

(2008) 08 P&H CK 0024
In the Punjab And Haryana At Chandigarh

Aastha Trading Company	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Constitution of India, 1950 — Article 372
State Financial Corporations Act, 1951 — Section 29
Transfer of Property Act, 1882 — Section 100

Citation : AIR 2009 P&H 4 : (2009) 153 PLR 593 : (2009) 1 RCR(Civil) 375

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—This judgment will dispose of 3 writ petitions, bearing CWPs Nos. 16657 of 2005, 310 of 2007 and 13848 of 2007 since common questions of law and fact are involved therein.

2. The petitioner is an auction-purchaser of mortgaged property of the respondent Nos. 4 and 5 which was sold by respondent No. 7 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest, Act 2002 (hereinafter referred as the 2002 Act) for a consideration of Rs. 4.00 crores. Subsequently, it transpired that various other agencies were seeking to claim amounts due to them from the aforesaid respondent Nos. 4 and 5 by enforcing their respective charge/s against the same property. In CWP No. 16657 of 2005, the claims relate to arrears of workmen's dues (sic) respondent No. 6. The Director of Industries and Commerce, Punjab was impleaded through its application as respondent No. 8 vide order dated 7-8-1986. The said respondent claimed that respondent No. 4 also owed certain amounts to it and that respondent No. 7-Bank should pay the amount of Rs. 4,55,000/- due to it for a separate loan raised by respondent No. 4. Similarly, the Taxation Department was also impleaded as respondent No. 9 on its application vide order dated 11-5-2007 and claimed that an amount of Rs. 87 lakhs was due

to it as arrears of sales tax and it had the first right to recover the said amount as arrears of land revenue. The petitioner has challenged the notice issued by respondent Nos. 1 and 2 to auction a portion of the property purchased by it from respondent No. 7, for realization of the dues of the workmen, the Industries Department and the Taxation Department.

3. In CWP No. 310 of 2007, the petitioners have challenged the second auction notice for the same property issued by respondent No. 1 to effect the same recoveries as were sought to be effected in CWP No. 16657 of 2005.

4. In CWP No. 13848 of 2007, the petitioner has challenged the order of the respondent Nos. 1 and 2 whereby they have refused to register the sale made by respondent No. 3 (the Bank which was respondent No. 7 in the earlier two petitions) in favour of the petitioner.

5. As regards the workmen's dues, the matter was adjourned on 7-8-2008 to enable the parties to reach at the possibility of amicable settlement. During the course of hearing of these petitions, the counsel for both the parties are agreed that in case the petitioner deposits another amount of Rs. 20,00,000/- with the Registrar of this Court by 23rd August 2008 (for onward transmission to the Assistant Labour Commissioner, Hoshiarpur) along with proceeds of the earlier deposit made by the petitioner in pursuance to order dated 30-1-2007 passed by this Court in CM. No. 1295 of 2007 in CWP No. 310 of 2007 for disbursement to the workers, the workmen would have no further claim against the petitioner over the property purchased by it. The only caveat put by the learned Counsel for the petitioner is that the money deposited by it should be released only in the event of these writ petitions being allowed vis-a-vis the other respondents and the property being consequently registered in its name free from all encumbrances.

6. Coming to the claims of the Industries Department and the Taxation Department, the said claims need not detain us for long. In *Isha Marbles Vs. Bihar State Electricity Board and Another*, , the Hon''ble Supreme Court held that a bona fide auction-purchaser under a statutory sale was not liable to clear electricity dues of the previous owner by holding as follows:

What we have discussed above appears to be the law gatherable from the various provisions which we have detailed out above. It is impossible to impose on the purchasers a liability which was not incurred by them.

7. Thereafter, in *State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others*, , (the Hon''ble Supreme Court stated the following questions):

1.1. Firstly, whether the purchaser of assets of a concern sold by a State Financial Corporation, in exercise of its powers u/s 29 of the State Financial Corporations Act, 1951 (hereinafter "the SFC Act") would be liable under the Karnataka Sales Tax, 1957 (hereinafter "the KST Act"), for the arrears of sales tax of the concern whose assets have been transferred?

1.2 Secondly, under what circumstances does a charge created on a property become unenforceable against a transferee of such a property?

8. The Hon''ble Court held as follows:

In these circumstances, we are of the view that the first respondent was a purchaser for value without notice of the sales tax arrears of the defaulting company or the consequent charge on the property. This would, therefore, attract the principle laid down by this Court in Ahmedabad Municipal Corporation, which is also embodied in the proviso to Section 100 of the TP Act. Thus, the property in the hands of the first respondent was free of the charge and it is not open to the appellants to enforce the liabilities of the defaulting company in this manner against the first respondent.

9. The third judgment on the point is the case of UTI Bank Ltd. v. Deputy Commissioner of Central Excise, reported as AIR 2007 Mad 118, wherein the Full Bench of the Madras High Court speaking through Hon''ble Chief Justice P. Sathasivam held as follows:

All the decisions relied on by Mr. V. T. Gopalan, clearly show that the Government is entitled to claim its dues/taxes/duties in preference to other ordinary debts. In all those cases, there is no provision as found in SAFRFAESI Act or a specific provision claiming to have "first charge" as provided in Rajasthan Sales Tax Act in State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Corporation and Others, Three-Judge Bench), Madhya Pradesh General Sales Tax in State of Madhya Pradesh and Another Vs. State Bank of Indore and Others, , Three-Judge Bench and Karnataka Sales Tax Act in Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, . As explained in the case of Constitution Bench Judgment in Builders Supply Corporation v. Union of India AIR 1965 SC 1061, the arrears of tax due to the State can claim priority over private debts and thus the rule of common law amounts to law in force in the territory of British India at the relevant time within the meaning of Article 372(1) of the Constitution of India and therefore continues to be in force thereafter. In Dena Bank case (cited supra) it is held that the Crown's preferential right to recover all debts over other creditors is confined to ordinary and unsecured creditors.

In the light of the above discussion, we conclude.:

(i) Generally, the dues to Government i.e. tax, duties etc. (Crown's debts) get priority over ordinary debts.

(ii) Only when there is a specific provision in the statute claiming "first charge-over the property, the Crown's debt is entitled to have priority over the claim of others.

(iii) Since there is no specific provision claiming "first charge" in the Central Excise Department cannot have precedence over the claim of secured creditor viz., the petitioner-Bank.

(iv) In the absence of such specific provision in the Central Excise Act as well as in Customs Act, we hold that the claim of secured creditor will prevail over Crown's debts.

10. In view of our above conclusion, the petitioner, UTI Bank being secured creditor is entitled to have preference over the claim of the Deputy Commissioner of Central Excise, first respondent therein."

11. It may be specifically noted here that no such "first charge" has been pleaded by the Taxation Authorities in the present case also. Lastly, reference may be made to the decision of this Court in *Union of India v. Punjab Financial Corporation* reported as 2007 (1) ISJ 258. In this case, the Court held as follows:

The result of the above discussion is that the plea raised by the petitioners in regard to its priority of recovering excise dues or the other such like dues under the Excise Act cannot be upheld either on the applicability of doctrine of priority of Crown debts or that any such priority has been so created under any of the provisions of the Excise Act or Rules or the Customs Act.

12. In the circumstances, the inescapable conclusion is that both the Director of Industries as well as the Taxation Department cannot enforce the payment of their dues against the property purchased by the petitioner though they would have the liberty to seek redress against the original debtors viz. respondent Nos. 4 and 5. As mentioned above, the dispute between the workmen, represented by respondent No. 6 and the petitioner has come to an end. In the circumstances these petitions are allowed, the action of the respondent Nos. 1 and 2 in seeking to recover the amounts due to the Director of Industries as well as the Sales Tax Department by claiming charge/s against the property sold to the petitioners is set aside and thus, the auction notices impugned in the said petitions are quashed. Directions are also issued to respondent No. 2 to register the sale made in favour of the petitioner by respondent No. 7 forthwith.

13. As regards the stand of the petitioner regarding the amount to be paid to the workmen, I find it to be fair and consequently direct that the additional amount of Rs. 20 lakhs to be deposited by the petitioner as stated above, by 23rd August, 2008 be also put in short term fixed deposit coming to an end-in the first instance-coterminous with the earlier deposit mentioned above and that the proceeds of both the deposits be forwarded to the Assistant Labour Commissioner, Hoshiarpur for disbursement to the workmen when the property purchased by the petitioner is registered in its name free from all encumbrances.

14. The petitions are thus allowed in above terms with, however, no order as to costs.