



**HIGH COURT OF ANDHRA PRADESH**  
THURSDAY ,THE FOURTH DAY OF AUGUST  
TWO THOUSAND AND TWENTY TWO

**PRSENT**

**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**WRIT PETITION NO: 27846 OF 2021**

**Between:**

1. TATA International Limited, A Company incorporated under the Companies Act, 1956  
Having its registered office at LodhaExcelus, 24th Floor,  
New Cuffparade, Off Eastern Freeway, Sewri - Chembur road,  
Near IMAX Dome, Wadala, Mumbai - 400037  
Represented by its Authorized Signatory  
Mr. Rahul Kumar  
Email- rahul.kumar tatainternational.com

**...PETITIONER(S)**

**AND:**

1. The State of Andhra Pradesh, Represented by its Principal Secretary,  
Revenue Department, Secretariat Bldgs, Velagapudi, Amaravati, Guntur  
District, Andhra Pradesh.
2. The District Collector, District Collectorate, Vizianagaram, Andhra  
Pradesh.
3. The Sub-Collector, Parvathipuram, Andhra Pradesh.
4. The Tahsildar, Mandal Revenue Office, Seethanagaram Mandal,  
Vizianagaram.
5. NCS Sugars Limited, Lakshmi Thirumala, Latchayyapeta,  
Seethanagaram (M),  
Bobbili - 535573, Vizianagaram District.
6. Starshine Logistics, 6th Floor, 6C, Gaiety Palace,  
I/L, Blackers Road, Mount Road,  
Chennai, Tamil Nadu - 600002.

**...RESPONDENTS**

**Counsel for the Petitioner(s): V NITESH**

**Counsel for the Respondents: GP FOR REVENUE**

**The Court made the following: ORDER**



**\*HONOURBLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

**+ W.P.No. 27846 of 2021**

% 04.08.2022

#Tata International Limited,  
A Company incorporated under the Companies Act, 1956  
Having its registered Office at Lodha Excelus,  
24<sup>th</sup> Floor, New Cuffparade, Off Eastern Freeway,  
Sewri – Chembur Road, near IMAX Dome, Wadala,  
Mumbai – 400037,  
Rep., by its Authorized Signatory,

... Petitioner

Vs.

\$ The State of Andhra Pradesh,  
Rep., by its Principal Secretary,  
Revenue Department, Secretariat Buildings,  
Velagapudi, Amaravati, Guntur District  
Andhra Pradesh and 5 others.

... Respondents

! Counsel for the petitioner : Sri P.Veera Reddy

! Counsel for the Respondent Nos.1 to 4 : Sri Kasa Jagan Mohan  
Reddy, Special Government Pleader

! Counsel for the Respondent No.5 : Challa Gunaranjan

! Counsel for the Respondent No.6: Sri V.S.R.Anjaneyulu

! Counsel for the Respondent Nos.7 to16: J.Ugra Narasimha

< Gist:

> Head Note:

? Cases referred:

<sup>1</sup> 1983 (2) APLJ (HC) 127

<sup>2</sup> 2005 (6) ALD 480

<sup>3</sup> 2013 (4) ALT 51

<sup>4</sup> AIR 2008 A.P.11

<sup>5</sup> AIR 1997 SC 2502

<sup>6</sup> AIR 1995 Karnataka 185

<sup>7</sup> (2009) 4 SCC 94

<sup>8</sup> 2022 SCC Online SC 227

<sup>9</sup> AIR 2003 SC 3184

<sup>10</sup> (2010) 9 SCC 496

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****W.P.No.27846 of 2021****ORDER :**

This writ petition is filed by the petitioner seeking a writ in the nature of Mandamus for declaring the impugned order dated 23.11.2021 bearing R.C.No.985/2021/D3 confirming the distraint order and notice bearing R.C.No.141/2021/A dated 11.06.2021 as illegal and arbitrary etc.

The petitioner before this Court claims to be the owner of sugar which was purchased by them from respondent No.5. The contention of the State namely respondents 1 to 3 is that respondent No.5 defaulted in the payment of the price of the sugarcane to the farmers and therefore, they invoked the provisions of the A.P. Revenue Recovery Act, 1864 (for short 'the Act') to recover the sum due by attaching the sugar/property. The order of distraint and the subsequent order confirming the same which are mentioned above are the subject matter of the challenge.

This Court has heard Sri P.Veera Reddy, learned Senior Counsel for the petitioner, Sri Kasa Jagan Mohan Reddy, Special Government Pleader representing respondents 1 to 4 in the Office of the Advocate General, Sri Challa Gunaranjan, learned counsel appearing for respondent No.5, Sri V.S.R.Anjaneyulu,



learned senior counsel for respondent No.6 and Sri J.Ugra Narasimha for the implead respondent Nos. 7 to 16.

I.A.No.2 of 2021 filed by the implead petitioners to implead the respondents Nos.7 to 16 to the writ petition is allowed by this order. Sri J.Ugra Narasimha was permitted to argue the matter on behalf of the respondents/farmers for whose dues the sugar was attached.

The essence of the submission of the learned Senior Counsel Sri P.Veera Reddy for the petitioner is that petitioner is the owner of the sugar, which has been distrained/ attached under the provisions of the Act for the dues of the 5<sup>th</sup> respondent. Learned senior counsel therefore argues that as the petitioner is the owner of the sugar, the respondents have committed a mistake in invoking the provisions of the Act for recovery of the sugarcane dues which are payable to the farmers. Learned Senior Counsel emphasizes that unless the title in the property/sugar remains with the 5<sup>th</sup> respondent, the proceedings cannot be taken against the same.

Learned senior counsel draws the attention of this Court to the terms and conditions of the agreement dated 06.11.2020, in particular to clauses 2, 7, 16, 20 and 23 to argue that the title in the sugar has passed to the petitioner from respondent No.5. He points out that under the provisions of the Sale of Goods Act and in particular sections in 19 and 20, the petitioner has become the owner of the sugar. He also submits that they have given a Stock Management Agreement on 07.11.2020 to a



company called 'DACPL' which is the physical control of the sugar.

Learned counsel also points out that the payment of the price is borne out by the record that they have filed before this Court. He also draws the attention of this Court to the counter affidavit filed by the 5<sup>th</sup> respondent, wherein it is clearly admitted that a sum of Rs.29,24,32,787/- was received from the petitioner-company in the period 16.12.2020 to 25.02.2021 towards sale consideration. The respondent No.5 also agrees that out of this a sum of Rs.21.99 crores has been paid to the farmers. Therefore, Learned Senior Counsel submits that as there is a transfer of title, the invocation of the provisions of the Act against the sugar which belongs to the petitioner-company and not to the defaulter is clearly illegal. He relies upon the case law (which would be considered later in the course of judgment) to buttress his argument. He also submits that a learned single Judge of this Court by its order dated 19.11.2021 while disposing W.P.No.21644 of 2021 has permitted the petitioner to submit a detailed representation and directed the official respondents to take a decision on the matter. Learned senior counsel points out that the petitioner has submitted a detailed representation and categorically asserted that title in the sugar has passed to the petitioner, but the 2<sup>nd</sup> respondent has not passed a reasoned order by deciding this point as directed by the Learned Single Judge. On this ground also he points out that they have challenged the impugned order and draws the



attention of this Court to paragraphs (c) (d) (e) and (g) of the grounds raised in the writ petition. He also argues that the language in the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 (for short 'the 1961 Act'), does not create a charge on the sugar that is purchased by the petitioner. Therefore, he submits that the invocation of the Act is *per se* bad. He prays for an order.

On behalf of the State and the respondents 1 to 4, Sri Kasa Jaganmohan Reddy argues the matter at length. According to the learned counsel, the 5<sup>th</sup> respondent is a chronic defaulter and in the present case also he has defaulted in the payment of price to the sugarcane farmers. Learned counsel submits that in view of the 1961 Act, in the area of the factory, the sugarcane growers had to supply the sugarcane only to the 5<sup>th</sup> respondent. The 5<sup>th</sup> respondent utilized the sugarcane for production of sugar, but did not pay the price leading to a huge agitation by the farmers. The State, therefore, had to step in and protect the interests of the farmers. He relies upon various provisions of the 1961 Act to show that once the factory zone has been established, the farmers can only sell their sugar to the factory of R 5. He also relies upon Sections 19 and 21 of the Act read with Rules and in particular, Rule 39-B of the A.P.Sugarcane (Regulation of Supply & Purchase) Rules 1961 (for short 'the 1961 Rules'). He submits that a priority/charge is created over the sugar and hence the State is right in distraining and selling the sugar. He submits that as the occupier of the factory of



respondent No.5 has failed to pay the sum due, the invocation of the provisions of the Act is correct and is in accordance with Rule 39-B of the 1961 Rules. He argues that the agreement is contrary to the statute and is per se void. He submits that as only advance is contemplated to be paid, there is no transfer of title. Learned counsel also relies upon ***Punjab National Bank v. Challapalli Sugars Ltd., and others***<sup>1</sup>, ***Central Bank of India v. State of A.P. and others***<sup>2</sup>, and ***State Bank of Hyderabad, MSME Branch, Warangal v. Tahsildar, Hanamkonda Mandal, Warangal District and others***<sup>3</sup> to argue that respondent No.5 should not be given any leeway by this Court as he is a defaulter and similarly, the petitioner should not be granted any order in view of the fact that he has purchased the sugar contrary to law from the 5<sup>th</sup> respondent. He argues that the clauses in the agreement relied on by the petitioner do not support a case of transfer of title. He submits that title in the sugar has not passed onto the petitioner.

Sri J.Ugra Narasimha argues for the farmers. He also strongly supports the submissions of the learned Government Pleader which are reproduced earlier. He also submits that a reading of the agreement does not lead to a conclusion that there is actually a “sale”. Relying upon clause 16.6, he argues that unless a deed of sale is executed, there is no transfer of title

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<sup>1</sup> 1983 (2) APLJ (HC) 127

<sup>2</sup> 2005 (6) ALD 480

<sup>3</sup> 2013 (4) ALT 51



to the petitioner. Learned counsel also submits that any alleged charge created is in “brazen violation” of the statutory provisions. The petitioner and respondent No.5 have entered into an agreement which is *per se* void under law as it is contrary to the 1961 Act. He also relies upon the very same judgments which are mentioned earlier to argue his point that as the Revenue/State has a charge over the property and a priority, their rights should be upheld.

On behalf of respondent No.5, Sri Challa Gunaranjan submits arguments and highlights the statements/figures in the counter affidavit of respondent No.5. He submits that the sum due to the farmers has been settled and that the bulk of the consideration received from the petitioner has been disbursed to the farmers. He, therefore, submits that the interests of the farmers are protected. He also submits that the title in the sugar has already passed on to the petitioner. In the alternative, he submits that against the 5th respondent, action has already been commenced under Insolvency and Bankruptcy Code and a Resolution Professional has already been appointed. He submits that since the said Code takes priority of all the dues, the respondent-State has to join the list of creditors. This is an alternative submission made by the learned counsel without prejudice to the earlier contention that the sale is already affected.

Sri V.S.R.Anjaneyulu, learned senior counsel appearing for the 6<sup>th</sup> respondent submits that the 6<sup>th</sup> respondent is the *bona*





*fide* purchaser for value of the sugar for which an auction has been conducted and that they have invested substantial sums of money for purchase of the sugar. The auction was held on 23.11.2021 and by virtue of the orders passed by this Court, the sugar has been stuck and delivery has not been affected. The 6<sup>th</sup> respondent is therefore facing severe hardships because his money is stuck and the quality of the sugar is also deteriorating. Therefore, he seeks a prayer for the reimbursement of the amount paid along with interest.

**Consideration by the Court:**

After considering the submission, noting the facts etc this court opines that two fundamental issues that have to be decided in this case (1) Is there a transfer of title in the sugar?. (2) Is there a charge created on the said Sugar?. The other issues which arise as a consequence are dealt with later in this order.

**Point 1** - The cases cited by the learned counsel for the petitioner are not in doubt and proceedings under the Revenue Recovery Act can only be taken against the property of the “defaulter” alone. Section 5 clearly talks of proceedings against the property of the “defaulter”. Section 5 of the Act is reproduced hereunder:

**5. Arrear of revenue how recovered:** 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 the defaulter’s movable and



immovable property, or by execution against the person of the defaulter in manner hereinafter provided.

The case cited is **Taherunnisa Begum v. District Collector, Cuddapah District and another**<sup>4</sup>. This judgment very clearly holds that the property of the defaulter alone can be proceeded against or sold under the Act. The earlier cases on this subject were also considered.

At the outset this Court has to therefore see if the sugar remains the property of the defaulter or not. The judgment of the Hon'ble Supreme Court of India reported in **Agricultural Market Committee v. Shalimar Chemical Works Ltd.**,<sup>5</sup> which is relied upon by the learned Senior Counsel for the petitioner is useful in this context. Paras 35, 37, 38 and 39 which are reproduced hereunder are relevant.

35. We may, at this stage, consider certain provisions of the Sale of Goods Act, 1930, specially as the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 does not contain any definition of sale or purchase. Sections 19 and 20 of the Sale of Goods Act are quoted bellows :

19. Properly passes when intended to pass-

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

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<sup>4</sup> AIR 2008 A.P.11

<sup>5</sup> AIR 1997 SC 2502



(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

...

37. Section 19 attempts to give effect to the elementary principle of the Law of Contract that the parties may fix the time when the property in the goods shall be treated to have passed. It may be the time of delivery, or the time of payment of price or even the time of the making of contract. It all depends upon the intention of the parties. It is, therefore, the duty of the Court to ascertain the intention of the parties and in doing so, they have to be guided by the principles laid down in Section 19(2) which provides that for ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

38. Section 19 indicates that in case of unconditional contract to sale in respect of specified goods in a deliverable state, the property in the goods passes to the buyer at such time as the parties intend it to be transferred. Section 19(3) provides that Section 20 to 24 contain the rules for ascertaining the intention of the parties as to the time at which the property in the goods shall be treated to have passed to the buyer. Both Sections 19 and 20 apply to the sale of "specific" or "ascertained" goods.

39. Section 20, which contains the first rule for ascertaining the intention of the parties, provides that where there is an unconditional contract for the sale of "specific goods" in a "deliverable state", the property in the goods passes to the buyer when the contract is made. This indicates that as soon as a contract is made in respect of specific goods which are in a deliverable state, the title in the goods passes to the purchaser. The passing of the title is not dependent upon the payment of price or the time of delivery of the goods. If the time for payment of price or the time for delivery of goods, or both, is postponed, it would not affect the passing of the title in the goods so purchased.



Against the backdrop of the settled law and the provisions of the Sale of Goods Act, the provisions of the present contract dated 06.11.2020 are being examined to decide point 1.

The seller is respondent No.5 and the buyer is the petitioner.

Clauses 2, 4, 7, 16, 17 (i to iii) and clause 23 are reproduced here under:

**2.** Quantity: 30000 MT or 100% of sugar production from crop year 2020-21. For each and every transaction/shipment placed under this Agreement, Buyer will raise Purchase Order (PO) specifying the exact quantity, quality, place of delivery, time and date of delivery, point of delivery, price and other commercial details and the Purchase Order is binding on the Seller.

**4.** Price/ Payment: i) Price for 30,000 MT =((as per Prevailing MSP rate + GST)

ii)These pricing arrangements is subject to change as per prevailing market condition and other commercial factors as per sole discretion of Buyer.

iii) the seller will make available 30,000 MT of sugar in favour of the buyer.

iv) upon the production of sugar, the Seller will deposit the sugar as per the agreement under the control of Buyer's appointed super vision company

v) upon the receipt of the sugar against sale invoice of every 100 MT, the buyer will remit 90% value prevailing Minimum support price as advance + GST.

vi) after the sale of sugar to the third parties by Tata's against receipt of sale proceeds Tata's will adjust their advance payment of 80% and the Trade Discount proportionately on prorata basis and then the balance they will be credit to the NCS account for every lots of 500 MTS.



**7. Delivery time:** The delivery of the total quantity of Sugar to be completed by 31 March 2021. Failing which there will be penal charges of 30% per annum on the outstanding advance amount (i.e. balance remain after adjustment as per clause

4). Buyer can buy the deficit quantity from the open market at the cost risk of Seller. This is without prejudice to other rights / remedies of Buyer under this Agreement and/ or law.

**16. SALE OF WHITE SUGAR-EXCLUSIVE CHARGE TO TATA'S**

1) The Seller shall provide all the white sugar produced (DURING THE SEASON 2020-21) day to day / everyday to the Buyer on 'SALE BASIS ONLY'. The Buyer shall, however, arrange payments @ 90% of the value of the Sugar+ GST thereon, (placed under exclusive charge on SALE BASIS to TATA's in the designated warehouse), on the Same day in lots of 100 mt each.

2) As and when Sale / deliveries are affected out of the said sugar placed under SMA as per the instructions of the BUYER, all the sale proceeds / amounts shall be duly received into the account of TATA's thereon and the Buyer shall set off / deduct from the outstanding advance amounts made by them to the Seller, again in lots of 100 mt each.

3.) The Seller herein warrants and assures that save and except this exclusive charge made in favour of the Buyer, he has not created any other charges / hypothecation/lien in favour of any other third party.

4.) The Seller shall specifically mark and segregate all the said quantity of Sugar placed in the designated warehouse under the SMA from its other stock of sugar and clearly identify the same with conspicuous signage "EXCLUSIVE CHARGE TO TATA INTERNATIONAL LTD."

5.) The Seller unequivocally agrees that in case of any breach of any of the terms and conditions of this Agreement, the Buyer can dispose off / sell the said stock of white sugar placed under its Exclusive Charge" in open market to any



third party as per its sole discretion without prejudice to its other rights / remedies under this Agreement and/or Law.

6.) The Seller shall sign and execute a separate DEED OF SALE" in a format as specified by the Buyer.

**(17) Stock Management:**

(i) Buyer will appoint at its sole discretion an independent stock management agency (SMA) for controlling the stock of Sugar and monitoring the stock management system.

(ii) No Sugar will be moved out of Factory without the valid delivery order issued by the Buyer.

(iii) It is clear understanding between the Parties that, entire Sugar production of the Seller will be under the control of the SMA appointed by Buyer

**23. TITLE AND RISK:** Title shall pass from Seller to Buyer on signing of this Agreement. Risk shall pass only when Sugar stock reaches the destination of the Buyer.

The Stock Management Agreement dated 07.11.2020 also defines the petitioner as the buyer and the 5<sup>th</sup> respondent as the seller. Clause 5 and clause 13 of the same are reproduced here under:

**5. RELEASE OF GOODS:** DACPL shall not allow the release of any Goods unless it has received written authorisation from the Buyer stating the person(s) to whom Goods shall be released which shall include the date, quantity and manner of such release.

**13. DURATION:** This Agreement comes into force on the first day on which the Processor/Seller delivers the goods into the storage warehouse and thereafter receipt at the warehouse No.1 of NCS SUGARS LTD, situated 'Lakshmi Thirumala' Latchayapeta, Seethanagaram (M), Bobbili. A.P., and delivered to the account of the Buyer and shall be valid until all physical releases have been effected by DACPL from its custody/ unless terminated as provided for in Paragraph 14 below.



A reading of these two agreements clearly shows that the delivery of the total quantity of the sugar produced was to be completed by 31st March 2021. As per clause 4, immediately on the production of the sugar, the seller-respondent No.5 will deposit the sugar with the buyers appointed supervision company. Clause 16 categorically states that all the sugar produced on a day-to-day basis shall be on a sale basis only. It is also clarified that an exclusive charge is created in favour of the petitioner and the sugar delivered to the warehouse should be identified with the signage that says there is an 'exclusive charge' in the petitioner's favour. Clause 23 clearly states that title shall pass from respondent No.5 to the petitioner on the signing of the agreement. Risk will only be passed when the sugar reaches the destination of the buyer that is the godown.

The primary principle of contractual interpretation is the plain language interpretation of a contract. A plain language interpretation of this contract and the subsequent agreement dated 07.11.2020 makes it very clear that title passes on to the petitioner on the date of signing of the agreement. Clause 23 makes it very clear. Delivery is also to be affected to their authorized representative namely DACPL with whom the Stock Management Agreement is equated. The said DACPL will release the goods only on a written authorisation from the petitioner. These are actions of an 'owner' of the goods. Therefore, in terms of clause 1 and 2 of section 19 of the Sale of Goods Act,



this Court is of the opinion that the title of the specific goods namely sugar which is in a deliverable stage has passed to the petitioner when the contract was made. The passing of the title is not dependent upon the payment of the price or the time of delivery. The execution of a formal sale deed is also not needed to transfer title in view of the express language used particularly as the property is moveable property. As per the counter filed by the 5<sup>th</sup> respondent (to which no reply has been filed by the State), sugar has been sold between 16.12.2020 and 25.02.2021. A total sum of Rs.29,24,32,787/- was realized. Out of this, a sum of Rs.21,99,75,311/- is paid to the farmers by respondent No.5.

Therefore, this Court has to hold that in view of the provisions of the Sale of Goods Act, the clauses in the agreement coupled with the actions of the parties, there was a transfer of title in favour of the petitioner long prior to the notice dated 11.06.2021 issued by the respondents under the provisions of the Act. By this date, the 5<sup>th</sup> respondent is not the owner of the sugar and the sugar is not the property of the defaulter.

**POINT 2-** is about a “charge” on the property/sugar or priority of the State.

Learned Government Pleader for the State and the counsel for the farmers argued the matter at length on the basis of the provisions of 1961 Act. Learned counsel argued that this is a special enactment governing the supply and produce of





sugarcane required for use of sugarcane factories and khandasari units. Learned counsel argued that the farmers of an area which has been declared as the factory zone have to sell the entire produce of sugarcane only to the notified factory as per section 16. The Cane Commissioner, who is the designated authority, has been given certain powers to monitor the entire scenario. This position is not in doubt.

Learned counsel for the State and the farmers rely upon sections 19 (1), 19 (2), 19 (2) (a) and 19 (3) to argue that within 14 days of supply of sugarcane, the occupier is bound to pay the amount due. It is also submitted that after expiry of 14 days, the amount will carry interest and it can be recovered as arrears of land revenue. In addition, a penalty under the Essential Commodities Act, 1955 is also provided. Lastly, on the basis of section 19(4), it is submitted that when an occupier of a factory enters into an agreement with a third party and secures a loan, it has to be mandatorily mentioned in the said agreement that 50% of the amount advanced shall be set apart and paid to the cane growers only. In addition, Rule 39-B of the 1961 Rules is relied upon to submit that if the occupier of a factory fails to pay the price of cane, details can be furnished to the District Collector for recovery of the dues in accordance with the provisions of the Act. Both the learned counsels argue that by a reading of section 19 and Rule 39-B of 1961 Rules, a charge is created over the sugarcane and that there is a priority for the payment of the sugarcane owners over and above any other



dues. They relied upon **Punjab National Bank, Central Bank of India** (supras 1 and 2) and **State Bank of Hyderabad, MSME Branch, Warangal** (3 supra). It is also argued that the agreement entered into by the petitioner is void under Section 23 of the Act since it is contrary to the statute.

As far as the creation of a charge is concerned, this Court is of the opinion that in view of the settled law that a charge can be created either by the operation of a statute (statutory charge) or by voluntary act of the parties. The language in the act must be very clear to create a statutory charge. In the case of creation of a voluntary charge by an act of parties the intention to create a charge assumes enormous importance in view of the law on the subject. This intention particularly for a charge on moveables must be expressly manifest and clear. For the sake of good order amongst the many orders on the subject, **Hindustan Machine Tools Ltd., v. Nedungadi Bank Ltd.**,<sup>6</sup> is relied upon. Para 17 of the order is reproduced here under:

17..... At this juncture, it is necessary to have a clear idea with reference to the concept of 'charge'. The word 'charge' is described in S. 100 of the Transfer of Property Act. I hasten to add here that the charge referred to in S. 100 of the T.P. Act relates to immovable property. However, the definition of the word 'charge' given in S. 100 of the T.P. Act will give an inkling as regards as to what exactly is meant by charge. Charge can be created in respect of immovable property and charge can be created also in respect of moveables. A charge is nothing but a devise to create security which is enforceable in a court of law. In

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<sup>6</sup> AIR 1995 Karnataka 185



order to create a charge in respect of immovable property, it is necessary that the same is required to be embodied in document. However, in order to create a charge relating to moveables it need not be in writing. Further in order to create a charge, it is not necessary to employ any technical or any particular form of expression. All that is required is that there should be a clear intention to make a particular property as a security for the payment of money. In other words, creation of enforceable security is the essence of charge either in respect of immovable property or in respect of moveables.....” (emphasis supplied)

If the facts in this case are viewed against the backdrop of the settled law on the subject, it is clear that the clear intention of respondent No.5 to create a charge over the sugar produced is not at all visible from the record. On the contrary, clause 16 of the agreement between the petitioner and respondent No.5 clearly states that a charge is created in favour of the petitioner only. Therefore, this Court has to hold that creation of a charge or a priority by act of parties is not manifest from the record.

As far as the statutory charge is concerned, this Court is of the opinion that section 19 of the 1961 Act does not create a charge by itself. It only provides for a method for recovery of the price of outstanding along with interest. Section 19 (1) of the 1961 Act merely states that the owner of a Khandasari unit shall make a provision for payment of price. If he fails to make payment within 14 days, he shall pay the same along with interest. If the price or the interest due is not paid, the same can be recovered as arrears of land revenue in terms of Rule 39-B of the 1961 Rules. The Inspector shall furnish the documents



to the District Collector, the price or amount due from the defaulter along with details of properties etc., to facilitate recovery. The cane commissioner is also vested with certain powers and duties. Therefore, in the opinion of this Court, section 19 does not by itself create a charge.

Learned counsel relied upon clause (4) of the agreement between the petitioner and respondent No.5 to argue that the price is only an “advance”. Relying upon Section 19(4) of the 1961 Act, it is argued that the petitioner is similar to a Bank mentioned in 19(4). Therefore, it is stated that respondent No.5 should set aside a fixed percentage of the amount for the payment of cane farmers dues. This argument is also fallacious because it very specifically deals with an agreement entered into by the factory or the owner with a Bank for advances on the security of sugar produced or to be produced. Once such an agreement is entered into, it should contain a clause for payment of the fixed percentage. The mere use of the word ‘advance’ will not make it a loan. The entire agreement has to be read to understand it in the proper perspective. A word or a clause cannot be read in isolation.

On the issue of statutory charge, this Court is relying upon the following two judgments, which deal with certain statutes which created a statutory charge.



***Central Government of India vs. State of Kerala***<sup>7</sup>. Paras

126 and 129 of the judgment are reproduced hereunder:

126. While enacting the DRT Act and Securitisation Act, Parliament was aware of the law laid down by this Court wherein priority of the State dues was recognized. If Parliament intended to create first charge in favour of banks, financial institutions or other secured creditors on the property of the borrower, then it would have incorporated a provision like Section 529A of the Companies Act or Section 11(2) of the EPF Act and ensured that notwithstanding series of judicial pronouncements, 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 the 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 the intervention of the Court or Tribunal. The reason for this omission appears to be that the new legal regime envisages transfer of secured assets to private companies.

129. 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(1) of the Estate Duty Act, 1953, Section 25(2) of the Mines and Minerals (Development and Regulation) Act, 1957, Section 30 of the Gift- Tax Act, and Section 529A of the Companies Act, 1956 would have been incorporated in the DRT Act and Securitisation Act.

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<sup>7</sup> (2009) 4 SCC 94



Similarly, ***Punjab National Bank v. Union of India***<sup>8</sup>.

Paras 41 and 42 are reproduced hereunder:

41. A Full Bench of the Madras High Court in the case of UTI Bank Ltd. v. Dy. Commissioner Central Excise, while dealing with a similar issue, has held that:

“25. In the case on hand, the Petitioner Bank which took possession of the property Under Section 13 of the SARFAESI Act, being a special enactment, undoubtedly is a secured creditor. We have already referred to the provisions of the Central Excise Act and the Customs Act. They envisage procedures to be followed and how the amounts due to the Departments are to be recovered. There is no specific provision either in the Central Excise Act or the Customs Act, claiming "first charge" as provided in other enactments, which we have pointed out in earlier paragraphs.

26. 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 Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the claim of secured creditor, viz., the Petitioner Bank.

(iv)....

42. This Court, while dismissing the Civil Appeal No. 3627 of 2007 filed against the judgment of the Full Bench, vide order dated 12.09.2009 held as under:

"Having gone through the provisions of the Securitization Act, 2002, in light of the judgment of the Division Bench of this Court in the case of Union of India v. Sicom Ltd. and Anr., reported in MANU/SC/8377/2008 :

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<sup>8</sup> 2022 SCC Online SC 227



2009 (1) SCALE 10, we find that under the provisions of the said 2002 Act, the Appellants did not have any statutory first charge over the property secured by the Respondent bank. In the circumstances, the Civil Appeal is dismissed with no order as to costs" (emphasis supplied)

43. Hence the reasoning given by the High Court stands strong and has been affirmed by this Court.

The absence of any specific/ express language in the 1961 Act makes it very clear that there is no priority as is sought to be argued in the present case. Only a procedure for recovery is spelt out in the Act.

This conclusion is further supported by the provisions of Section 21 of 1961 Act, which deals with "purchase tax". Section 21 clearly states that the Government may by notification levy a tax on the purchase of cane required for use, consumption or sale. Clause 21(3) states that notwithstanding anything contained in any other law, the sum due to the Government towards the purchase tax levied under this section shall be a first charge on the sugar produced out of the cane already purchased. The legislature in its wisdom clearly stipulated that there will be a first charge on the sugar produced towards the purchase tax only. They have not used similar language in section 19. This makes the intention of the Legislature clear and this Court cannot read anything more into the statute as that would amount to "judicial legislation". Therefore, this Court is of the opinion that neither section 19 of the 1961 Act nor 39-B of 1961 Rules support the contention that the payment of price either assumes priority or a charge



over the sugar produced. Even G.O.Ms.No.588, dated 20.02.1980 which is relied upon by the counsel for the farmers does not advance their case. Point 2 is also decided against the official respondents.

Lastly, this Court also notices on this particular aspect that the distraint notice dated 11.06.2021 talked of sugarcane price arrears of Rs.16.34 crores. The same is reiterated in Form-1 and in distraint order also. The counter filed by respondent No.5 clearly shows that Rs.21.99 crores has already been paid to the farmers out of the sale consideration paid by the petitioner. Further, land of the 5<sup>th</sup> respondent was auctioned on 09.02.2022 for a price of Rs.20.05 crores. Out of this, an amount of Rs.5.25 crores was already deposited by the bidder. The balance amount payable is Rs.14.79 crores. Once these dues are cleared, it is asserted that all the other dues will be cleared. This Court notices that as far as the sugar is concerned, the action to recover Rs.16.34 crores only was initiated. The distraint order is also for Rs.16.34 crores. Therefore, it appears from the record that the dues to the sugarcane farmers for which the entire dispute has arisen are actually settled. The existence of other dues which have now been raised are not very material to decide this case. The crux is the recovery of the dues of Rs 16.34 crores only.

As far as the case law cited by the learned Government Pleader and the counsel for the respondents is concerned, this Court notices that in the case of **Central Bank of India** (2





supra), the borrower hypothecated the plant and machinery and created an equitable mortgage for certain property as security for the loan availed from the Bank. Whether this immovable property could be auctioned for recovery of the Bank dues was the issue. Learned Single Judge did not finally decide the issue. *Prima facie* observations were made and parties were relegated to the appropriate forum for adjudication. In para 12, it is also noted that the submission about 19(4) and Rule 39 of the Rules creating a charge is misconceived.

The second judgment is ***Punjab National Bank*** (1 supra). In this case also, the dispute was between a Banker that advanced loans to a sugar factory and had obtained security and sale of the same. Since the agreement was with a Banker, a learned single Judge came to the conclusion in para 31 as per Rules 19 (4) and 39-B and a provision must be made in the agreement to set aside a fixed amount to be paid. This case relates to an agreement with a bank which is contrary to the express terms of the statute. Same is not the case in this writ petition.

Similarly, in ***State Bank of Hyderabad, MSME Branch, Warangal*** (3 supra) also a learned single Judge was deciding a case of a secured creditor. In para 19 it is clearly held that proceedings under the Act would have precedence over a mortgage. In the present case, we are dealing with a question of transfer of title and sale of sugar and not a case of security for payment of price.



These cases do not therefore help or advance the respondents case as the factual matrix is wholly different in this case. Even a difference of one fact can make a difference in its applicability to later cases (***Megh Singh v. state of Punjab***<sup>9</sup>)

The last issue that survives for consideration is the order passed by the learned single Judge in W.P.No.21644 of 2021 and its compliance. The Learned single Judge in para 7 of the order gave option to the present petitioner to file a detailed representation along with all the relevant documents and directed the District Collector (respondent No.2) to pass a detailed order in accordance with law. One of the main issues raised in the writ petition is that the petitioner is the owner of the sugar/ property. This Court notices that on 21.11.2021, the petitioner gave a detailed representation to the 2<sup>nd</sup> respondent wherein para 4 and in other paragraphs it is asserted that the petitioner is the “owner” of the sugar. The invoices, stock reports and other documents were referred to prove their contention that the petitioner is the owner. In para 11, about 16 documents are referred to in support of their contention. However, a reading of the impugned order dated 23.11.2021 does not indicate that any of the issues raised are actually considered. The transfer of title which has been asserted by the petitioner has not at all been considered or answered by the 2<sup>nd</sup> respondent in the course of the impugned order. Specific grounds are also raised in para 14 of the writ petition to show

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<sup>9</sup> AIR 2003 SC 3184



that 2<sup>nd</sup> respondent has not considered these issues at all. Section 5 of the Act is also clearly mentioned along with judgments of the A.P.High Court in Paras M and N.

Time and again, this Court and the highest Courts of the land have held that in matters having civil consequences a reasoned order should be passed. Reasons are held to be the heartbeat of any decision. Reasons should link the conclusions with the factual and legal issues that are raised. Unless and until the issues raised are answered in a proper manner, it cannot be said that the order is a reasoned other. This is a clear facet of the rule of natural justice. The law is too well settled on this aspect to be repeated here and only ***Kranti Associates (P) Ltd., v. Masood Ahmed Khan***<sup>10</sup> is referred to for this. This Court has therefore no hesitation to hold that on this ground also the impugned order must be set aside.

In conclusion therefore, this Court holds that by the date of the distraint order i.e. 11.06.2021, there is transfer of title in favour of the petitioner. The sugar is not the property of the 5<sup>th</sup> respondent by the date of the distraint order. Hence, the State cannot proceed against the said sugar for recovery of the dues. There is no charge created over the said sugar nor is any statutory preference given for recovery of the price payable to the sugarcane farmers. The dues of the sugarcane farmers which are mentioned in the distraint notice on 11.06.2021 also appeared to have been fulfilled. Lastly, it is held that despite the

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<sup>10</sup> (2010) 9 SCC 496



order passed by the learned single Judge in WP.No.21644 of 2021, the 2<sup>nd</sup> respondent has not passed a reasoned order as warranted.

For all these reasons, the writ petition is allowed and both the orders dated 23.11.2021 bearing R.C.No.985/2021/D3 and the earlier distraint notice bearing R.C.No.141/2021/A dated 11.06.2021, are set aside. As a consequence of this, the 6<sup>th</sup> respondent is also entitled to immediately seek a refund of the money deposited/paid by them in the auction conducted. To prevent multiplicity of proceedings and to render complete justice this consequential direction is also given. No order as to costs.

As a sequel, the miscellaneous petitions if any shall stand dismissed.

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D.V.S.S.SOMAYAJULU,J

Date : 04.08.2022

Note: L.R. Copy be marked.

KLP