

**(2016) 08 AP CK 0020**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition Nos. 39476 of 2015 & 5008 of 2016

Telangana State Civil Supplies Corpn. Ltd.

APPELLANT

Vs

Karur Vyshya Bank Ltd.

RESPONDENT

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**Date of Decision :** 10-08-2016

**Acts Referred:**

Andhra Pradesh Revenue Recovery Act, 1864 — Section 2  
Constitution of India, 1950 — Article 226  
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14

**Citation :** (2016) 6 ALT 457 : (2017) 1 AndhLD 245

**Hon'ble Judges :** Sri C.V. Nagarjuna Reddy and Sri G. Shyam Prasad, JJ.

**Bench :** Division Bench

**Advocate :** Mr. A. Jagan, Advocate, for the Petitioner; Mr. P. Rajesh Babu, Advocate, for the Respondent No. 1

**Final Decision :** Disposed Off

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## **Judgement**

Sri C.V. Nagarjuna Reddy, J. - These two Writ Petitions pertain to common subject matter. Hence, they are heard and being disposed of together. For convenience, the parties are referred to as they are arrayed in WP. No. 39476 of 2015.

2. WP. No. 39476 of 2015 is filed by Karur Vysya Bank Limited, a Scheduled Bank incorporated under the provisions of the Indian Companies Act, 1913, for a Mandamus to declare the action of respondent Nos. 2 to 4 in not lifting/shifting the stocks of paddy bags from the rice mill premises and godown premises of respondent No. 5 situated over an extent of Acs.1.27 guntas in Survey No. 28/A.D of Penchikalpet Village, Elkathurthy Mandal, Karimnagar District, as illegal, arbitrary and contrary to Order, dated 21-07-2015, in Crl. M.P. No. 132 of 2015 on the file of the Chief Judicial Magistrate, Karimnagar.

3. WP. No. 5008 of 2016 is filed by the Telangana State Civil Supplies Corporation (for short "respondent No. 1") for a Mandamus to declare Order, dated

21-07-2015, in Crl. M.P. No. 132 of 2015 on the file of the Chief Judicial Magistrate at Karimnagar, as illegal and contrary to the Andhra Pradesh Revenue Recovery Act, 1864 (for short "the RR Act") and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the 2002 Act").

4. The brief facts leading to filing of these Writ Petitions are stated hereunder :

Respondent No. 1 has entrusted 23156.40 quintals of paddy to respondent No. 5 for custom milling and delivery of resultant rice to the FCI for the Kharif Season 2013-2014. Respondent No. 5 has delivered 8085.95 quintals of rice leaving a balance of 4007.18 quintals of rice undelivered, which is equivalent to 5892.91 quintals of paddy. Respondent No. 1 has demanded respondent No. 5 to pay a sum of Rs. 1,04,23,732.78 ps., representing the cost of paddy.

5. As respondent No. 5 failed to pay the demanded amount, respondent No. 1 has addressed letter to respondent No. 4 to initiate proceedings under the RR Act. Respondent No. 4, in turn, took possession of the rice mill including stocks therein under a panchanama. Respondent No. 4 has issued the first auction notice, dated 17-03-2015, and the second auction notice, dated 27-04-2015, for sale of the stocks available in respondent No. 5- Mill.

6. Meanwhile, respondent No. 5 approached the Chief Judicial Magistrate, Karimnagar, by filing Crl.M.P. No. 132 of 2015 under Section 14 of the 2002 Act. By order, dated 21-07-2015, the learned Chief Judicial Magistrate, Karimnagar, has allowed the said Crl.M.P. directing that the possession of the property shall be delivered by the Advocate-Commissioner with the help of Police. This order has been challenged in WP. No. 5008 of 2016.

7. After obtaining Order, dated 21-07-2015, in Crl.M.P. No. 132 of 2015, respondent No. 5 filed WP.No.39476 of 2016 for the relief referred to above.

8. The respondents have filed their respective counter-affidavits in both the Writ Petitions.

9. We have heard Mr. P. Rajesh Babu, learned Counsel for the petitioner, and Mr. A. Jagan, learned Counsel for respondent No. 1.

10. The learned Counsel for respondent No. 1 submitted that as respondent No. 5- Mill failed to supply a substantial part of the resultant rice to the FCI, having received the paddy for custom milling, it was found liable to pay a sum of Rs. 1,04,23,732-78 ps representing the value of the undelivered rice of 4007.18 quintals and that therefore, at the instance of respondent No. 1, respondent No. 3 has initiated the proceedings under the RR Act. He has relied upon Section 2 of the RR Act and submitted that under the said provision, a statutory security for recovery of public revenue is created on the property and that therefore, the petitioner is not entitled to enforce its right under mortgage against the properties of respondent No. 5. In support of his submission, he has placed reliance on the judgment of the Supreme Court in Central Bank of India v. State

of Kerala and others, (2009) 4 Supreme Court Cases 94.

11. Mr. P. Rajesh Babu, learned Counsel for the petitioner, however, sought to distinguish the above judgment of the Supreme Court by stating that the same related to the General Sales Tax dues under Kerala General Sales Tax Act, 1963 and that therefore, the said judgment has no application to the dues claimed by respondent No. 1 from respondent No. 5.

12. We have carefully considered the respective submissions of the learned Counsel for the parties.

13. It is not in dispute that in pursuance of the communication sent by respondent No. 1, respondent No. 2 has treated the dues payable by respondent No. 5 as arrears of land (public) revenue.

14. Section 2 of the RR Act reads as under:

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

15. In Central Bank of India (cited supra), the Supreme Court, while dealing with the overriding effect of Section 34(1) of the DRT Act, 1993, and Section 35 of the 2002 Act vis-a-vis the Bombay Sales Tax Act, 1959, and Kerala General Sales Tax Act, 1963, held as under:

"The non obstante clauses contained in Section 34 (1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the DRT Act or the Securitisation Act, the provisions contained in those Acts cannot override other legislations. Section 38-C of the Bombay Act and Section 26-B of the Kerala Act also contain non obstante clauses and give statutory recognition to the priority of the State's charge over other debts, which was recognised by Indian High Courts even before 1950. In other words, these sections and similar provisions contained in other State legislations not only create first charge on the property of the dealer or any other person liable to pay sales tax, etc. but also give them overriding effect over other laws."

16. In the above judgment, the question arose as to whether the provisions of Section 38-C of the Bombay Sales Tax Act, 1959, Section 29 of the Kerala General Sales Tax Act, 1963, and similar provisions contained in other State legislation's by which first charge was created on the property of the dealer or such other person, who was liable to pay the sales tax etc., were inconsistent with the provisions contained in the Recovery of Debts due to Banks and Financial Institutions Act, 1993, for recovery of "debt" and the 2002 Act for enforcement of "Security Interest".

17. After an elaborate discussion of the entire legal position, the Supreme Court

answered the said question in the negative and upheld the view taken by the Kerala High Court to the effect that the State's first charge over the dues has primacy over the dues of the Banks, Financial Institutions and Secured Creditors.

18. In the light of the afore-noted authoritative pronouncement, we have no hesitation to hold that the dues claimed by respondent No. 1 against respondent No. 5 are subject to the statutory charge under Section 2 of the RR Act and therefore, they have the precedence over the dues claimed by the petitioner from respondent No. 5. It is only after the satisfaction of the dues of respondent No. 1 that the petitioner can recover its dues from out of the balance sale proceeds. In the event respondent No. 1 is unable to recover the dues to the full extent, from out of the sale of the balance paddy seized by it from respondent No. 5-Mill, respondent No. 1 is entitled to sell the immovable properties such as factory, building etc. It is only after the debt of respondent No. 1 is satisfied that the petitioner is entitled to recover its dues from out of the left over properties or balance sale proceeds.

19. In the light of the above discussion, Order, dated 21-07-2015, in CrI.M.P. No. 132 of 2015 on the file of the Chief Judicial Magistrate, Karimnagar, is set aside.

20. WP. No. 5008 of 2016 is, accordingly, allowed and WP. No. 39476 of 2016 is dismissed.

21. As a sequel, Miscellaneous Petitions, pending if any, stand disposed of.