

**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

**WRIT PETITION Nos.6488, 7087 & 478 of 2022**

**W.P.No.6488 of 2022**

Between:-

State Bank of India,  
Stressed Assets Recovery Branch,  
Visakhapatnam, Rep.by D.G.Suresh Atreya,  
Authorized Officer, Aged about 51 years,  
SBI Administrative Office Campus,  
Balajinagar, Siripuram Junction, Visakhapatnam. .... Petitioner

And

The State of Andhra Pradesh,  
Represented by its Principal Secretary,  
Revenue(Stamps & Registration Department),  
A.P.Secretariat, Velagapudi, Amaravathi,  
Guntur District & Others. .... Respondents

Counsel for the Petitioner : Mr.P.Raj Kumar  
Counsel for R1 & R2 : G.P. for Stamps & Registration  
Counsel for R3 & R4 : No representation  
Counsel for R5 : Notice un-served

**W.P.No.7087 of 2022**

Between:-

State Bank of India,  
Stressed Assets Recovery Branch,  
Visakhapatnam, Rep.by D.G.Suresh Atreya,  
Authorized Officer, Aged about 51 years,  
SBI Administrative Office Campus,  
Balajinagar, Siripuram Junction, Visakhapatnam. .... Petitioner

And

The State of Andhra Pradesh,  
Represented by its Principal Secretary,  
Revenue(Stamps & Registration Department),  
A.P.Secretariat, Velagapudi, Amaravathi, Guntur District  
& Others. .... Respondents

Counsel for the Petitioner : Mr.P.Raj Kumar  
Counsel for R1 & R2 : G.P. for Stamps & Registration  
Counsel for R3 & R4 : No representation  
Counsel for R5 : Notice un-served

**W.P.No.478 of 2022**

Between:-

Canara Bank(erstwhile Syndicate Bank),  
Rep.by its Authorized Officer, Sri B.Srinivasa Rao,  
S/o.Yellaiah, Aged about 56 years, D.No.36-7-14,  
Konduri Square, Kondurivari Street, Innispeta,  
Rajahmundry.

.... Petitioner

And

The State of Andhra Pradesh,  
Represented by its Principal Secretary,  
Revenue(Stamps & Registration Department),  
A.P.Secretariat, Velagapudi, Amaravathi, Guntur District  
& Others.

..... Respondents

Counsel for the Petitioner : Mr.Sreedhar Valiveti

Counsel for R1 to R5 : G.P. for Stamps & Registration  
Counsel for R6 : No representation

**COMMON ORDER:**

As the issue involved in these writ petitions is identical, the same are disposed of by this Common Order.

2. W.P.No.6488 of 2022 is filed to declare the action of the 2<sup>nd</sup> respondent in not registering the Sale Certificate dated 16.06.2021 executed by the petitioner-Bank in favour of the 5<sup>th</sup> respondent in the auction conducted in respect of residential building to an extent of 145.50 sq.yards or 121.44 sq.meters together with Ground & First Floor House bearing Door No.12-176, besides Girls Hostel, situated in Survey No.491 of Tummapala Village, Anakapalli Mandal, Visakhapatnam District as illegal, arbitrary, violative of principles of natural justice, contrary to Articles 14 and 300-A of Constitution of India as also contrary

to Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') and orders passed by this Court in W.P.Nos.29922 of 2018 dated 06.02.2019, W.P.No.10432 of 2020 dated 19.08.2020 and for a consequential direction to the 2<sup>nd</sup> respondent to receive, register and release the Sale Certificate dated 16.06.2021 in favour of the 5<sup>th</sup> respondent in respect of the subject matter property by setting aside the proceedings of the 2<sup>nd</sup> respondent dated 01.07.2021.

3. W.P.No.7087 of 2022 is filed to declare the action of the 2<sup>nd</sup> respondent in not entertaining and registering the Sale Certificate dated 28.09.2021 executed by the petitioner-Bank in favour of the 5<sup>th</sup> respondent in the auction conducted in respect of property consisting of RCC roof framed structure Ground and First floor building admeasuring 100 sq.yds., or 83.61 sq.meters of site situated at Door No.65-3-273, Sri Nilayam under the Assessment No.760081772 Western part situated in Plot No.133, Survey No.35 of Gullalapalem, Ex-Serviceman Colony, Sriharipuram, Visakhapatnam, on the ground that an attachment order has been passed in I.A.No.307 of 2018 in O.S.No.715 of 2018 dated 20.01.2018 by VII Addl.Senior Civil Judge, Visakhapatnam as illegal, arbitrary, violative of principles of natural justice, contrary to Articles 14, 21 and 300-A of

Constitution of India as also contrary to SARFAESI Act and orders passed by this Court in W.P.Nos.29922 of 2018 dated 06.02.2019, W.P.No.10432 of 2020 dated 19.08.2020 and for a consequential direction to the 2<sup>nd</sup> respondent to receive, register and release the Sale Certificate dated 28.09.2021 in favour of the 5<sup>th</sup> respondent in respect of the subject matter property.

4. W.P.No.478 of 2022 is filed to declare the action of the 4<sup>th</sup> respondent in not registering the Sale Certificate dated 20.12.2018 executed by the petitioner-Bank in favour of the 6<sup>th</sup> respondent under the provisions of the SARFAESI Act in respect of RCC roofed building to an extent of 222 sq.yards located at Survey No.212/1C3, Jaya Prakash Mahar colony, Godarigunta Area, within the limits of 4<sup>th</sup> respondent, as illegal, arbitrary, unconstitutional and contrary to the provisions of the Registration Act, 1908 and the Rules made therein and the Rules made therein, and for a consequential direction to the 4<sup>th</sup> respondent to receive, register and release the Sale Certificate in favour of the 6<sup>th</sup> respondent in respect of the subject matter property.

5. The facts of the cases, as per the averments made in the Writ Petitions, in brief, are to the effect that the subject matter properties in the instant writ petitions were mortgaged towards loan transactions and in view of non-discharge of loan amounts, the petitioner-Banks initiated proceedings under the provisions of

the SARFAESI Act, being the secured creditors. The petitioners-Nationalized Banks issued public auction notices for sale of subject schedule properties by e-auction mode, un-official respondent No.5 in the respective Writ Petitions was declared as successful highest bidder. On payment of the sale considerations in respect of the subject matter properties, the petitioners issued Certificates of Sale under Rule 9(6) of the Security Interest(Enforcement) Rules 2002 (for short, 'the Rules, 2002') to the respective auction purchasers. In pursuance of the said Sale Certificates, the petitioners-Nationalized Banks as vendors approached the concerned registration authorities to register the Sale Certificates.

6. Insofar as W.P.Nos.6488 and 7087 of 2022 are concerned, the respondent-authorities refused to register the same stating that the attachment orders were passed by the Civil Court as also in view of Government Circular *vide* Memo No.1/gen.1/2020 dated 10.03.2010. Whereas, W.P.No.478 of 2022 is concerned, the respondent-authorities refused to register the subject schedule property on the premise that the same was placed in prohibitory list *vide* A.P.Gazette dated 04.02.2016.

7. Heard Mr.P.Raj Kumar and Mr.Sreedhar Valiveti, learned counsel appearing for the respective petitioners. Also heard

learned Government Pleader for Stamps & Registration representing the official respondents.

8. Learned counsel for the respective petitioners submits that much prior to the passing of the attachment orders by the Civil Courts, the properties in question were mortgaged first in favour of the petitioners-Nationalized Banks. They submit that the petitioners-Nationalized Banks are having prior/first charge as the subject matter properties were mortgaged to the petitioners prior to the attachment orders passed by the Civil Court. It is also their contention that the above said Circular dated 10.03.2010, is not applicable to the facts of these cases, the orders of the Civil Court restraining a person from alienation of the property would not cover the petitioners-Nationalized Banks, who are neither a party to the aforementioned suits nor received any orders restraining from alienation, that the said suits are between two private parties and as such the Circular instructions or even Standing Order 219(b) is not at all applicable to the present cases and the registration authorities are not empowered under the statute to refuse the registration of the documents. They also contend that Section 35 of the SARFAESI Act has an over-riding effect and the petitioners-Nationalized Banks have priority insofar as the dues recoverable from the mortgaged properties and any attachment will not have an over-riding effect over the right of the Banks to

enforce the mortgaged debt. Making the above submissions and relying on the judgment of the erstwhile Common High Court in **City Union Bank Limited v. The Sub-Registrar, Peddapalli**<sup>1</sup> and other decisions.the learned counsel for the petitioners-Nationalized Banks prays to allow the Writ Petitions.

9. A counter-affidavit was filed on behalf of the 1<sup>st</sup> & 2<sup>nd</sup> respondents in W.P.No.6488 of 2022, wherein it is *inter alia* stated that as per Standing Order 219(b) of Registration Manual Part-II, any Court order restraining registration is brought to the notice of the Registering Officer or served on him, the Registering Officer would stop from going ahead with the Registration. While stating that the petitioners have a remedy of appeal, the respondents justified the action of rejecting the registration of the Sale Certificates. No separate counter is filed in W.P.No.7087 of 2022.

10. The 4<sup>th</sup> respondent in W.P.No.478 of 2022 filed a counter, wherein it is *inter alia* stated that the subject land to an extent of Ac.222 sq.yds., in Survey No.212/1C3 of Suryaraopeta Village, Kakinada Urban is classified as 'Government Land' and included in the list of prohibited properties furnished by the District Collector, Kakinada *vide* letter dated 17.07.2019 under Section 22-A(1) (b)

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<sup>1</sup> 2018 SCC OnLine Hyd 370 = (2018) 5 ALT 279(DB)

of the Registration Act, 1908 in pursuance of the Judgment of the Hon'ble Full Bench in W.A.No.343 of 2015 & Batch dated 23.12.2015. It is also stated that the instructions issued by the Director and Inspector General of Registration and Stamps *vide* Circular Memo dated 13.04.2018 also provides that in the event of any deletion or modification of the properties covered by clauses (a) to (d), the concerned competent authorities shall furnish the modified list to the concerned District Registrar and the registering officers having jurisdiction over such property for necessary action. It is also stated that the petitioner has to approach the appropriate authority to delete the lands from the prohibited properties list, but without availing the said remedy, the petitioners have filed the above writ petitions and the same are liable to be dismissed.

11. This Court has considered the submissions made and perused the material on record.

12. Before dealing with the contentions on both sides, it may be appropriate to refer to the following important dates, which have a bearing on the reliefs sought for in these writ petitions.

13. The subject matter properties in W.P.No.6488 of 2022 were mortgaged to the petitioner-Bank on 25.02.2012 and the order of attachment was passed on 06.03.2017 in I.A.No.68 of

2017 in O.S.No.35 of 2017 on the file of the Court of the Additional Senior Civil Judge, Anakapalle. Likewise, the properties in respect of W.P.No.7087 of 2022 were mortgaged to the Bank on 02.02.2015, whereas the order of attachment was passed on 20.11.2018 in I.A.No.307 of 2018 in O.S.No.715 of 2018 on the file of the Court of VII Additional Senior Civil Judge, Visakhapatnam. Insofar as the property in W.P.No.478 of 2022 is concerned, the same was mortgaged to the petitioner-Bank on 03.09.2014 and the same was placed in the prohibited category list much subsequently on 04.02.2016. These factual aspects were not controverted specifically in the counter-affidavits filed on behalf of the official respondents. Be that as it may.

14. In **City Union Bank Limited's** case, on which much reliance was placed, a Division Bench of the erstwhile Common High Court for the State of Telangana and for the State of Andhra Pradesh dealt with similar fact situation as in the present cases i.e., W.P.No.6488 and 7087 of 2022.

15. The Hon'ble Division Bench by referring to the provisions of the relevant statutes, Standing Order 219 as also the legal precedents, in its detailed order *inter alia* held that "S.O.219 only pertains to a civil dispute between private parties and it does not include an institutional sale under a statute. Though Section 64 of

Civil Procedure Code comes into play only after alienation of the property under attachment against the private persons, the said legal position does not create an embargo upon the Registrar to proceed with the registration of sale certificate under SARFAESI Act as the Bank is not a party to the suit and sale is not being effected by a party to the attachment order." It was also held that the attachments effected subsequent to the mortgage created in favour of the bank do not affect the rights of the secured creditor over the subject property.

16. While allowing the writ petitions the Hon'ble Division Bench at para No.14, held as follows:

"14. The preponderance of judicial opinion leads to the irresistible conclusion that the sale of the mortgaged property in favour of the auction purchaser and the sale certificate under the SARFAESI Act in such circumstances is free of all encumbrances. The attachments effected subsequent to the mortgage created in favour of the bank do not affect the rights of the secured creditor over the subject property. Such attachments have no impact on the sale conducted under the Act and the same ceases to have any effect or fall to the ground the moment the same is confirmed in favour of the secured creditor Bank and auction purchaser. Otherwise, those attachments would remain as a permanent taboo prejudicially affecting the marketability and title to the property even though they ceased to have any legal efficacy and thereby it becomes necessary to register the sale certificate."

17. In the light of the above referred legal position, the action on the part of the official respondents, more particularly

respondent No.2 in W.P.Nos.6488 and 7087 of 2022 is not sustainable and the contentions raised by the learned Assistant Government Pleader, including the plea of alternative remedy are rejected.

18. Insofar as W.P.No.478 of 2022 is concerned, as noted earlier, the subject matter property was mortgaged to the petitioner-Bank and the same registered in the office of the 4<sup>th</sup> respondent *vide* Document No.4025/2014 dated 03.09.2014. When such be the undisputed position, the rejection of registration of the Sale Certificate on the ground that the property is included in list of prohibited properties list dated 04.02.2016 cannot be approved. In this regard, this Court is of the considered opinion that the reasoning of the Hon'ble Division Bench in City Union Bank Limited's case(referred to supra) at Para 14 of the Order applies to the present case.

19. The inclusion of the property which was mortgaged by deposit of Title Deeds through registered document to the Bank in the prohibited category reflects non-application of mind, vitiates the effect of registration and as such, shall be of, no legal consequence.

20. Therefore, the contentions advanced by the learned Assistant Government Pleader merits no appreciation and the same are rejected.

21. For the foregoing conclusions, the writ petitions are allowed and the following reliefs are granted.

(A) In W.P.No.6488 of 2022, (i) the proceedings of the 2<sup>nd</sup> respondent dated 01.07.2021 are set aside.

(ii) the 2<sup>nd</sup> respondent shall receive, register and release the Sale Certificate dated 16.06.2021 in favour of the respondent No.5 in respect of the subject matter property, if the same is otherwise in compliance with the provisions of the Stamps Act & Registration Act.

(iii) the remainder of the Sale Consideration, if any, after satisfying the loan of the petitioner-Bank with interest and other charges shall be deposited to the credit of O.S.No.35 of 2017 on the file of the Court of Additional Senior Civil Judge, Anakapalle.

(B) In W.P.No.7087 of 2022, (i) the 2<sup>nd</sup> respondent shall receive, register and release the Sale Certificate dated 28.09.2021 in favour of the respondent No.5 in respect of the subject matter property, if the same is otherwise in compliance with the provisions of the Stamps Act & Registration Act.

(ii) the remainder of the Sale Consideration, if any, after satisfying the loan of the petitioner-Bank with interest and other charges shall be deposited to the

credit of O.S.No.715 of 2018 on the file of the Court of VII Additional Senior Civil Judge, Visakhapatnam.

(C) In W.P.No.478 of 2022, the 4<sup>th</sup> respondent shall receive, register and release the Sale Certificate dated 20.12.2018 in favour of the respondent No.6 in respect of the subject matter property without reference to the prohibited category list dated 04.02.2016, if the same is in compliance with the provisions of Stamps Act & Registration Act.

(D) No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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**NINALA JAYASURYA, J**

Date: .11.2023  
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**THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

**W.P.No.6488, 7087 & 478 of 2022**

Date: .11.2023

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