

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 124 of 2019

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AXIS BANK LIMITED
 Versus
 STATE OF GUJARAT & 5 other(s)

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Appearance:

MR PM DAVE(263) for the Petitioner(s) No. 1

MR UTKARSH SHARMA, AGP GOVERNMENT PLEADER for the
 Respondent(s) No. 1,2,6

MR YOGESHKUMAR A RATANPARA(7260) for the Respondent(s) No. 5
 NOTICE SERVED for the Respondent(s) No. 3,4

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CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA
 and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 04/05/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs:-

16(A) Be pleased to quash and set aside the action of respondent no.2 authority in registering the charge of attachment on the subject property being "Godown Property constructed on land admeasuring 429-18 sq.mtr. Of City Sy. No.2863 of Street No.90 at Manavadar, DistL Junagadh" as being illegal, unjust, unreasonable, contrary to the provision of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as also violative of statutory rights of the petitioner bank and cancel the charge of respondent no.2 authority, in the interest of justice and equity;

(B) Be pleased to direct respondent no.6 authority to record the name of respondent no.5 in the property card of the

subject property forthwith, being an auction purchaser of the subject property, pending admission, hearing and final hearing of the present petition in the interest of justice;

(C) Be pleased to grant such other and further reliefs as may be deemed fit and proper by this Hon'ble Court, in the interest of justice;

2. We need not delve much into the facts of this litigation as the issue involved is in a very narrow compass and no longer *res-integra* in view of the two pronouncements of this High Court as under:

(1) Bank of India vs. State of Gujarat and others

[Special Civil Application No.13863 of 2014; decided on 21st January 2020].

(2) Kalupur Commercial Co-operative Bank Ltd. vs. State of Gujarat

[Special Civil Application No.17891 of 2018; decided on 23rd September 2019].

3. The respondents nos.3 and 4 respectively are the original borrowers. They had availed loan facility from the writ-applicant – bank. At the time of grant of the necessary finance, the original borrowers had mortgaged the subject property and thereby, had created a charge in favour of the writ-applicant – bank. As the original borrowers defaulted in the repayment of the loan amount, the subject property was taken over by the writ-applicant – bank in accordance with the provisions of the SARFAESI Act, 2002 and was ultimately, put to auction. The respondent no.5 was declared as the highest bidder in the public auction conducted by the bank. The bid ultimately came to be finalized in favour of the respondent no.5. The bank has put the respondent no.5 in possession of the

subject property. The sale certificate has also been issued by the bank. The sale-deed has also been registered in favour of the respondent no.5 duly executed by the bank.

4. The bank is here before this Court with the present writ-application as the State has got its charge mutated in the revenue records with respect to the dues to be recovered from the original borrowers towards VAT.

5. We have heard Mr. P.M. Dave, the learned counsel appearing for the writ-applicant; Mr. Utkarsh Sharma, the learned AGP appearing for the State respondents and Mr. S.M. Kikani, the learned counsel appearing for the respondent no.5.

6. It is the case of the bank that in accordance with the provisions of the SARFAESI Act, more particularly, Section-26E and also, in view of the two pronouncements of this High Court one in the case of *Bank of India vs. State of Gujarat and others*; and another in the case of *Kalapur Commercial Co-operative Bank Ltd. vs. State of Gujarat*, the bank will have the first precedence and the department cannot put forward its claim for the purpose of recovering the dues towards VAT.

7. We quote the relevant paragraphs of the judgment rendered in *Kalapur Commercial Co-operative Bank Ltd. (supra)* as under:

“54. In view of the aforesaid discussion, We have no hesitation in coming to the conclusion that the first priority over the secured assets shall be of the Bank and not of the State Government by virtue of Section 48 of the VAT Act, 2003.

55. *In the result, this writ application succeeds and is hereby allowed. The impugned attachment notice dated 22.01.2018 (Annexure-A) and the impugned communication dated 19.04.2018 (Annexure-B) issued by the respondent No.2 is hereby quashed and set aside. It is hereby declared that the Bank has the first charge over the properties mortgaged from M/s. M.M. Traders by virtue of Section 26E of the SARFAESI Act.*

56. *It is further clarified that the excess, if any, shall be adjusted towards the dues of the State under the VAT Act. It is further declared that the respondents cannot proceed against the purchasers of the properties sold under the SARFAESI Act.”*

8. What came to be purchased by the writ-applicant in the auction proceedings conducted by the Bank of Baroda was a secured asset under the provisions of the SARFAESI Act. In such circumstances, the State cannot claim preference over the subject property for the purpose of recovery of the dues towards tax. It is not in dispute that the first charge was created in favour of the bank and the bank in exercise of its powers under the SARFAESI Act, put the subject property to auction.

9. In view of the settled position of law, this writ-application succeeds and is hereby allowed. It is hereby declared that the State cannot claim any first charge over the subject property on the strength of Section-48 of the GVAT Act, 2003. The respondent no.6 is directed to post and certify a mutation entry to record the certificate of sale by the writ-applicant – bank in favour of the respondent no.5 with respect to the subject property.

If there is any entry of the State in the form of charge in the revenue records, the same stands deleted.

10. With the aforesaid, this writ-application stands disposed of accordingly.

Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

A. B. VAGHELA

