



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

ON THE 31st DAY OF MAY, 2022

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR

CIVIL WRIT PETITION NO. 3446 OF 2020

Between:-

1. BHAGWAN SINGH, SON OF SHRI BHAG SINGH, VPO MANPURA, TEHSIL BADDI, DISTRICT SOLAN HIMACHAL PRADESH AGED 45 YEARS.

2. DARSHAN SINGH SON OF SHRI BELI RAM, RESIDENT OF VILLAGE BEHLI KHOL, POST OFFICE MANPURA, TEHSIL NALAGARH, DISTRICT SOLAN HIMACHAL PRADESH

....PETITIONERS

(BY MS. AMBIKA KOTWAL, ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH THROUGH SECRETARY (REVENUE) TO THE GOVT. OF HIMACHAL PRADESH.

2. THE TEHSILDAR, TEHSIL NALAGARH, DISTRICT SOLAN HIMACHAL PRADESH

3. HIMACHAL PRADESH STATE ELECTRICITY BOARD LTD., VIDYUT AAYOG BHAWAN, BLOCK NO. 37, SDA COMPLEX, KASUMPTI SHIMLA-171009

4. STATE EXCISE AND TAXATION DEPARTMENT B-30, SDA COMPLEX, NEAR CID OFFICE KASUMPTI, SHIMLA HIMACHAL PRADESH 171009

5. STATE BANK OF INDIA, THROUGH ITS AUTHORIZED OFFICER, STRESSED ASSETS MANAGEMENT BRANCH, FIRST FLOOR, LOCAL HEAD OFFICE, SECTOR-17-A, CHANDIGARH-160017

.....RESPONDENTS

**(BY SHRI AJAY VAIDYA, SENIOR ADDITIONAL
ADVOCATE GENERAL, FOR R-1, 2 AND 4).**

**(BY SHRI VIKRANT THAKUR, AND SH. SUSHANTVIR SINGH
THAKUR, ADVOCATES FOR R-3)**

(BY SHRI ARVIND SHARMA, ADVOCATE FOR R-5)

**Judgment Reserved on: 25th February, 2022
Date of Decision : 31st May, 2022**

Whether approved for reporting? Yes.

*This Writ Petition coming on for pronouncement this day, the Court
passed the following:*

ORDER

Petitioners herein are purchasers of property in reference for consideration of Rs.3,71,50,000/- in an E-auction conducted by respondent No.5-Bank in proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act) for default in payment of Loan Cash Credit etc. by previous owner of property M/s Dev Bhumi Ispat.

2 Respondent No.5-Bank has issued Sale Certificate in favour of petitioners, but respondents No. 1 and 2, for the charge recorded in revenue record in favour of respondent No.3 H.P. State Electricity Board for outstanding electricity bill and respondent No.4- State Excise and Taxation Department for outstanding taxes declared as arrears of land revenue, are not

permitting the petitioners and respondent No.5 to execute the sale deed after removing the charges recorded in favour of respondents No.3 and 4 and treating the property in question free from all encumbrances. Therefore, petitioners have approached this Court with following main reliefs:-

1. That respondent No.2 may kindly be directed to grant the permission to the petitioners to get the sale deed executed and registered in view of Annexure P-1, certificate of sale and decide Annexure P-5, within the time bound period;

2. That respondent No.2 may kindly be directed to sanction/attest the mutation of the property purchased by the petitioners in an auction in their favour;

3. That respondent No.2 may kindly be directed to remove the entries/note made in the revenue record in favour of respondents No.3 and 4 within time bound period, as requested in Annexure P-5.

3 Undisputed facts, in present case, are that one M/s Dev Bhumi Ispact had availed financial assistance i.e. Cash Credit and Term Loan from respondent No.5 by keeping the property in question

as a secured assets with respondent No.5-Bank by creating a lien/charge over the property and a corresponding entry in the revenue record was made by Report No. 401 dated 14.5.2010. For non-payment/re-payment of cash credit and term loans by M/s Dev Bhumi Ispat, respondent No.5-Bank had invoked provisions of SARFAESI Act and Security Interest (Enforcement) Rules, 2002 and in furtherance thereto, had advertised public notice for E-auction of suit property in newspaper dated 12.7.2019 proposing E-auction on 30.7.2019. In E-auction, petitioners were confirmed as highest bidders and to this effect, respondent No.5-Bank had issued Certificate of Confirmation of Sale of property under SARFAESI Act, 2002 vide communication/certificate dated 2.8.2019 (Annexure P-3). Thereafter, on depositing sale amount of Rs.3,71,50,000/- including TDS amount, Sale Certificate dated 4.11.2019 (Annexure P-1) was issued by Authorized Officer. In sequel thereto, possession of suit property was handed over to petitioners and a certificate of handing and taking over the possession was issued on 5.11.2019.

4 It is also on record that vide Report No. 745 dated 8.8.2014, an entry was made in revenue record

creating charge in favour of H.P. State Electricity Board for non-payment of Electricity Bill amounting to Rs.7,80,725/- by M/s Dev Bhumi Ispect. Thereafter, another entry was made in revenue record creating charge, vide Report No. 190 dated 10.12.2014, in favour of Collector-cum-Assistant Excise and Taxation Commissioner, BBN, Baddi for recovery of unpaid taxes amounting to Rs.7,53,17,197/- which has been declared as arrears of land revenue.

5 In aforesaid circumstances, petitioners intend to execute and register the sale deed and attestation of mutation thereof accordingly for updating the revenue entry, but with removal of charges created in favour of respondents No. 3 and 4 from revenue entries recorded vide Rapat Nos. 745 and 190. For denial thereof by respondents No. 1 to 4, petitioners have approached this Court.

6 According to petitioners as well as respondent No.5-Bank, on the suit property M/s Dev Bhumi Ispect has created security interest in favour of secured creditor i.e. respondent No.5-Bank by creating mortgage and, therefore, security assets under Sections 26-E and 35 of SARFAESI Act and Section 31-B of Recovery of Debts Due to Banks, Financial

Institutions Act, 1993 (RDB Act), respondent No.5 has priority over all other debts and all revenue taxes, cesses and other rates payable to Central Government or State Government or local authorities. Whereas, claim of respondent No.4 is that in view of Section 26 of H.P. Value Added Tax Act 2005 (in short HPVAT), respondent No. 4, on the basis of "Doctrine of Priority of State's Debt" treating the unpaid tax as a "Crown Debt" as first charge over the property in reference, irrespective of mortgage created by M/s Dev Bhumi Ispect in favour of respondent No.5-Bank and irrespective of provisions of SARFAESI and RDB Acts; it has first charge.

7 To substantiate its claim, State has placed reliance on **Central Bank of India vs. State of Kerala & others**, reported in **(2009)4 SCC 94**, wherein it was held that in terms of Section 26-B of Kerala Act, the State had got prior charge over the property of defaulter in preference to financial institutions/bank.

8 In reply filed by respondents No.1 and 2, it has been stated that they are always ready to accept the Sale Deed executed between respondent-bank and petitioners and register the same, but without removal

of charge of respondents No. 3 and 4 which cannot be removed by them (respondents No. 1 and 2) at the time of execution and registration of sale deed.

9 Despite availing numerous opportunities, no reply has been filed by respondent No.3-Electricity Board.

10 Learned Senior Additional Advocate General, referring judgment dated 31.3.2021 of the Division Bench of this Court passed in LPA Nos. 27 to 31 to 2021 has canvassed that being an excise and taxation matter, as per Roster, present petition requires to be listed before and decided by Division Bench.

11 As per Roster, tax matters are to be listed before Division Bench. Every matter wherein Excise and Taxation Department is a party, does not become a tax matter only for a dispute with Excise and Taxation Department. The tax matter to be listed before the Division Bench would be a matter wherein validity of taxation law; imposition; levy and/or charging on tax; quantum of calculations of tax; interpretation of a tax charging provision etc are to be adjudicated. It is not the case in present case as in present case, issue involved is that as to whether

secured creditors shall have priority, over all other debts and all revenues, taxes, cesses and other rates payable to Central Government or State Government or local authorities, upon the secured assets or respondent No.4-Excise Department shall have first charge on such property irrespective of creation of charge in the assets in favour of secured creditors. Therefore, it is not a tax matter, which is required to be listed before Division Bench as per roster and, therefore, I proceed to decide this petition.

12 Petitioners to substantiate their claim have relied upon judgment of the Supreme Court in ***UCO Bank and another vs. Dipak Debbarma and other***, reported in ***(2017)2 SCC 585***; pronouncement dated 24.2.2022 of the Supreme Court in ***Civil Appeal No. 2196 of 2012, titled Punjab National Bank vs. Union of India and others***; judgment of this Court in ***Punjab National Bank vs. State of HP***, reported in ***2021(3) Shim.LC 1545***; decisions rendered by this Court in ***CWP No. 2491 of 2020 titled Canara Bank vs. State of HP decided on 23rd July, 2021***; ***CWP No. 3447 of 2019, titled Sunil Kumar vs. State of HP, decided on 6.9.2021***; ***CWP No. 984 of 2019, titled Dr. Ajit Pal***

Jain and others vs. Punjab National Bank and others, decided on 9.9.2021; and judgment rendered by High Court of Judicature at Bombay in ***Writ Petition (ST.) No. 92816 of 2020, titled State Bank of India vs. State of Maharashtra, decided on 17.12.2020.***

13 At the time of adjudication of ***Central Bank of India's case*** (referred supra), Section 26-E of SARFAESI Act and Section 31-B of RDB Act were not in existence and only Section 26-B of Kerala Act which is similar to Section 26 of HPVAT Act was in existence.

14 Learned Senior Additional Advocate General has not cited any case law dealing with same situation after insertion of Section 26-E in SARFAESI Act and 31-B in RDB Act.

15 SARFAESI Act as well as RDB Act are Central Legislations whereas HPVAT is a State Legislation. SARFAESI Act and RDB Act declare priority of secured creditors upon secured assets over all revenues, taxes, cesses and other rates payable to Central Government or State Government or local authorities. Provisions of Section 31-B of RDB Act are also the same. Section 26 of HPVAT creates first charge on property of dealer or

such other person from whom any amount of tax or penalty including interest is recoverable.

16 As has been reiterated by the Supreme Court in **UCO Bank's case** (referred supra), by virtue of provisions of Article 246(1), the Parliamentary Legislation would prevail and such Legislation will have to give way notwithstanding the fact that the State Legislation is within demarcated field.

17 The Supreme Court in its recent decision dated 24.2.2022 passed in **Civil Appeal No. 2196 of 2012 titled Punjab National Bank vs. Union of India**, reported in **(2022 SCC Online SC 227)** has held that provisions contained in SARFAESI Act, 2002 will have an overriding effect on the provisions of Central Excise Act of 1944. Therefore, the provisions of SARFAESI Act shall have priority not over the State Excise Act but also over the Central Excise Act.

18 A Coordinate Bench of this Court in **Punjab National Bank vs. State of HP**, reported in **2021(3) Shim.LC 1545**, has considered the relevant case law and provisions of HPVAT Act, SARFAESI Act as well as RDB Act and has concluded that provisions of Section 26 of HPVAT Act, 2005 shall have to give way to the provisions of Section 26-E of SARFAESI Act, 2002

and 31-B of RDB Act 1993. I, for the reasons assigned in said judgment and also for recent pronouncement of the Supreme Court, concur with findings returned by the Coordinate Bench.

19 Pronouncements of Coordinate Bench in ***CWP No. 2491 of 2020 titled Canara Bank vs. State of HP and others; CWP No. 3447 of 2019 titled Sunil Kumar vs. State of HP and CWP No. 984 of 2019 titled Dr. Ajit Pal Jain and others vs. Punjab National Bank and others*** are based upon pronouncement in ***CWP No. 1638 of 2017 titled Punjab National Bank vs. State of HP***, reported in ***(2021)3 Shim.LC 1545***, wherein judgment of High Court of Judicature at Bombay passed in Writ Petition (ST.) No. 92816 of 2020 has also been considered.

20 In the light of aforesaid discussion, it is concluded that SARFAESI Act and RDB Act shall have overriding effect to provisions of HPVAT Act and therefore, creation of charge upon the property in reference by and in favour of respondents No. 3 and 4 vide Rapat Nos. 745 dated 8.8.2014 and 190 dated 10.12.2014 is not sustainable and the said property is to be permitted to be transferred in favour of petitioners free from all encumbrances in terms of E-

auction dated 30.7.2019, confirmation of sale dated 2.8.2019 and Sale Certificate dated 4.11.2019, possession whereof has already been handed over to petitioners vide document Annexure P-2 on 5.11.2019.

21 Accordingly petition is allowed and respondents No. 1 and 2 are directed to permit the petitioners to execute the sale deed in aforesaid terms and to register the same in accordance with law after removing the entries/notes made in revenue record in favour of respondents No. 3 and 4 vide Rapat Nos. 745 and 190 and to attest the mutation of property in aforesaid terms on or before **30th June, 2022.**

Petition disposed of in aforesaid terms, so also pending application(s), if any.

Parties are permitted to produce a copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned and the said authorities shall not insist for production of certified copy, but, if required, may verify it from the Website of the High Court.

May 31, 2022
(ms)

(Vivek Singh Thakur)
Judge