
(1993) 03 AP CK 0042
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2447 of 1988

Indian Bank

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 09-03-1993

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 16(4), 17(5), 5
Andhra Pradesh Revenue Recovery Act, 1864 — Section 5, 52
Stamp Act, 1899 — Section 2

Citation : (1993) 03 AP CK 0042

Hon'ble Judges : Y. Bhaskara Rao, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant; Government Pleader, for the Respondent

Judgement

Y. Bhaskar Rao, J.—The plaintiff-Indian Bank is the revision-petitioner herein. This civil revision petition is filed against the interlocutory order passed by the learned Principal Subordinate Judge, Visakhapatnam, in I.A. No. 997 of 1980 in O.S. No. 76 of 1979 on his file ordering payment of an amount of Rs. 33,648 being arrears of sales tax due to the 1st respondent herein - State of A.P. represented by the Deputy Commercial Tax Officer IV, from out of the amount lying to the credit of O.S. No. 76 of 1979.

2. The brief facts of the case are :

The plaintiff-bank filed a suit for recovery of Rs. 7,09,296.72 against defendants 1 to 9. Defendants 2 to 7 are the directors of the first defendant-company. The defendants have started a heavy structural unit in the industrial estate situated at Tunglam village in Visakhapatnam district. Defendants 2 and 3 made an application to the Indian Bank, Cumbala Hill Branch, Bombay-26 for N.T.L. of Rs. 2.85 lakhs, open cash credit of Rs. 0.26 lakhs and clean supply bills of Rs. 0.45 lakhs. On the said application, the plaintiff-bank sanctioned the loan facility to the defendants on different items with conditions specified in the sanction letter.

The first defendant-company resolved to accept the terms and conditions contained in the sanction letter dated March 26, 1974 and offer the securities as mentioned in the said sanction letter sanctioning the facilities by the bank. It was further resolved that the facilities will be secured by floating charge on all other assets of the company in favour of the bank and irrevocable joint and several personal guarantee of defendants 2 to 7. Under the said agreement, the first defendant-company had taken different loans and the same were not repaid. Therefore, the bank filed the suit for recovery of Rs. 7,09,296.72. There was also hypothecation of some of the assets of the first defendant-company, After filing the suit, the bank has filed a petition for appointment of a receiver for sale of the properties hypothecated and accordingly the court below ordered for sale of the hypothecated properties. The properties were sold and the amount realised was deposited to the credit of the suit.

3. The State Government represented by the Deputy Commercial Tax Officer IV has filed application I.A. No. 997 of 1980, stating that the first defendant was doing business in ferrous and non-ferrous metals and other electrical goods at plot No. "A" Industrial Estate, near B.H.P.V. Ltd., with a branch office at Himayathanagar, Hyderabad. It was registered as a dealer under the provisions of the A.P. General Sales Tax Act, 1957. It was liable to pay arrears of sales tax for the financial years 1974-75 and 1975-76 and the total amount comes to Rs. 33,648. Even though demand notice was issued, no payment was made. Hence, final notice was got served on the directors of the first defendant-company, but they did not respond to it.

4. It is stated that in pursuance of the appointment of receiver in the suit, the hypothecated properties were auctioned on June 7, 1980 and a sum of Rs. 81,000 was deposited to the credit of the suit. As the amount of Rs. 33,648 is due to the State Government towards sales tax by the first defendant-company, the said sum stands as a first charge on the amount lying to the credit of the suit. Therefore, the first respondent herein - State - has filed I.A. No. 997 of 1980 under sections 5 and 17(5-A) of the A.P. General Sales Tax Act, 1957 read with sections 5, 52, 52B of the Revenue Recovery Act for payment of Rs. 33,648 lying to the credit of the suit. The plaintiff-bank filed a counter stating therein that the petition filed by the State Government under sections 5 and 17(5-A) of the A.P. General Sales Tax Act read with sections 5, 52, 52-B of the Revenue Recovery Act is not maintainable and that the State Government is not entitled to claim any amount lying to the credit of the suit, as the said amount has been brought into the court by sale of hypothecated properties belonging to defendants 2 to 9 in the suit. There is no charge over the properties for the tax due under the Sales Tax Act. As such, the State Government is not entitled to claim any amount whatsoever. The Sales Tax Department is only in the nature of a general unsecured creditor, whereas the plaintiff-bank is a secured creditor, as it had charge over the properties of respondents 1 to 9, defendants in the suit.

5. The first defendant-company also filed a counter denying the allegations made

in the petition filed by the State Government contending, inter alia, that the department had never served any assessment notice to the first defendant-company, nor had it served any demand notice. Hence, any assessment made by the State Government is illegal and void. As per the Sales Tax Act, unless the first defendant is being heard, no assessment can be made and the State Government has not followed the procedure laid down under the Act. Unless these things are complied with, the State Government cannot claim any amount from the first defendant-company, Under these circumstances, the State Government has no right to attach the amount lying to the credit of the suit.

6. The lower court, after hearing the rival contentions of the parties and considering the material placed before it, passed an order directing payment of the amount to the State Government as stated supra. Aggrieved by that order, the present revision is filed by the plaintiff-bank.

7. The learned counsel for the petitioner-bank contended that the bank filed the suit for recovery of the amount, and that the properties in question are hypothecated to the petitioner-bank by the first defendant-company, Though the suit is filed for simple recovery of money, it is actually based on hypothecation of properties by the first defendant-company in favour of the bank. As the properties are hypothecated, the right to recover the suit amount is a charge on the hypothecated properties. It is further submitted that without filing a suit, the hypothecated properties cannot be sold by the bank. Therefore, the bank filed the suit. It also filed an interlocutory application in the suit praying for appointment of a receiver to sell the hypothecated properties and deposit the amount to the credit of the suit. The court below ordered that the hypothecated properties have to be sold and the amount realised be deposited to the credit of the suit. Accordingly, the hypothecated properties were sold and the amount realised was deposited to the credit of the suit.

8. It is contended by the learned counsel for the petitioner that the bank has got a right to recover the due amount from the first defendant-company, as the properties were hypothecated to the bank and the right of the bank is a secured right whereas the right of the State Government to recover the sales tax due under the Revenue Recovery Act is an unsecured right. Therefore, the secured right of the petitioner prevails over the unsecured right of the State Government. In view of the above circumstances, submits the learned counsel, the court below erred in directing payment of the amount credited to the suit to the State Government.

9. The learned Government Pleader for the first respondent-State contended that the State has got priority to recover the amount which is to the credit of the suit. Admittedly, the said amount was realised after the sale of the hypothecated properties of the first defendant-company who is a defaulter. Therefore, when the State Government has got priority to recover the amount as a State debt or Crown debt, the same will prevail over the other debts of the creditors. It is further contended that the first hypothecation is for Rs. 2 lakhs on October 25,

1976. The present amount of Rs. 33,648 shown as arrears of sales tax, to be recovered, is for the years 1974-75 and 1975-76. Assessment for the year 1974-75 was made and an order of assessment was served on June 3, 1977 and for the year 1975-76, assessment order was passed on February 23, 1978. Thereafter, an assessment notice was served on the first defendant-company on July 19, 1977, for the year 1974-75 and thereafter number of reminders were issued. I.A. No. 884 of 1979 was filed by the plaintiff-bank for the sale of hypothecated properties by appointing a receiver on August 11, 1980 and the properties were sold on June 7, 1980. It is further contended that the plaintiff-bank filed the suit for simple money and no charge is claimed on the hypothecated properties in the suit. As per section 16(4) of the A.P. General Sales Tax Act, 1957, right to recover the arrears of sales tax as a land revenue accrues to the State Government when a defaulter fails to pay the amount under demand under the Revenue Recovery Act. Therefore, the State debt has got priority over all other debts of the creditors. The court below has rightly allowed the interlocutory application ordering payment of the arrears from out of the amount which is to the credit of the suit.

10. In view of the above rival contentions of both the learned counsel, the point that arises for consideration is whether the State debt or Crown debt has got priority over the secured debt of the other creditors.

11. There is no dispute that the first defendant is a defaulter for payment of the sales tax and the arrears of Rs. 33,648 have to be recovered by the Sales Tax Department, i.e., the State, from the first defendant-company for the assessment years 1974-75 and 1975-76 for which assessment orders were passed and thereafter notices were issued for payment of the said amount. Though number of notices were issued, the amounts were not paid. Therefore, the first defendant became defaulter of payment of the amount. When the assessee becomes a defaulter of the amount, the same can be recovered as arrears of land revenue. It is relevant here to refer to certain provisions of the A.P. General Sales Tax Act.

12. Section 5 provides for levy of tax on sales or purchases of goods; section 14 provides for assessment of tax; section 15 provides for provisional assessment of tax; section 16 says that the assessee shall pay the tax assessed or the penalty levied under the provisions of the Act within 15 days from the date of service of the notice of assessment as may be specified in the notice; section 16(4) says that, if the tax assessed or penalty levied or interest payable under this Act or any instalment thereof, and the fees payable towards licence or registration, are not paid by a dealer within the time specified therefor, the whole of the amount then remaining unpaid may be recovered from him as if it were an arrear of land revenue; section 16-B says that the directors of private company are liable in case of liquidation; section 17 empowers the assessing authority to recover tax and other dues payable under the Act from persons from whom money is due to the dealer; section 17-B provides for attachment of property and section 17-C

confers the powers of the Collector under the A.P. Revenue Recovery Act on the Deputy Commissioner to take all the proceedings under the Act.

13. Thus, as per the above provisions of the Act, if any amount is unpaid by the assessee after the demand notice is issued within the specified time, the same can be recovered as arrears of land revenue by the Deputy Commissioner by exercising the powers of the Collector under the Revenue Recovery Act. It is also relevant to extract some of the provisions of the A.P. Revenue Recovery Act, 1864.

14. Section 1 of the Act defines public revenue. Public revenue due on land shall, for the purpose of this Act, be taken to include cesses or other dues payable to the State Government on account of water supplied for irrigation.

15. Section 2 provides for security for revenue and it reads thus :

"The land, the buildings upon it and its products, shall be regarded as the security of the public revenue."

Section 3 provides for mode of payment for land revenue. Section 4 says what is arrears of revenue which reads thus :

"When the whole or portion of a kist shall not be so paid, the amount of the kist or of its unpaid portion shall be deemed to be an arrear of revenue."

Section 5 envisages as to how the arrear of revenue is recovered. It reads thus :

"Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided."

Section 8 provides rules for seizure and sale of movable property. Section 9 provides for procedure when defaulter neglects to pay after notice. Section 17 deals with claims to property distrained and sold - Revenue to be the first charge. Section 22 provides for proclamation of sale. Section 52 provides for similar process in case of other species of revenue, advances, fees, cesses, etc. It reads thus :

"All arrears of revenue other than land revenue due to the State Government, all advances made by the State Government for cultivation or other purposes can be recovered as land revenue."

16. Section 52-B provides for recovery of dues from persons from whom money is due to the defaulter. Thus, as per sections 5 and 52 of the Act, the dues to the Government other than land revenue can be recovered as arrears of revenue. Further, as per section 52-B, the said arrears can also be recovered from the persons who owed money to the defaulter. Thus, the arrears under the Sales Tax Act can also be recovered as arrears of land revenue by following the

procedure laid down under the Revenue Recovery Act. The above provisions of the A.P. General Sales Tax Act as well as the A.P. Revenue Recovery Act make it clear that the arrears of the sales tax can be recovered by following the procedure laid down under the A.P. Revenue Recovery Act, 1864. The Revenue Recovery Act also authorises to recover the said amount as arrears of land revenue including from the persons who owned money to the defaulter. In the present case, admittedly, the petitioner-plaintiff filed the suit for recovery of the amount due to them. It is also not in dispute that some of the movable properties were hypothecated in favour of the plaintiff-bank by the first defendant and the said properties were brought to sale at the instance of the bank. At that stage, the impugned interlocutory application was filed and the lower court ordered an amount of Rs. 33,648 to be paid to the Sales Tax Department towards the arrears of the sales tax due by the first defendant.

17. The learned counsel for the petitioner firstly contended that though the suit has been filed for simple recovery of money, in para 3 of the plaint, it is specifically mentioned that some of the movable properties were hypothecated to the bank and therefore, the bank cannot recover the amount directly by sale without filing a suit. In this context, he relied upon a judgment of this Court in *State Bank of India v. S. B. Shah Ali* (1987) 2 ALT 470. There is no dispute regarding this proposition. Merely because the properties are hypothecated, the creditor cannot sell them directly and recover the amount without filing a suit and obtain a decree to realise the amount. It is further contended by the learned counsel for the petitioner that the amount borrowed by the first defendant-company is secured by the hypothecation of properties. Thus the loans are secured by the charge of hypothecation on the movable properties hypothecated to the bank. Therefore, they are secured debts when compared to the sales tax arrears to be recovered by the State which is unsecured debt.

18. The learned Government Pleader appearing for the first respondent contended that there is no dispute that the first defendant-company has to pay the arrears of sales tax amount to the State Government and as per the provisions of the A.P. General Sales Tax Act and the Revenue Recovery Act, the State can recover the same as arrears of land revenue. Thus, the State has correctly filed the interlocutory application and the lower court rightly allowed the same. He further contended that the hypothecation is not equal to pledge. In the case of hypothecation, the property and possession will remain with the owner. Therefore, no security is created on the said property. In case of pledge, though ownership will remain with the owner, the possession will pass on to the other person with whom the pledge is made. Therefore, the amount to be recovered by the bank cannot be said to be a secured debt.

19. In view of the abovesaid contentions, it is relevant to find out what is the meaning of "hypothecation". It is also relevant to refer to a judgment of this Court in *State of Andhra Pradesh and Another Vs. Andhra Bank Ltd. and Others*, . According to the Blacks Law Dictionary, hypothecation means "a contract or

mortgage or pledge in which the subject-matter is not delivered into the possession of the pledgee or pawnee; or, conversely, a conventional right existing in one person over specific property of another, which consists in the power to cause a sale of the same, though it be not in his possession, in order that a specific claim of the creditor may be satisfied out of the proceeds. In the Law Lexicon, "hypothecation" is defined as "a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold in order to be paid his claim out of the proceeds". In the decision referred to above, it is held as follows :

"At this juncture it is useful to note the difference between the pledge and the hypothecation. It is true the hypothecation as such is not defined in the Contract Act and there is no provision dealing with such a transaction. In the Indian Contract Act by Pollock and Mulla at page 688 the difference between "hypothecation" and "pledge" is explained that in hypothecation the possession of the property is retained by the owner and certain rights in that movable property are transferred to the person in whose favour the property is hypothecated. But in a pledge the possession of goods also passes to the pledgees by way of security though the possession may be constructive. The true distinction between pledge and hypothecation is that the constructive possession of the goods in the case of pledge is specifically secured by the terms of the contract and is continued unabated throughout. In *Bank of Maharashtra Ltd. v. Official Liquidator* AIR 1969 Mys. 280; [1970] 40 Comp Cas 466 it is observed :

"In the case of hypothecation or pledges of movable goods, there is no doubt about the creditor's right to take possession, to retain possession and to sell the goods directly without the intervention of court for the purpose of recovering his dues. The position in the case of regular pledge completed by possession is undoubted and set out in the relevant sections of the Contract Act. Hypothecation is only extended idea of pledge, the creditor permitting the debtor to retain possession either on behalf of or in trust for himself."

20. Thus, "hypothecation" is only an extended idea of pledge and a right is created in favour of the creditor to realise the amount by sale of the hypothecated property.

21. It is nextly contended that though "hypothecation" is created, the same does not confer any right to the creditor as no statutory right is created in favour of the creditor. There is no doubt, that, no statutory right is provided to realise the amount by sale of hypothecated property. But the said right has been recognised by the judicial pronouncements from time to time following the rule of Common Law of England. Thus, it has been treated as a "law in force" in the country within the meaning of article 372 of the Constitution of India. This question arose for consideration in the decision in *Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others*, and their Lordships considering the concept of "law in force" as contained in article 372(1) of the Constitution, laid down the principle as follows :

"It is fairly well-settled that there are various forms of mortgage recognised by courts though there may not be statutory recognition. In *Tehilram Girdharidas Vs. Longin D'mello*, it is held thus :

"In the statute law of India it would be difficult to find anything making it imperative upon courts to acknowledge any such doctrine. In the third section of the Transfer of Property Act, amongst other definitions, the definition of a chose in action mentions the hypothecation of movables as though that were an accepted part of the law of this country, and again, in the Stamp Act section 2, clause 7, the like words are to be found. Elsewhere I do not believe that it would be easy to discover in the sufficiently voluminous statute law of this country any warrant for the assertion that the courts of India are bound to recognise a mortgage of movables. Nor after having considered the case law, both of this country and England which has gone to establish that doctrine, very carefully and critically for many years, am I able to discover any authority, in reason or equity, adequate to establish it. If, however, it is to be taken as a part of the law of India, and in the existing state of the case law, I suppose it must be, then it is very necessary to examine the essential ingredients of the mortgage of movables and so arrive at a clear understanding not only of the nature of the legal notion but of all its legal consequences in relation to others"

22. It can, therefore, be seen that hypothecation of movable property is also a recognised form of mortgage. Hence, it has to be recognised although such hypothecation or mortgage of movables are not specifically dealt with in the Contract Act, but these transactions have long been recognised as valid in law and they have to be given effect to. In the absence of specific rules, the recognised principle in the civil courts is that court should decide according to justice, equity and good conscience which is underlying recognised principle of common law courts. In *Md. Sultan and Others Vs. Firm of Rampratap Kannyalal*, a distinction between a pledge and a mortgage is considered and the learned Judge observed :

"Broadly it can thus be stated that in case of hypothecation a general lien is created, but possession of the property is not transferred, whereas in case of a pledge a special interest and not special property is transferred to the pledgee who is impliedly authorised to sell the goods pledged in case of default in accordance with the provisions of the Contract Act. In case of mortgage, however, a general but limited property is transferred to the creditor, but the possession may or may not be transferred to the mortgagee."

23. Thus, there is a right to the creditor to recover the amount by sale of the hypothecated properties.

24. It is thirdly contended that though the creditor has got a right to recover the amount by sale of the hypothecated property by filing a suit, the said right is subject to the right of the State to recover any dues from the said debtor who is in arrears to the State. This is called in the Common Law as the doctrine of

priority of the Crown debt. Thus, the principle of the doctrine is that the Crown debt will prevail over all other debts and the State has got a right to recover as priority to other creditors. This aspect has been considered in Collector of Tiruchirapalli Vs. Trinity Bank Ltd., Trichirapalli and Another, wherein it is held as follows :

"The Collector was entitled to the payment asked for as the debt due to the Crown had priority over the claims of all the creditors of the debtor inclusive of the creditor who made the properties custodia legis by the appointment of receiver in enforcement of his mortgage or charge."

25. It is further held that this right to priority has received recognition in India so far as the unsecured debts are concerned. Thereafter, the same question arose for consideration in MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA., and the Full Bench of the Madras High Court consisting of Leach, C.J., Varadachariar and Mockett, JJ., held that the Crown is entitled to prior payment over all unsecured creditors and that there was no reason why the Crown should not be allowed to apply to the court for an order directing its debt to be paid out of money in court belonging to the debtor, without having to file a suit. The same is the view taken in Soniram Rameshwar v. Mary Pinto AIR 1934 Rang. 8 : [1934] 2 ITR 58. The Madras High Court held in para 10 as follows :

"There can thus be no doubt that the Income Tax Officers in both the cases will be entitled to be paid out the amounts of tax due from the respective debtors from whose properties the respective receivers have collected the rents and profits and deposited them into court, if the fund in court is not already burdened with any lien or charge or mortgage in favour of the decree-holders or not earmarked or appropriated for the benefit of the decree-holders at whose instance the receivers were appointed.

What is the character of the money realised by the receiver in the perception of rents and profits of the hypotheca from the charged property in his possession in a case where he is appointed in a suit commenced by the mortgagee or the charge-holder for the recovery of the amounts due to him ? The answer to this question will afford a complete solution of the problem now before us. If the appointment of a receiver in an action to enforce a mortgage or a charge cannot and does not enlarge the rights of the creditor by augmenting his security or by conferring further rights in his favour than what was created by the parties themselves under the terms of their contract or what ensures in his favour by the operation of the substantive law governing the contract, the creditor cannot put forward any special right in preference to other simple money creditors of his debtor.

In this view of the matter any debt due by the debtor to the Crown will of course have priority over the claims of all the other creditors of the debtor inclusive of the creditor who made the properties custodia legis by the appointment of a receiver in enforcement of a mortgage or charge over the corpus of the

properties. But if it were to be held that a receiver appointed at the instance of a mortgagee or charge-holder in the course of his realisation of any amount due under a mortgage or charge functions only for the benefit of the mortgagee or charge-holder and that the rents and profits emanating from the hypotheca and the charged property are also stamped with security in favour of the creditor he alone will be entitled to appropriate and adjust them towards his dues even in preference to a Crown debt, as the Crown has no priority over the secured claim against the debtor."

26. Thus, the Full Bench of the Madras High Court held that the Crown has no priority over the secured claim against the debtor.

27. In *Satyam Vs. Krishna Murthy and Others*, it is held that the sale for recovery of arrears of Income Tax subsequent to the mortgage did not have the effect of superseding the rights of the mortgagee nor giving any priority over the rights of the mortgagee. The Supreme Court while considering the background of the priority of the Crown debt has considered the case law in *Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others*, wherein it is held by the Supreme Court as follows :

"In our opinion, it is difficult to accept the argument that the application of the doctrine of priority of arrears of tax over private debts can be said to be displaced by any of the provisions of the Recovery Act."

28. The above decisions clearly laid down that in case of the recovery of the debt other than the land revenue, from the defaulter which has to be treated as arrears of land revenue, the debt will not have priority over the secured debt. Thus, the above decisions confirm the view that the Crown debt will have no priority over the secured debt.

29. The learned Government Pleader appearing for the first respondent relied upon the judgment in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, . In that case, the obligation to pay the tax arose when a dealer made either purchases or sales which were subject to sales tax. Therefore, it must be deemed that the Crown has got a right to recover the debt on the date of transaction of sale or purchase by the assessee. In the present case, the sales tax arrears to be recovered were for the years 1974-75 and 1975-76. Therefore, they were much earlier to the hypothecation of the disputed properties and the State has got a right to recover the arrears of sales tax by applying the principle of priority of the Crown debt. It must be noted that the sales tax to be paid relates to the period 1974-75. But the assessment orders were made on May 6, 1977 for the year 1974-75, and February 23, 1978, for the year 1975-76. Thereafter, notices were issued and when the assessee remained to be a defaulter, right to recover the said arrears of the sales tax accrued to the Government. Section 16(4) of the A.P. General Sales Tax Act says that if the tax assessed or any other amount is not paid by a dealer within the time specified

therefor, the whole of the amount then remaining unpaid may be recovered from him as if it were an arrear of land revenue. Thus, until the assessee commits default in payment of the assessed amount after receipt of the notice within the specified time, there is no right to the department to recover the same as arrears of land revenue and the said right to recover the assessed tax as arrears of land revenue u/s 16(4) accrues to the State or the department only in default of the assessee to pay the tax demanded and this default was committed by the assessee after passing the assessment orders for the years 1977 and 1978 respectively, whereas the first hypothecation was made on March 26, 1974 and the second hypothecation on October 25, 1976. Thus the hypothecation of the movable properties of the first defendant in favour of the plaintiff-bank is much earlier to the right to recover tax as arrears of land revenue accrued to the State. Therefore, though the obligation is created on the part of the assessee to pay the tax on the date of the transaction of the sale/purchase, the same will not, as such, create a right in favour of the State to recover the said amount as arrears of land revenue. Thus, there is no doubt with regard to the principles laid down by the Supreme Court, but the same will not apply to the facts of the present case. The learned Government Pleader next relied upon the decision in *P. Nagappan Vs. H.A. Ramaswamy Chettiar and Others*, wherein it is held that "though regard for public welfare is undoubtedly the highest law, the priority of the State debt cannot, unless otherwise provided by a particular statute, prevail as against a prior secured creditor such as a mortgagee or a charge-holder so as to completely affect his security and prejudice his rights as a secured creditor. As between an unsecured creditor and the State, the doctrine of priority of State debts will ordinarily be attracted. But this rule cannot automatically be extended so as to extinguish the rights of the secured creditors and prefer State debts if such a competition arises". The facts of that case are not akin to the facts of the present case and it is of no help to respondent No. 1. Similarly, the facts in *Industrial Finance Corporation of India v. State of Punjab* [1972] 30 STC 581 (P&H) are different from the facts of the present case. While considering the question relating to the priority of the debts over the secured creditors, the court held that "the department had no priority over the mortgage debt of the corporation. The legal right in the properties to the extent of the mortgage amount had passed to the corporation which was the legal owner of the mortgagee rights and no attachment of the property could be made by the department in derogation of the rights of the corporation. The department could recover its dues only out of the equity of redemption which belonged to the company. Hence, this decision is in no way helpful to the first respondent. Similarly, in *Bank of India Vs. John Bowman and Others*, it was held :

"The priority given to the Crown is not on the basis of its debt being a judgment-debt or a debt arising out of statute, but the principle is as enunciated by Halsbury that if the debts are of equal degree and the rights of the Crown and the subject are equal, the Crown's right will prevail over that of the subject."

30. It is clear from the above decisions that the unsecured Crown debt will have

priority over the debt of the unsecured creditor. But in the present case, the debt of the creditor is secured by hypothecation. Therefore, the judgment of the Bombay High Court will not fit in the present case.

31. In view of what is stated above, it has to be held that the Sales Tax Department will have no right to recover the amount of tax due and defaulted in payment, on priority basis, under the doctrine of "priority of the Crown-debt", as against the "secured debt" of the plaintiff pursuant to the hypothecation of the properties, which in fact were brought to sale and the proceeds thereof lying to the credit of the suit instituted by the revision-petitioner, inasmuch as the tax due defaulted is not a secured debt (reasons as to how it is not a secured debt would presently follow).

32. It is also relevant here to note that, as per section 2 of the A.P. Revenue Recovery Act, the land, the buildings upon it, and its products, shall be regarded as the security of the public revenue. Public revenue is defined in section 1 as follows :

"Public revenue due on land shall, for the purposes of this Act, be taken to include cesses or other dues payable to the State Government on account of water supplied for irrigation."

33. Thus, the public revenue is only the land revenue plus other cesses, etc., payable to the Government on account of water supply for irrigation. It is not equated to other debts or dues to the Government under any other enactment. Therefore, to the extent of recovery of the public revenue under the Revenue Recovery Act, a charge is already there on the land, the buildings upon it and its products as a security for public revenue. Thus, the land revenue and the public revenue can be said to be "secured debts" when the assessee fails to pay the same, whereas in the case of amounts other than land revenue and public revenue, they stand on a different footing, and therefore, the dues other than the land revenue and public revenue cannot be said to be secured debts when compared to the public revenue and land revenue. Therefore, the sales tax amount to be recovered from the assessee by the State Government is unsecured debt. It prevails over the unsecured debt of other creditors as per the doctrine of the priority of the Crown debt. But in the case of secured creditors, they prevail over the unsecured debt of the Crown. Therefore, the secured right of the petitioner prevails over the unsecured right of the State Government. Thus, the order of the lower court directing payment of the amount credited to the suit to the State Government is set aside. Consequently, the civil revision petition is allowed.

There shall be no order as to costs.

34. Petition allowed.