

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1919 OF 2010

M/s. Connectwell Industries Pvt. Ltd. Appellant(s)

Versus

**Union of India
Through Ministry of Finance & Ors. Respondent(s)**

J U D G M E N T

L. NAGESWARA RAO, J.

1. The Appellant filed the Writ Petition in the High Court of Judicature at Bombay seeking a restraint order against the Tax Recovery Officer, Range 1, Kalyan - Respondent No.4 for enforcing the attachment made under the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for recovery of the dues. The Writ Petition was dismissed by the High court, aggrieved by which the Appeal has been filed.

2. Biowin Pharma India Ltd. (hereinafter referred to as 'BPIL')- Respondent No.5 herein obtained a loan from the Union Bank of India. Property situated in Plot No.D-11 admeasuring 1000 sq. mtrs. situated at Phase-III, Dombivli Industrial Area, MIDC, Kalyan along with plant machinery and building was mortgaged as security to Union Bank of India-Respondent No.5 herein. Respondent No.-5 filed OA No.1836 of 2000 before the Debt Recovery Tribunal III, Mumbai (hereinafter referred as 'the DRT') for recovery of the loan advanced to BPIL. The DRT allowed the OA filed by Respondent No.5 and directed BPIL to pay a sum of Rs.4,76,14,943.20/- along with interest at the rate of 17.34% per annum from the date of the application till the date of payment and/or realisation. A recovery certificate in terms of the order passed by the DRT was issued and recovery proceedings were initiated against BPIL. The Recovery Officer, DRT III (Respondent No.2) attached the property on 29.11.2002. Respondent No.2 issued a proclamation of sale of the said property on 19.08.2004. A public

auction was held on 28.09.2004. The DRT was informed that there were no bidders except the Appellant. The offer made by the Appellant to purchase the property for an amount of Rs.23,00,000/- was accepted by Respondent No.2. On 14.01.2005, a certificate of sale was issued by Respondent No.2 in favour of the Appellant. The possession of the disputed property was handed over to the Appellant on 25.01.2005 by Respondent No.2 and a certificate of sale was registered on 10.01.2006.

3. The Maharashtra Industrial Development Corporation (hereinafter referred to as 'the MIDC') informed Respondent No.2 that it received a letter dated 23.03.2006 from the Tax Recovery Officer, Range 1, Kalyan, Respondent No.4 herein stating that the property in dispute was attached by Respondent No.4 on 17.06.2003. The Appellant requested the Regional Officer, MIDC by a letter dated 10.04.2006 to transfer the property in dispute in its favour in light of the Sale Certificate issued by DRT on 25.01.2005. As the MIDC

failed to transfer the plot in the name of the Appellant, the Appellant filed a Writ Petition before the High Court seeking a direction for issuance of 'No Objection' in respect of the plot and to restrain Respondent No.4 from enforcing the attachment of the said plot, which was performed on 11.02.2003.

4. The question posed before the High Court is whether the Appellant who *bona fide* purchased the property in auction sale as per the order of the DRT is entitled to have the property transferred in its name in spite of the attachment of the said property by the Income Tax Department. Relying upon Rule 16 of Schedule II to the Act, the High Court came to the conclusion that there can be no transfer of a property which is the subject matter of a notice. The High Court was also of the view that after an order of attachment is made under Rule 16(2), no transfer or delivery of the property or any interest in the property can be made, contrary to such attachment. The High Court held that notice under Rule 2 of Schedule II to the Act was issued

on 11.02.2003, and the property in dispute was attached under Rule 48 on 17.06.2003, whereas the sale in favour of the Appellant took place on 09.12.2004 and the sale certificate was issued on 14.01.2005. Therefore, the transfer of the property made subsequent to the issuance of the notice under Rule 2 and the attachment under Rule 48, is void. The submission made on behalf of the Appellant that the sale in favour of the Appellant was at the behest of the DRT and not the defaulter *i.e.*, BPIL was not accepted by the High Court. In view of the above findings, the High Court dismissed the Writ Petition.

5. It was submitted by Mr. Basava Prabhu Patil, learned Senior Counsel and Mr. Amar Dave, learned counsel appearing on behalf of the Appellant that the property in dispute was mortgaged by the BPIL in 2000 and the recovery certificate was issued pursuant to the order passed by the DRT in 2002. They submitted that the property was attached by Respondent No.2 on 29.11.2002, prior to the issuance of the notice by the

Income Tax Officer under Rule 2 of Schedule II to the Act on 11.02.2003. According to them, the rigours of Rule 2 and Rule 16 of Schedule II are not applicable to the instant case as a charge over the property was created prior to the issuance of the notice under Rule 2 of Schedule II to the Act. It was argued that a government debt in India is not entitled to have precedence over a prior secured debt.

6. Mr. Arijit Prasad, learned Senior Counsel appearing for the Union of India submitted that BPIL was in default of a payment of income tax and a penalty arose therefrom, due to which a notice under Rule 2 of Schedule II to the Act was issued on 11.02.2003 by following the prescribed procedure. He submitted that no property which is the subject matter of a notice can be transferred after the issuance of a notice under Rule 2. Mr. Prasad also submitted that the immovable property was attached in accordance with Rule 48 of Schedule II on 17.06.2003. Undisputedly, the sale in favour of the Appellant took place subsequent to the

order of attachment dated 17.06.2003. He urged that the Appellants are not entitled to any relief and the High Court was right in dismissing the Writ Petition as the Crown debt is entitled to priority in view of the provisions of Schedule II to the Act and thus any transfer of the property, which is subject matter of attachment under Rule 16(2) is void.

7. As Rules 2 and 16 of Schedule II to the Act would fall for interpretation in this case, the same read as under :

“Issue of Notice

2. When a certificate has been drawn up by the Tax Recovery Officer for the recovery of arrears under this Schedule, the Tax Recover Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps

would be taken to realize the amount under this Schedule.

16.1 Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.”

8. 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. and Others¹, Union of India & Ors. v. Sicom Ltd. & Anr.², Bombay Stock Exchange v. V.S.**

1 (2000) 5 SCC 694

2 (2009) 2 SCC 121

***Kandalgaonkar & Ors.*³, *Principal Commission of Income Tax v. Monnet Ispat and Energy Ltd.*⁴]**

9. 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.

3 (2015) 2 SCC 1

4 (2018) 18 SCC 786

10. 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.

11. The judgment of the High Court is set aside and the Appeal is allowed. The MIDC is directed to issue a ‘No Objection” certificate to the Appellant. Respondent No.4 is restrained from enforcing the attachment order dated 17.06.2003.

.....J.
[L. NAGESWARA RAO]

.....J.
[DEEPAK GUPTA]

**New Delhi,
March 06, 2020.**