amount which a person is required to pay to the assessing authority or for which he is personally liable to the assessing authority under this Section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrears of land revenue.

(emphasis supplied)

10. A perusal of the above said Sections would show that the tax due under TNGST Act will have priority over all other claims against the property of the dealer. The tax due would be a charge as per Section 24(1) of the Act. Section 24(1) creates charge whereas 24(2) gives preference/priority to the tax arrears over other claims except the claim of the land development bank over property mortgaged u/s 28(2) of the Tamil Nadu Co-operative Land Development Bank Act 1934. Therefore it is very evident that except the claim of the land development bank, the tax arrears would be given priority and it would be the "First Charge" on the property and would have priority over other claims.

11. The Hon''ble Supreme Court in Poppatlal Shah Vs. The State of Madras, held

as follows:

(7) It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself....

Therefore, specific employment of words in the statue viz. "have priority" over all other claims against the property of the said dealer" would denote that any other claim under all other acts including the claims of the secured creditors are subservient to the claim of the tax due. The adjective "priority" would supply special importance to the tax revenue. If Section 24(1) alone is found in the statue, it cannot be said that tax due would be first charge. Incorporation of Sub-Section 2 of 24 by the legislature makes the difference and it is not without purpose. Section 24(2) qualifies and makes the taxes as "first charge". The legislature thought it fit to incorporate substantive provision in Section 24(2) in the Act by including "priority over all other claims" and also mode of recovery of the tax revenue as land revenue u/s 26 and to recover the tax revenue as if a fine imposed by the Magistrate would certainly denote that "priority over other claims" would mean "Statutory first charge" which overrides other claims.

12. Therefore this Court holds that:

1) First charge" is created by Section 24 of the Act for tax arrears.

2) Tax claim will override all other claims and against the property of the dealer except the claim of the development bank.

3) The words "priority" over other claims" means and denote "First charge".

13. As per judgment of the Hon''ble Supreme Court, in Central Bank of India v. State of Kerala and Ors. (supra) in paras 126, 129,130,131 and 158, this Court holds that the tax due would be the first charge as per Section 24 of the TNGST Act over the claim of the secured creditors.

14. A number of judgments have been cited by both the parties.

In A1 Champdany Industries Ltd. v. Official Liquidator and Anr. (supra), a 2 Judge Bench of the Hon''ble Supreme Court held that municipal tax in terms of provisions of the Bombay Provincial Municipal Corporation Act 1949 does not create encumbrance on the property and the municipality was held unsecured creditor even though first charge was created for tax due. The above judgment was rendered before the judgment in Central Bank of India v. State of Kerala (supra) wherein it has been held that the first charge created under the state Act will have priority over claims of the secured creditors. Hence, the above judgment is not helpful to the Petitioner. In Union of India v. SICOM LTD (supra), the question was whether duty under Central Excise Act will have priority over secured debts in terms of State Financial Act. In that case, it was held that the dues of the corporation was prior in point of time and therefore it was held to have priority over the dues of the customs. Therefore, the said case is clearly distinguishable. No doubt, a Division Bench of this Court in M. Nagarajan v. Deputy Commercial Tax Officer (supra) and in Indian Bank rep. By Authorised Officer, Vellore Circle Office v. Commercial Tax Officer, Office of the CTO, Navalpur, Ranipet and Ors. (supra) after considering Apex Court judgment in Central Bank of India v. State of Kerala (supra) held that the claim of secured creditor will prevail over state claims. The fact remains that the Ap ex Court in Central Bank of India v. State of Kerala and Ors. (supra) categorically held in paragraphs 111, 113 and 116 that no first charge created under DRT Act and SARFAESI Act in favor of Banks. In view of the categorical pronouncement by the three judge Bench of the Hon''ble Supreme Court in Central Bank of India v. State of Kerala (supra), the claim of the State will prevail over the claim of the secured creditors.

15. That apart, a Division Bench of this Court in which one of us was a party (Justice F.M. IBRAHIM KALIFULLA) in Punjab National Bank v. Commercial Tax Officer II (supra) already held that the amount of sales tax payable by the dealer under the Tamil Nadu General Sales Tax Act is a first charge over the property of the dealer and it will have priority oyer all other debts including the prior mortgage. In fact the Division Bench relied upon the three judge Bench judgment of the Hon''ble Supreme Court in Dattatreya Shanker Mote and Others Vs. Anand Chintaman Datar and Others, , which held that a charge is a wider term than mortgage and it would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property, that charge will have precedence over the existing mortgage. Paragraph 13, 16 and 19 of the Division Bench judgment in Punjab National Bank Assets Recovery Branch v. Commercial Tax Officer (supra) (2006 (3) MLJ 919) are extracted as follows at p. 923 of MLJ:

13. u/s 26(6) of the TNGST Act, if the tax remains unpaid, it will be a charge. As per the provisions of Sections of Section 26(6) of the Act, any amount which an Assessee is required to pay to the assessing authority or for which he is personally liable to the assessing authority, if it remains unpaid, be a charge on the properties of the Assessee. It is clear from the provisions of Section 24(2) of the Act, any tax assessed on or has become payable under the act, have priority over all other claims, against the property of the dealer. So, it is evident from the said Sections that the claim of the tax department will have priority over other debts.

16. A similar case arose under Kerala General Safes Tax and the same was Delhi Auto and General Finance Private Limited Vs. Tax Recovery Officer, Income Tax and Others, . Section 23 of the Kerala General Sales Tax act is similar to Section 24 of the Tamil Nadu general sales Tax act and interpreting the same, their Lord ships said thus: ...it is idle to contend that the Appellant has a priority for payment of the amount due to him over the sales tax amount due to the state from the borrow under the Kerala Sales Act. 19. in the light of the above

decision, it is clear that the state has got priority over the claim of the Appellant. So, the Appellant cannot claim priority over tax dues to the state. Hence, the claim of the Appellant is not maintainable and is liable to be rejected.

16. Similarly, another Division Bench judgment of this Court in Central Bank of India v. State of Tamilnadu and Ors. (supra) held that Section 24(2) and 26(6) of the TNGST Act 1959 as amended by Tamilnadu Act 78/18 of 1986 sufficiently safeguarded and also enable the State to enforce the recovery of taxes and other dues under the Tamil Nadu General Sales Tax 1959, as the first statutory charge holder in suppression of even the claims of an existing mortgage, who claims to be a secured creditor. The Hon''ble Supreme Court in Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. and Ors. (supra) held that Sales tax would get priority/ precedence over secured creditors. Therefore, this Court holds that the State (the first and second Respondent) has first charge over the property of the Assessee by operation of law and over rides the claim of the Secured creditor.

17. However in this case, the property was sold under the provision of SARFAESI Act for non-payment of dues to the bank, the third Respondent which brought the property for auction through tender-cum-auction sale on 19.5.2008; The sale certificate was also issued on 19.5.2008 and possession was also stated to be given to the Petitioners. The rights already got accrued to the Petitioners in view of the sale under the SARFAESI Act. The first Respondent''s communication dated 24.12.2008 to the third Respondent bank reads as follows:

The Sub-Registrar, Virugambakkam has issued an encumbrance certificate on 24.12.2008 with the commercial tax officer as one of the executance and claimants. Therefore the purchaser cannot claim the right on the said property.

The aforesaid communication would show that the encumbrance (tax arrears) certificate was only reflected on 24.12.2008. Whereas the encumbrance certificate dated 15.5.2008 issued by the Sub Registrar office, Virugambakkam did not reflect any encumbrance except the sale deed dated 9.6.1998 and no claim of the first Respondent was reflected. The sale was conducted on 19.5.2008 and subsequent only the encumbrance of the first Respondent was made on 24.12.2008. It is clear from sale notice dated 20.9.2008 by the first Respondent the sales tax arrears were due from 1991-92 to 1996-97. However, the Petitioners had no notice of "charge" over the property in question, in spite of their due verification of Encumbrance Certificate dated 15.5.2008. Hence, it has to be held that the Petitioners are "bona fide purchasers" without notice of charge u/s 24(2) of the TNGST Act and the rights accrued to them cannot be interfered with. For the reasons stated above, the Respondents 1 and 2 belatedly could not proceed against the Petitioner''s property for the arrears of sales tax due of the company which availed the loan from the third Respondent bank.

18. The Hon''ble Supreme Court in The Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenbhai, held that the tax due cannot be recovered from transferee for consideration without notice of charge.

Again in Chogmal Bhandari and Others Vs. Deputy Commercial Tax Officer, II Division, Kurnool, it was held by the Hon''ble Supreme Court that so long as the transfer was not fraudulent and not set aside by Civil Court, the Tax authority cannot seek recovery of dues from the property. In this case also, the auction sale conducted by the third Respondent bank under SARFAESI Act cannot be termed as fraudulent and it was not set aside by any civil Court. A Division Bench of this Court also in 1998 (108) STC 161, following the judgment in Ahamedabad Municipal Corporation v. Hajigapur Husain (supra), held that the property of bona fide purchaser without notice of charge under TNGST Act cannot be proceeded for recovery of sales tax arrears. Similar is the case on hand.

19. The Hon''ble Supreme Court in Janatha Textiles and Others Vs. Tax Recovery Officer and Another, following privy council judgment in Nawaz Zair-Ul-Abdinkhan v. Mohd Asghar Ali Khan (1887) 15 IA 121 and Apex Court judgments Janak Raj Vs. Gurdial Singh and Another, , Gurjoginder Singh Vs. Jaswant Kaur (Smt) and Another, , Padanathil Rugmini Amma Vs. P.K. Abdulla, and Ashwin S. Mehta and Another Vs. Custodian and Others, held that third party auction purchaser''s interest in the auctioned property continues to be protected, notwithstanding that underlying decree is subsequently set aside or otherwise. In view of the judgments and also considering the fact that the Petitioner purchased the property bona fidely in the auction, after verification of encumbrance certificate dated 15.5.2008 in respect of the property, the property in the hands of the third party purchasers viz. the Petitioners cannot be auctioned by the Respondents 1 and 2. Though this Court comes to the conclusion that the tax arrears payable under TNGST Act is the first charge over the property of the Assessee and it will have priority over the claim of secured creditor, this Court holds that the sale in favor of the Petitioners is valid and the same cannot be sold by Respondents 1 and 2.

20. In fine this Court holds that:

1) Sale Tax arrears under the provisions of TNGST Act would prevail upon the claim of the secured creditor like third Respondent Bank.

2) Petitioners are bonafide purchasers of the property for valuable sale consideration without notice in a valid sale under the provisions of SARFAESI Act.

3) Petitioners property cannot be auctioned by the first Respondent for tax dues of the borrowing company.

21. In view of the above reasonings and on equitable consideration also, the auction notice dated 24.4.2009 issued by the first and second Respondent to sell the property at No. 300, Poonamallee High Road, Maduravoyal, Chennai-600 095 for recovery of tax arrears of Pioneer Cashew Industries Limited is not sustainable and the same is quashed. Accordingly, the writ petition is allowed. However, there will be no order as to costs.

