

CWP-26875-2021 (O&M)

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2025:PHHC:171842-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-26875-2021 (O&M)

STATE BANK OF INDIA

....Petitioner

Versus

SUB REGISTRAR, SUB TEHSIL NIGHDU KARNAL AND OTHERS

...Respondents

Reserved on: 20.11.2025

Pronounced on: 10.12.2025

Uploaded on: 10.12.2025

*Whether only operative part of the judgment is
pronounced or the full judgment is pronounced: full judgment*

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY**

Present: Mr. Vikas Chatrath, Senior Advocate with
Ms. Preet Agroa, Advocate, for the petitioner.

Mr. Neeraj Gupta, Addl. Advocate General, Haryana.

Mr. Diwan Sharma, Advocate
for respondent No.2.

SHEEL NAGU, C.J.

1. This petition under Article 226/227 of the Constitution of India has been filed by State Bank of India ('SBI' for brevity) aggrieved by inaction on the part of respondent No.1/Sub-Registrar, Sub-Tehsil Nigdhu, District Karnal in failing to register the sale deed in favour of the auction purchaser-respondent No.2 (M/s Mahadev Foods), despite the said auction purchaser having been declared as a 'successful bidder' in the e-auction held on 21.09.2021 and depositing the entire sale consideration of Rs.738.00 lacs, and the sale certificate having been issued in favour of respondent No.2 on 29.09.2021.

1.1 The Bank has approached this Court aggrieved due to the above and the fact that failure on the part of respondent No.1 to register the sale deed is



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causing grave prejudice to the petitioner-Bank as it is unable to recover the outstanding dues of Rs.6,38,81,387/- as on 12.08.2018 standing against the borrower-M/s Mahavir Cereals, who had availed credit facility of Rs.8,10,00,000/- in the year 2013 and had later defaulted in repayment, leading to initiation and conclusion of proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for brevity).

1.2 The respondent No.1/Sub-Registrar concerned has declined to register the sale deed on the ground of attachment order of the secured asset in question, having been passed by Deputy Commissioner on 28.11.2018 as outstanding tax dues against borrower-M/s Mahavir Cereals.

2. The petitioner-Bank had made a representation dated 09.11.2021 (Annexure P-4) in this regard to respondent No.1 requesting for registration of sale deed in respect of the secured assets sold in the above said e-auction, but to no avail.

3. In the aforesaid factual matrix, the petitioner-Bank has essentially prayed for issuance of a Writ of Mandamus directing respondent No.1 to register the sale deed in respect of the secured assets sold through e-auction held on 21.09.2021 in respect of which sale certificate dated 29.09.2021 has been issued; and further to quash the revenue entry in the records as regards charge of respondent No.3/District Food and Supply Department, State of Haryana over the secured asset which was created on 28.11.2018.

4. Learned counsel for the rival parties are heard on the question of admission and also final disposal.



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5. It is undisputed at the Bar that the charge in favour of District Food and Supply Department, State of Haryana was created as late as on 28.11.2018 over the secured assets, whereas the charge of the petitioner-Bank over the secured assets was created much earlier upon deposit of original title deeds by the borrower-M/s Mahavir Cereals with the petitioner-Bank on 04.07.2013.

6. As such, this Court has to ascertain as to which authority i.e. either the State of Haryana or the petitioner-Bank, has priority over the secured assets.

6.1 It is undisputed that the charge in favour of petitioner-Bank was created in 2013.

6.2 Prior to the Amendment Act No.44 of 2016, the concept of priority of charge in favour of a particular secured creditor was not statutorily codified. A generic kind of assistance could be had from Section 35 read alongwith Sec 2(zc) to (zf) and Sec. 13 of SARFAESI Act which stipulated that the provisions of SARFAESI Act shall have effect notwithstanding anything inconsistent contained in any other law or instrument having effect by virtue of such law. Incidentally, by an amendment carried out on 01.09.2016 (notified subsequently for its implementation), the SARFAESI Amendment Act No.44 of 2016 was promulgated which inserted Chapter IV-A between Chapter IV and Chapter V. Section 26B, 26C, 26D and 26E were included in this newly inducted chapter.

6.3 Section 26E of SARFAESI Act being relevant is to the following effect:-

“26E. Priority to secured creditors.—Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor



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shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.”

The object behind introduction of Section 26E of SARFAESI Act was to give priority of security interest due to any secured creditor under SARFAESI Act over all other debts including revenue taxes, cesses and other rates payable to Central or State Government or local authority, except in cases where the Insolvency and Bankruptcy Code, 2016 ('IBC, 2016' for brevity) became applicable.

6.4 Even though Section 26E was notified only in 2020 and therefore, is not the basis of adjudicating priority in the present matter. Furthermore, the facts do not reveal that the IBC, 2016 has any application.

6.5 The petitioner has relied upon decision of a Coordinate Bench of this Court rendered in the cases of **Deepak Kumar vs. State of Punjab and Ors., in CWP 8249 of 2018** and of **M/s Kamla Engg. And Steel Industries, Ludhiana vs. Punjab National Bank, Ludhiana and others, 2020(4) PLR 669**, where the petition of an auction purchaser in similar set of facts and circumstances was allowed.

7. This Court need not dwell upon the said aspect of priority in detail as the State has not pointed out to any Statute creating a statutory first charge in its favour regarding the dues arising out of Custom Milling Agreements. Such dues, even if validly claimed, remained contractual or policy-based recoveries and do not enjoy statutory status.

8. The rapat entry itself does not decide rights of parties, it is merely an



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administrative note and cannot defeat a prior statutory right of mortgage of petitioner Bank. Therefore, respondent No.1- Sub Registrar could not rely on this later-in-time attachment to refuse registration of SARFAESI sale deed.

8.1 It has already been laid down by the Apex Court, time and again in its various pronouncements that the right of a secured creditor to recover its debts, will always be a prior right, even over the right of recovery of a crown debt or any other debt, as is the case herein. We are fortified in our view by the judgments of the Supreme Court in *Dena Bank v. Bhikhabhai Prabhudas Parekh*, (2000) 5 SCC 694 (**Para 10**), *Union of India v. SICOM Ltd.*, (2009) 2 SCC 121(**Para 22**) and *Rana Girders Ltd. v. Union of India*, (2013) 10 SCC 746 (**Para 21**), *Punjab National bank v. Union of India and Ors.*, (2022) 7 SCC 260 (**Paras 38-43**).

9. Consequent upon the above said discussion, this Court has no manner of doubt that the present petition filed by the Bank, which has prior charge over the tax dues of the State of Haryana, deserves to be and is hereby allowed in the following terms:-

- i. A Writ of Mandamus is issued to respondent No.1 to register the sale deed presented by auction purchaser-respondent No.2 based on the e-auction conducted on 21.09.2021 of the secured assets, and file compliance report within a period of two (02) months before the Registry of this Court, failing which the Registry is directed to list the case as IOIN before appropriate Bench.
- ii. The prior charge created in the Revenue records vide rapat No.117 dated 28.11.2018 in favour of respondent No.3/District Food and Supply Department, State of Haryana is quashed by a Writ of Certiorari.



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iii. However, the State of Haryana is at liberty to recover its dues of the Department of District Food and Supply/respondent No.3, after the petitioner-Bank satisfies its outstanding dues, or by any other means permissible in law.

10. The cost of the petition is quantified at Rs.25,000/-, out of which Rs.10,000/- to be paid to the petitioner-Bank and Rs.15,000/- to be paid to Bar Association of Punjab and Haryana High Court, by the State of Haryana for having delayed the liquidation of secured asset for no justified cause.

11. Before parting, we feel it apt to mention that there are lot many litigations involving the question of priority of charge pertaining to the transactions where the charge was created after the stipulated date i.e. 24.01.2020, when Section 26E of SARFAESI Act was notified. It is made clear that in such cases, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority in terms of the provisions contained in Section 26E of the SARFAESI Act.

12. Pending applications, if any, shall stand disposed of accordingly.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

10.12.2025

mohit goyal

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No