

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 10314 of 2021**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

**and**  
**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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**ALOK KISTUCHAND AGARWAL**  
 Versus  
**SUB REGISTRAR**

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Appearance:

MR. JAIMIN R DAVE(7022) for the Petitioner(s) No. 1,2  
 MS AAKSHA K SAJNANI(11281) for the Petitioner(s) No. 1,2  
 PRIYANK S DAVE(9465) for the Petitioner(s) No. 1,2  
 for the Respondent(s) No. 1  
 MR ANAND B GOGIA(5849) for the Respondent(s) No. 3  
 MR RB GOGIA(5850) for the Respondent(s) No. 3  
 MR NIKUNT RAVAL WITH MRS KALPANA K RAVAL(1046) for the  
 Respondent(s) No. 2  
 MS MUSKAN A GOGIA(6624) for the Respondent(s) No. 3

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

**Date : 06/04/2022**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application, the writ applicants under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

*“This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to:*

- A. *Quash and set aside the impugned letter / order dated 24.05.2021 at Annexure – A and impugned letter / order dated 31.12.2020 at Annexure – F;*
- B. *Direct the respondent No.1 herein to release the registered sale deed bearing registration number 1016 of 2020 in favour of Petitioners concerning plot numbers 01 to 12 at Revenue Survey Number: 119/3 & 156/1, Block Number:191 paiki west side at Village: Karang, Taluka: Mandavi, District: Surat, Gujarat, admeasuring 7185 Square meters;*
- C. *Quash and set aside attachment order dated 18.04.2013 at Annexure – G to the petition and direct the Respondent No.2 herein to lift / remove all its charges, encumbrances over plot numbers 01 to 12 at Revenue Survey Number: 119/3 & 156/1, Block Number: 191 paiki west side at Village: Karang, Taluka: Mandavi, District: Surat, Gujarat, admeasuring 7185 Square meters;*
- D. *Pending notice, admission and final hearing of this Petition, restrain Respondent No.2 from taking any further steps in pursuant to attachment order dated 18.04.2013 at Annexure – G to the petition;*
- E. *Pending notice, admission and final hearing of this Petition, your lordship may be pleased to direct Respondent No.1 herein to provisionally release the registered sale deed subject to outcome of the main petition;*
- F. *Any other and further relief deemed just and proper be granted in the interest of justice;”*

2. The facts giving rise to this litigation, may be summarized as under:

2.1 We are concerned with 12 plots of land forming part of the Revenue Survey Nos.119/3 and 156/1 respectively, Block No.191 paikee West side situated at village: Karanj, Ta. Mandavi, Dist. Surat, Gujarat admeasuring 7185 Sq. Mtrs. These 12 plots were owned by a Company running in the name of M/s. Salar Polyfab Private Limited. M/s. Salar Polyfab Private Limited availed loan facilities some time in the year 2006-07 from the respondent No.3 – State Bank of India by mortgaging all the 12 plots. The Company thereby created a security interest with respect to the 12 plots in favour of the State Bank of India within the meaning of Section 2(lb) of the Recovery of Debts and Bankruptcy Act, 1993 (fort short “the RDB Act”). The bank could be said to have become the secured creditor so far as the 12 pots of land are concerned.

2.2 In or around 2011-12, the Company defaulted in repayment of the debts of the bank to the tune of Rs.85,41,51,495/- (Rupees Eighty-five Crore Forty-one Lakh Fifty-one Thousand Four Hundred Ninety-five only). In such circumstances, the bank decided to proceed against the Company by filing an Original Application No.295 of 2012 before the Debts Recovery Tribunal – II, Ahmedbaad, under the provisions of the RDB Act.

2.3 The Debts Recovery Tribunal allowed the Original Application vide order dated 29.01.2015 and authorized the bank to recover the outstanding by auctioning the secured assets in accordance with the provisions of the RDB Act, 1993. The Tribunal issued a Recovery Certificate under Section 18(22) of the Act,

1993.

2.4 All the 12 plots were put to auction by the bank. The writ applicants participated in the auction proceedings and were declared as the highest bidders. The offer of Rs.1,30,00,000/- towards sale consideration was accepted by the bank. The writ applicants were declared as the highest bidders. It is not in dispute that the writ applicants deposited the entire amount towards the sale consideration. It is also not in dispute that later the Tribunal confirmed the sale of land in favour of the writ applicants. The sale deed also came to be executed by the State Bank of India in favour of the writ applicants.

2.5 The writ applicants as on date are facing two fold problems; first the sale deed has not been released by the Sub-Registrar and secondly, the Talati-cum-Mantri has declined to mutata the entry of such sale in the revenue records. This has happened because the State has put forwarded its claim towards the dues to be recovered from the erstwhile Company towards income tax.

2.6 In such circumstances referred to above, the writ applicants are here before this Court with the present writ application.

3. We have heard Mr. Jaymin Dave, the learned counsel appearing for the writ applicants, Mr. Nikunt Raval, the learned senior standing counsel appearing for the respondent No.2 and Mr. Anand B. Gogia, the learned counsel appearing for the respondent No.3.

4. The short point that falls for our consideration which otherwise no longer *res integra* is whether the bank will have the

precedence over the secured assets or the Income Tax Department will have the precedence over the secured assets.

5. The Supreme Court in a recent pronouncement in the case of ***Punjab National Bank Vs. Union of India and Others, Civil Appeal No.2196 of 2012*** decided on **24.02.2022** has taken the view that once any immovable property is mortgaged / hypothecated towards secured creditors then having regard to the provisions contained in Section 2(zc) to (zf) of the SARFAESI Act, 2002 read with the provisions contained in Section 13 of the SARFAESI Act, 2002, the secured creditor will have the first charge on the secured assets. The Supreme Court proceeded to hold that Section 35 of the SARFAESI Act, 2002 inter alia provides that the provisions of the SARFAESI Act shall have overriding effect on all other laws.

6. In the case on hand, the Income Tax Department obviously would rely upon the provisions of Section 281 of the Income Tax Act.

7. In view of the recent pronouncement, the provisions contained in Section 281 of the Income Tax Act would be said subject to the provisions contained in the SARFAESI Act, 2002. It appears that the Company was assessed for the F.Y. 2007-08. We do not have the exact date on which the assessment order came to be passed, but the records reveals that the Income Tax Department proceeded to attach the plots some time in 2013.

8. In the aforesaid context, Mr. Dave invited the attention of this Court to one another decision of the Supreme Court in the case of ***Connectwell Industries Private Limited Vs. Union of India***

**Through Ministry of Finance and Others** reported in **(2020) 5 Supreme Court Cases 373**, wherein the Supreme Court held as under:

*“9. It is trite law that, unless there is preference given to the Crown debt by a statute, the dues of a secured creditor have preference over Crown debts. [See:- Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., Union of India & Ors. v. SICOM Ltd., Bombay Stock Exchange v. V.S. Kandalgaonkar, CIT v. Monnet Ispat and Energy Ltd.]*

*10. Rule 2 of Schedule II to the Act provides for a notice to be issued to the defaulter requiring him to pay the amount specified in the certificate, in default of which steps would be taken to realise them. The crucial provision for adjudication of the dispute in this case is Rule 16. According to Rule 16(1), a defaulter or his representative cannot mortgage, charge, lease or otherwise deal with any property which is subject matter of a notice under Rule 2. Rule 16(1) also stipulates that no civil court can issue any process against such property in execution of a decree for the payment of money. However, the property can be transferred with the permission of the Tax Recovery Officer. According to Rule 16(2), if an attachment has been made under Schedule II to the Act, any private transfer or delivery of the property shall be void as against all claims enforceable under the attachment.*

*11. There is no dispute regarding the facts of this case. The property in dispute was mortgaged by BPIL to the Union Bank of India in 2000 and the DRT passed an order of recovery against the BPIL in 2002. The recovery certificate was issued immediately, pursuant to which an attachment order was passed prior to the date on which notice was issued by the Tax Recovery Officer- Respondent No.4 under Rule 2 of Schedule II to the Act. It is true that the sale was conducted after the issuance of the notice as well as the attachment order passed by Respondent No.4 in 2003, but the fact remains that a charge over the property was created much prior to the notice issued by Respondent No.4 on 16.11.2003. The High Court held that Rule 16(2) is applicable to this case on the ground that the actual sale took*

*place after the order of attachment was passed by Respondent No.4. The High Court failed to take into account the fact that the sale of the property was pursuant to the order passed by the DRT with regard to the property over which a charge was already created prior to the issuance of notice on 11.02.2003. As the charge over the property was created much prior to the issuance of notice under Rule 2 of Schedule II to the Act by Respondent No.4, we find force in the submissions made on behalf of the Appellant.”*

9. In view of the aforesaid, this writ application succeeds and is hereby allowed. The impugned letter / order dated 24.05.2021 and 31.12.2020 respectively at Annexure F are hereby quashed and set aside. The respondent No.1 is directed to release the registered sale deed bearing registration No.1016/2020 in favour of the writ applicants with respect to the property in question. The attachment order dated 18.04.2013, Annexure G passed by the Income Tax Department is also hereby quashed and set aside. The writ applicants are entitled in law to get their names mutated in the revenue records on the strength of sale deed.

सत्यमेव जयते

THE HIGH COURT  
OF GUJARAT

(J. B. PARDIWALA, J)

WEB COPY

(NISHA M. THAKORE, J)

Y.N. VYAS