



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**WRIT PETITION Nos.4063 of 2019, 18852 of 2019; 20579, 23218,
23198, 23902, 24719 and 24031 of 2020**

Between:

State Bank of India,
Represented by its Authorised Officer,
Sri Satyavolu Srinivas,
S/o. Suryaprakasa Rao,
Stressed Assets Recovery Branch,
Visakhapatnam and others

--- Petitioners

And

The Deputy Commercial Tax Officer-II,
Dwaraka Nagar Circle,
Visakhapatnam Division
And others

--- Respondents

DATE OF JUDGMENT PRONOUNCED : 18.02.2021

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE JOYMALYA BAGCHI
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the judgment? Yes/No

JUSTICE JOYMALYA BAGCHI

JUSTICE A.V.SESHA SAI



*** THE HON'BLE SRI JUSTICE JOYMALYA BAGCHI
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI
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--- Respondents

! Counsel for the Petitioners : Sri S.Satyanarayana Moorthy/

^ Counsel for Respondents : Sri T.C.D.Shekar

< Gist:

> Head Note:

? Cases referred:

This Court made the following :



**THE HON'BLE SRI JUSTICE JOYMALYA BAGCHI
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**WRIT PETITION Nos.4063 of 2019, 18852 of 2019; 20579, 23218,
23198, 23902, 24719 and 24031 of 2020**

(Taken up through video conferencing)

COMMON ORDER: (Per Hon'ble Sri Justice A.V.Sesha Sai)

Since the issues that fall for consideration in all these writ petitions are substantially the same and as the contentions advanced are also the same, this Court deems it appropriate and apposite to dispose of this batch of writ petitions by way of this common order.

2. The sum and substance of the stance of the petitioners in all these writ petitions is that in view of the provisions of Section 26E of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') and Section 31B of the Recovery of Debts and Bankruptcy Act, 1993, the debts advanced by the banks/financial institutions do have precedence over all the revenues due to the Central or State Governments. In order to adjudicate the said issue, it would be appropriate to refer to the said provisions of law, which read as under:

“Section 26E of SARFAESI Act, 2002:- Priority to secured creditors.-Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.



Section 31B of Recovery of Debts and Bankruptcy Act, 1993:- Priority to secured creditors.-

Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.”

3. The only objection/contention raised by the learned Government Pleader, Sri T.C.D.Shekar, is that since above mentioned provisions came into force with effect from 26.12.2019, the said provisions are required to be enforced only in the cases where there is creation of security interest posterior to the said debts.

4. In fact, the issue raised in the present batch of writ petitions is no longer *res integra*. The composite High Court in W.P.No.23620 of 2017 while dealing with the provisions of Section 26E of the SARFAESI Act held in the following manner:

“Chapter IV A of the SARFAESI Act, 2002 (from Section 26B to Section 26E) was inserted by Section 18 of Act 44 of 2016 with effect from 01.09.2016. Section 26E of the SARFAESI Act relates to the priority of secured creditors, and stipulates that, notwithstanding anything contained in any other law for the time being in force, after the registration of a security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority. The debt due, in the present case, is the income-tax payable by the eighth respondent to the Union of India; and as Section 26E of the SARFAESI Act gives priority in payment of the debts of a secured creditor over other dues, including the taxes payable to the Union of India, the



attachment notice is liable to be and is, accordingly, set aside. Needless to state that on the sale of the subject property, if any amount is available, after the entire loan of the borrower with interest and other charges are satisfied, it shall be made available to the Deputy Commissioner, Income Tax for its adjustment to the income-tax dues of the eighth respondent. The Writ Petition is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.”

5. Another Division Bench of this Court, in identical set of circumstances, allowed W.P.No.5630 of 2020 by way of an order dated 01.10.2020. In the said judgment at paragraph Nos.9 to 15 this Court held as follows:

“9. The question now is, “Who will have a first charge over the property?”

10. Article 251 of the Constitution reads as under : “251. Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of 7 the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.”

11. From a reading of the above it is clear that any inconsistency between the laws made by the Parliament and the laws made by the State Legislature, the law made by the Parliament will prevail and continue to have effect. Nothing in Articles 249 and 250 shall restrict the power of the legislature of a State to make any law which under this Constitution has power to make. But if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either or the said articles power to make, the law made by Parliament, whether passed before or after



the law made by the legislature of the State, shall prevail, and the law made by the legislature of the State shall to the extent of the repugnancy be inoperative, so long as the law made by the Parliament continues to have effect -- **Nallajerla Murali Krishna @ Murali v. The State of Telangana** (CrI.P.No.9567 of 2014, dated 09-10-2014).

12. In **T. Barai v. Henry Ah Hoe and Another**¹ the Hon'ble Supreme Court held as under:

“By virtue of the proviso to Art.254(2) of the Constitution, Parliament may repeal or amend a repugnant State law either directly or by itself by enacting a law repugnant to the State law with respect to the same matter. Even though the subsequent law made by Parliament does not expressly repeal a State law, the State law will become void under Article 254(1) if it conflicts with a later law made by Parliament creating repugnancy. Such repugnancy may arise where both laws operate in the same field 1 1983 AIR 150 8 and the two cannot possibly stand together: As for example, where both prescribe punishment for the same offence, both the punishments differs in degree or kind or in the procedure prescribed. In all such cases the law made by Parliament shall prevail over the State law under Art.254(1).”

13. In **Karunanidhi vs Union of India**² the Hon'ble Supreme Court held as under :

“It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act.”

14. Issue identical to the case on hand came up for consideration in W.P. No. 23620 of 2017. It was also a case where the petitioner-bank therein initiated proceedings under the

¹ 1983 AIR 150

² 1979 AIR 898



provisions of the SARFAESI Act and thereafter took possession of the mortgaged property from respondent Nos.8 to 10 therein and thereafter issued tender-cum-auction notice of the subject properties vide paper notification. The auction was conducted on 22.6.2017, wherein three persons who were the highest bidders remitted a sum of Rs.51,25,000/- towards partial sale consideration. While matters stood thus, the Deputy Commissioner of Income Tax issued notices to the petitioner bank informing that the subject lands were under attachment 2 1979 AIR 898 9 for recovery of the Income tax dues of Rs.60.84 lakhs from M/s.Sai Concrete Pavers Private Limited (the eighth respondent). Referring to Section 26E of the SARFAESI Act, which was inserted by the Act 44 of 2016 with effect from 1.9.2016. The Division Bench held that Section 26-E of the SARFAESI Act gives priority in payment of the debts to a secured creditor over other dues, including the taxes payable to the Union of India and accordingly set aside the attachment notice.

15. In view of the judgments referred to above, and having regard to the Article 251 of the Constitution of India, the Writ Petition is allowed directing the 2nd respondent to register the property in favour of the auction purchasers. Further, it is needless to state that on the sale of the subject property, if any amount is left over, after the entire loan of the borrower with interest and other charges are adjusted, it shall be made available to the Deputy Commissioner, Income Tax for its adjustment to the tax dues by the 3rd respondent.”

6. The judgment of this Court in W.P.Nos.44211 of 2017 and 20988 of 2019 is also to the same effect. In W.P.No.23312 of 2020, this Court while dealing with the provisions of Section 26E of SARFAESI Act, 2002 and Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 held at paragraph Nos.10 to 12 as follows:

10. A reading of the above provisions of law makes it abundantly clear that the said provisions are analogous though under two different legislations. Section 26E of the Act, which came into force w.e.f 24-01- 2020 begins with ‘non obstante’ clause and stipulates that after registration of the security interest,



the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central or State Governments or local authority. Section.31B of the Bankruptcy Act is also to the same effect. When the language of the provisions of law is very lucid and clear, no other interpretation is possible.

11. In the instant case, the 3rd respondent created mortgage over the subject property by way of a registered deed in favour of Andhra Bank as long back as on 16-03-2013 and as the account of the loanee became NPA on 31-07-2016, the Bank authorities initiated action under the provisions of the Act by issuing notices under Section 13(2) and (4) of the Act. It is absolutely not in controversy that the petitioner herein clearly falls under the definition of “secured creditor” as defined under Section 2(zd) of the Act, since the petitioner herein is an Asset Reconstruction Company in whose favour Andhra Bank assigned the debt by way of registered document on 26-09-2017. In fact, the material available on record further reveals that on 18-11- AVSS,J & KSR,J W.P.23312_2020 8 2020 i.e., immediately after the sale notice came to be issued by the 2 nd respondent, the petitioner herein brought to the notice of the Office of the 2nd respondent about the existence of the security interest in favour of the petitioner herein. In fact, when the provisions of Section 26E of the Act and 31B of the Bankruptcy Act fell for consideration of this court in W.P.No.43841 of 2018, when the registering authority failed to register the sale certificate, a Division Bench of this court, while holding that the secured creditor would have the priority of the charge over the mortgaged property, allowed the said writ petition directing the registering authority to register the sale certificate. In the said judgment, the Division Bench also held that the revenue has no priority of charge over the mortgaged property in question. Having regard to the language employed in Section 26E of the Act and 31B of the Bankruptcy Act, the contention of the learned Government Pleader that mortgage in favour of the petitioner herein should yield to crown debt coupled with charge cannot be sustained in the eye of law.

12. Submission of the learned Government Pleader that since the petitioner-institution did not take any steps pursuant to the assignment of debt in its favour, it is liable to be non-suited, is



also not tenable having regard to the above said provision of law. With regard to the contention of the learned Government Pleader on the prospective application of the provisions of Section 26E of the Act and Section 31B of the Bankruptcy Act, it is to be noted that the said provisions do not make any distinction to the said effect. Accordingly, the said contention is also rejected."

It is very much evident from the above paragraphs that the issues raised in the present batch of writ petitions are squarely covered by the earlier orders of this Court referred to supra.

7. With regard to the contention of the learned Government Pleader on the aspect of applicability of Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Section 31B of the Recovery of Debts and Bankruptcy Act, 1993, in the considered opinion of this Court, a reading of the language of the said provisions of law makes it very much manifest that the security interest, existing as on the date of commencement of the said provisions of law, is required to be taken as a criteria for extending the safeguard and benefit of the said provisions of law to the secured creditors. By any stretch of imagination, it cannot be construed that the said provisions of law are applicable only to the security created subsequent to the advent of the said provisions of law and such an interpretation sought to be pressed into service by the learned Government Pleader, undoubtedly, frustrates the very intention of the Parliament in introducing such drastic provisions of law to protect and safeguard the interest of the secured creditors. Therefore, the contention contra advanced by the learned Government Pleader is liable to be rejected and is, accordingly, rejected.



8. For the aforesaid reasons, all the Writ Petitions are allowed setting aside the impugned proceedings/orders with a further declaration that on the basis of the said proceedings/orders either the Commercial Taxes Department or the Revenue Department cannot restrain the registration authorities from registering the documents submitted by the auction purchasers or the banks/financial institutions nor the banks are entitled to withhold the sale certificates pursuant to the auctions held. It is also made clear that if any balance of sale consideration amount is available after the loan of the banks/financial institutions with interest and other charges as specified, same shall be made available to the department concerned for adjustment towards the dues, if any. There shall be no order as to costs.

As a sequel, Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

JUSTICE JOYMALYA BAGCHI

JUSTICE A.V.SESHA SAI

Date: 18.02.2021

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