

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE,

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. Nos.2675, 253 and 9750 of 2011, 46458 of 2002, 27409 and  
31060 of 2005, 6267 and 469 of 2006, 21496 of 2008, 21358 of 2009

THE ASSISTANT COMMISSIONER(CT)  
ANNA SALAI-III ASSESSMENT CIRCLE SIRE  
MANSION NO.621 ANNA SALAI  
CHENNAI-6. ..PETITIONER IN WP.2675/11

K.MAHENDRAN ..PETITIONER IN WP.253/11

THE COMMERCIAL TAX OFFICER-I  
COMMERCIAL TAXES DEPARTMENT OFFICE OF THE  
COMMISSIONER (CT)  
PUDUCHERRY ..PETITIONER IN WP.9750/11

INDIAN BANK REP BY BRANCH  
MANAGER,  
245, POLLACHI ROAD,  
UDUMALPET-642126 ..PETITIONER IN WP.46458/02

INDIAN OVERSEAS BANK  
PONDICHERRY MAIN BRANCH BY ITS CHIEF  
MANAGER / CONSTITUTED ATTORNEY  
PONDICHERY. ..PETITIONER IN WP.27409/05

INDIAN BANK  
HARBOUR BRANCH REP. BY ITS ASSISTANT  
GENERAL MANAGER B. PANDA 66 RAJAJI SALAI  
CHENNAI -1. ..PETITIONER IN WP.31060/05

M/S.GUPTA & COMPANY  
REP. BY ITS MANAGING PARTNER DR.S.K.GUPTA  
NO.8 & 11 EKKADUTHANGAL ROAD GUINDY  
CHENNAI-32 ..PETITIONER IN WP.6267/06

INDIAN OVERSEAS BANK  
PERUNGULATHUR BRANCH CHENNAI-63 BY ITS  
SENIOR MANAGER /  
CONSTITUTED ATTORNEY...PETITIONER IN WP.469/06

ORIENTAL BANK OF COMMERCE,  
OVERSEAS BRANCH,  
REP.BY ITS CHIEF MANAGER,  
A.SRINIVAS SHARMA,  
PADMA COMPLEX, 467, MOUNT ROAD,  
CHENNAI-35 ..PETITIONER IN WP.2496/08

MIJAN SHOE FABRIC LTD.,  
NO.57/28 VEPEERY HIGH ROAD,  
PERIAMPET, CHENNAI. ..PETITIONER IN WP.21358/09

vs

THE INDIAN OVERSEAS BANK  
REP. BY ITS MANAGER RECOVERY ADMINISTRATIVE  
BRANCH CENTRAL OFFICE ANNEXE BUILDING NO.  
763 ANNA SALAI 1ST FLOOR CHENNAI-2.

M/S.SUPER RECORDING CO. LTD  
NO.713 ANNA SALAI  
CHENNAI-2. ...RESPONDENTS 1 &2 IN WP.2675/11

THE COMMERCIAL TAX OFFICER  
AROR DHARMAPURI DISTRICT

THE TAMILNADU INDUSTRIAL  
INVESTMENT CORPORATION LTD M.H.U. COMPLEX  
692 ANNA SALAI NANDANAM  
CHENNAI 35 ..RESPONDENTS 1&2 IN WP.253/11

UCO BANK  
REP BY ITS AUTHORISED OFFICER MAIN BRANCH  
PONDICHERRY 605 001

MARUTHI AGENCIES  
REP BY R.THIRUMALAI PLOT NO.3 VIP NAGAR  
ARUMPARTHAPURAM PUDUCHERRY

T.SARAVANAN ..RESPONDENTS 1 TO 3 IN WP.9750/11

THE COMMERCIAL TAX OFFICER  
COMMERCIAL TAX OFFICE UDUMALPET  
(NORTH) UDUMALPET

JAGADEESWARAN TEXTILES (P)  
LTD THUNGAVI UDUMALPET TALUKCOIMBATORE  
DISTRICT 642 203

THE SALES TAX RECOVERY  
INSPECTOR UDUMALPET (NORTH)  
UDUMALPET ..RESPONDENTS 1 TO 3 IN WP.46458/02

THE COMMERCIAL TAX OFFICER  
KORATTUR ASSESSMENT CIRCLE CHENNAI -80.

TRIVENI STEELS PVT. LTD.  
8/7 M.T.H. ROAD AMBATTUR  
CHENNAI -98. ..RESPONDENT IN WP.27409/05

THE COMMERCIAL TAX OFFICER  
THIRUVOTTIYUR ASSESSMENT CIRCLE CHENNAI -19.

M/S. ENNORE STEEL ENTERPRISES  
LTD. 593/1 THIRUVOTTIYUR HIGH ROAD  
THIRUVOTTIYUR CHENNAI - 57.

THE MANAGER  
RESERVE BANK OF INDIA FORT GLACIS 16  
RAJAJI SALAI CHENNAI -1. ..RESPONDENTS 1 TO 3 IN  
WP.31060/05

- 1 THE COMMERCIAL TAX OFFICER  
ALANDUR ASSESSMENT CIRCLE 62 PUDUPET  
STREET ALANDUR CHENNAI-16.
- 2 THE COMMERCIAL TAX OFFICER  
NANDANAM ASSESSMENT CIRCLE GREENWAYS RAOD  
CHENNAI-28.
- 3 THE OFFICAL LIQUIDATOR  
HIGH COURT OF MADRAS REPD. M/S.MOOLCHAND  
EXPORTS LTD. (IN LIQUIDATION) KURALAGAM  
BUILDING FIRST FLOOR CHENNAI-108.
- 4 THE RECOVERY OFFICER-II  
DEBTS RECOVERY TRIBUNAL-I SPENCER PLAZA  
6TH FLOOR 770-A ANNASALAI CHENNAI-2.
- 5 STATE BANK OF INDIA  
REP. BY ITS BRANCH MANAGER LEATHER  
INTERNATIONAL BRANCH MVJ TOWERS  
CHENNAI-10. ..RESPONDENTS 1TO5 IN WP.6267/06

- 1 THE COMMERCIAL TAX OFFICER  
CHENGALPET ASSESSMENT CIRCLE CHENGELPET
- 2 THE COMMISSIONER  
COMMERCIAL TAX DEPT. EZHILAGHAM CHETPET  
CHENNAI
- 3 A.N.PADMARAJ  
PROP. M/S.ELECTRO CHEMISMELT PLOT-NO.2/1A/1  
PERUNGULATHUR VILLAGE  
GUDUVANCHERRY-603 202 ..RESPONDENTS 1TO3 IN WP.469/06
- 1 THE COMMERCIAL TAX OFFICER  
MOORE MARKET (NORTH) ASSESSMENT CIRCLE  
191 NSC BOSE ROAD CHENNAI - 1
- 2 THE MANAGER  
RESERVE BANK OF INDIA FORT ST. GEORGE  
CHENNAI -1
- 3 ASHAPURI INDUSTRIES  
REP. BY ITS PROPRIETOR MR. SUNDAR SINGH 32  
ELAKALDAPPAN ST  
CHENNAI - 3 ..RESPONDENTS IN WP.21496/08
- 1 THE ASSISTANT COMMISSIONER (CT)  
COMMERCIAL TAX RANIPET.
- 2 VILLAGE ADMINISTRATIVE OFFICER  
PINJI VILLAGE.
- 3 CANARA BANK  
ASSET RECOVERY MANAGEMENT BRANCH SPENCER  
PLAZA CHENNAI-2. ..RESPONDENTS IN WP.21358/09

WP.2675/11: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to forbear the 1<sup>st</sup> respondent from proceeding with the recovery proceedings issued a 'Public Auction Notice' in Dinakaran newspaper on 28.12.2010 for the sale of the property of the 2<sup>nd</sup> respondent without confirming the arrears of Sales Tax or without wide promulgation for transfer for consideration for arrears of Sales Tax Rs.2,57,64,830/- due to the Petitioner Department for the period from 1997-98 to 1999-2000 on which charge is subsisting as this Court may deem fit.

WP.No.253/11:  
calling for the records of the 1st respondent in his proceedings in N.K.2062/97/A3 and quash the recovery notice dt 1.11.2010 issued therein as illegal and without authority of law in view

of the law laid down by two Division bench judgments of this Honourable Court reported in 25 VST 175 and 25 VST 187.

WP.No.9750/2011:calling for the records relating to the TenderSale Notice dt 12.3.2011 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to enforce its right subject to the priority rights of the petitioner provided u/s. 37 of the Puducherry Value Added Tax Act 2007 and u/s.27 of the Pondicherry General Sales Tax Act 1967 r/w. Sec.81 of the Puducherry Vale Added Tax Act 2007 over the assets of the respondents 2 and 3 viz. the vacant land bearing R.S. No. 106A/37 (106/37A) Cadastre No. 602 20/20 Lawspet Main Road Karuvadikuppam Revenue Village Puducherry

WP.No.46458/2002:to issue a Writ of Certiorari or any other appropriate writ order or direction of like nature calling for the records of the proceedings of the 1st respondent relating to the impugned Form B6 notice dated 03.09.2002 and consequential distraint order dated 18.12.2002 ad quash the same and pass such further or other orders

WP.No.27409/2005:Forbearing the 1st respondent herein from proceeding further under the proposed auction Sale Notice issued vide Rc.665/95/A3 dt. 28.07.05 Exten 29.08.05 for the sale of factory land and building belonging to the 2nd respondent situated at 8/7 MTH Road Ambattur Chennai - 98.

WP.No.31060/2005:Calling for the records pertaining to the proceedings bearings Rc. 141/91/A3 dated 29.08.2005 on the files of the 1st respondent and quash the same.

WP.No.6267/06:to call for and quash the impugned proceedings of the first respondent in Form No.5 in Rc.23/2006/A3 dated 16.01.2006.

WP.No.469/2006:forbearing the 1st respondent herein from proceeding further under the proposed auction sale notice issued vide Na.Ka.No.95302/2005 Aa 26/09/05 published in the Kancheepuram Dist. Gazette dt. 1/11/05 for the sale of the factory land and building belonging to the 3rd respondent measuring 43 cents situated in Sy.N2/1A/1 (2/1A2 & 2/1A1a1) in perumattunallur Village chengelpet dist.

WP.NO.21496/08:calling for the records on the files of the First Respondent herein in his Ref. No. 1915/2002 dated 13.9.2004 and quash the same and forbear the First Respondent herein from resorting to recovery proceedings under Section 26 of the Tamil Nadu General Sales Tax Act 1959 in so far as it relates to arrears of Sales tax of the Third Respdnent herein due to the First Respondent herein

WP.No.21358/2009:calling for the records on the file of the first respondent in respect of proceedings in Na Ka 4067/2000 A3 dt. 15.9.2009 read with Annexure namely the Sale Notice addressed to the second respondent and the consequential sale notice quash the same.

Mr.S.Kanmani Annamalai  
AGP (T) : For Petitioner in WP.2675/11 and  
Respondent in WP.46458/02, 469/06,  
6267/06, for R1 in WP.253/11 R1 in  
WP.31060/05, 21496/08, R1 & R2 in  
WP.21358/09, for R1 in WP.27409/05.

Mr.F.B.Banjamin George : For R1 in WP.2675/11 and for  
Petitioner in WP.27409/05

Mr.N.A.S.Richard : For R2 in WP.2675/11

Mr.Jayesh B.Dolia for  
M/s.Aiyar & Dolia : For Petitioner in WP.46458/02,  
31060/05, 21358/09

Mr.R.Hemalatha : For R2 in WP.46458/02

Mr.A.P.Srinivas for  
M/s.V.Nandakumar : For petitioner in WP.469/06

Mr.V.Ramesh : For Petitioner in WP.6267/06

Mr.S.R.Sundar : For R3 in WP.6267/06

Mr.P.V.Sudaka : For petitioner in WP.253/11

Mr.K.V.Sundararajan : For R2 in WP.253/11

Mr.T.P.Manoharan, SC  
for Reena Iswarya AGP(P) : For Petitioner in WP.9750/11

Mr.Srinath Sridevan : For R1 in WP.9750/11

Mr.G.Desingu : For R3 in WP.9750/11

Mr.N.Inbarajan : For Petitioner in WP.21496/08

Mr.T.Poornam : For R2 in WP.21496/08

M/s.Mcgan Law firm : For R3 in WP.21496/08

Mr.Joseph Augustine  
for M/s.Sampathkumar&  
Associates : For R3 in WP.21358/09.

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The writ petitions have been listed before the Full Bench in pursuance to the reference order in W.P.No.6267 of 2006 and W.P.No.253 of 2011, in respect of the following issues:-

'a) As to whether the Financial Institution, which is a secured creditor, or the department of the government concerned, would have the 'Priority of Charge' over the mortgaged property in question, with regard to the tax and other dues.

b) As to the status and the rights of a third party purchaser of the mortgaged property in question.'

2.We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-

'31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise 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.

Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.'

3.There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the

Central Act is with ''notwithstanding'' clause and has come into force from 01.09.2016.

4.The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.

5.The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.

6.In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes ''secured debts due and payable to them by sale of assets over which security interest is created''.

7.We, thus, answer the aforesaid reference accordingly.

8.The matters be placed before the roster Division Bench for dealing with the individual cases.

Sd/-  
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

To

1.The Indian Overseas bank  
rep by its Manager  
Recovery Administrative Branch  
Central Office  
'Annexe Building  
No.763 Anna Salai 1st Floor  
Chennai-600 002

2.The Commercial Tax Officer  
Anoor, Dharmapuri District

3.The Tamil Nadu Industrial Investment  
Corporation Limited,  
M.H.O.Complex  
692 Anna Salai Nandanam  
Chennai-35

4.UCO Bank



Rep by its Auhtorized officer  
Main Branch,  
Pondicherry 605 001

5.The Commissioner Tax Officer,  
Commissioner Tax Officer  
Udumalpet(North)  
Udumalpet

6.The Sales Tax Recovery Inspector  
Udumalpet(North)  
Udumalpet

7.The Commercial Tax Officer  
Korattur Assessment Circle,  
Chennai-80

8.The Commercial Tax Officer  
Thiruvottiyur Assessment Circle,  
Chennai-600 019

9.The Manager  
Reserve Banking India,  
Fort Glacis  
NO.16 Rajaji Salai  
Chennai-600 001

10.The Commercial Tax Officer  
Alandur Assessment Circle,  
62 Pudupet street Alandur  
Chennai-16

11.The Commercial Tax Officer  
Nandanam Assessment Circle,  
Greenways Road, Chennai-28

12.The Official Liquidator  
High Court of Madras  
Rep by M/s.Moolchand exports Limited (In Liquidation)  
Kuralagam Building  
First floor, Chennai-108

13.The Recovery officer-II  
Debts Recovery tribunal-II  
Spencer Plaza 6th floor  
770-A Annasalai Chennai-2

14.State bank of India  
rep by its Branch Manager

Leather Internation Branch  
MVJ Tower, Chennai-10

15.The Commercial Tax Officer  
Chengalpet Assessment Circle  
Chengalpet

16. The Commissioner  
Commercial Tax Department  
Ezhilagam Chepauk Chennai-5

17.The Commercial Tax officer  
Moor Market (North) Assessment  
191, NSC Bose Road,Chennai-1

18.The Manager  
Reserve Bank of India,  
Fort St.George  
Chennai-1

19.The Assistant Commissioner (CT)  
Commercial Ta,  
Ranipet,

20.Village Administrative officer  
Pinji village

21.Canara Bank  
Asset Recovery Management Branch  
Spencer Plaza,Chennai-2

+2 cc to Mr.F.B.Banjamin, advocate,sr.64875,76

+1 cc to Mr.S.R.Sundar,advocate,sr.64866

+1 cc to Mr.S.V.Nandakumar,advocate,sr.64877.

sv(co)  
krd 15/11

W.P. Nos.2675, 253 and 9750 of 2011  
46458 of 2002, 27409 and 31060  
of 2005, 6267 and 469 of 2006,  
21496 of 2008, 21358 of 2009