IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6951 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
		✓

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ANAND CHANDUBHAI THAKKAR & ORS.
Versus
CHIEF STATE TAX COMMISSIONER & ORS.

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Appearance:
MR.ADITYA A GUPTA(7875) for the Petitioner(s) No. 1,2,3
MS.TANUSHREE SHRIMAL, AGP for the Respondent(s) No. 1,2,3,4,5
MR.MAHITOSH U SINGH(7015) for the Respondent(s) No. 7
MR.YUVRAJ G THAKORE(7785) for the Respondent(s) No. 6

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 07/09/2026

ORAL JUDGMENT

(PER : HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI)

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1. Issue ***Rule***, returnable forthwith. Learned Assistant Government Pleader Ms.Tanushree Shrimal, learned advocate Mr.Yuvraj G. Thakore and learned advocate Mr.Mahitosh U. Singh waives service of Rule on behalf of the respondents.

2. With consent of the learned advocates appearing for the respective parties, the present petition is taken up for final disposal.

3. Heard learned advocate Mr.Aditya A. Gupta appearing for the petitioners, learned Assistant Government Pleader Ms.Tanushree Shrimal for the respondent nos.1 to 5, learned advocate Mr.Yuvraj G. Thakore for the respondent no.6 and learned advocate Mr.Mahitosh U. Singh for the respondent no.7.

4. The petitioners herein are constrained to invoke Article 226 of the Constitution of India, challenging the Entry No.12724 as well as the order dated 24.01.2022 passed by the State Tax Officer, Unit-52, Kapadwanj, whereby, a charge is sought to be created in favour of the State Value Added Tax (for short 'VAT') Department in the property situated at *'Revenue Survey No. 782-2, Khata No. 1474, admeasuring 8977 square meters situated at village:Pithai, Taluka: Kathlal, District Kheda'* (for short 'the subject land/ subject property').

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5. Briefly stated that, one company in the name of Raffles Green Pet India Private Limited (for short 'the Company') obtained a loan from Bank of Baroda. To the knowledge of the petitioners, the said Company had obtained a cash credit limit of Rs.4 crores, term loan of Rs.1.85 crores and a further term loan of Rs.3.1 crores from the Bank of Baroda (respondent no.7 herein). In order to secure such credit facilities, several immovable properties were mortgaged in favour of Bank of Baroda, one of which is the subject land/subject property, which was in the name of Mansukhbhai Parshottambhai Ajani.

5.1. The subject land did not belong to the borrower company, but was in the name of one of the guarantors as referred to herein-above, though the registered office address of the borrower Company was the subject land. The Company failed to repay the loan amount, because of which the subject land was auctioned by the Bank of Baroda under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act, 2002').

5.2. The petitioners participated in the e-auction held on 24.02.2021, in which they emerged as successful bidders. Upon payment of Rs.2,04,48,000/-, a sale certificate dated 09.08.2021 was issued by Bank of Baroda in favour of petitioners. The

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petitioners got the sale certificate registered before the Sub-Registrar Office, Kathlal, on 22.09.2021. At the time of purchase of the subject land/subject property, there was no encumbrance recorded in the revenue record or any other statutory records.

5.3. In accordance with the order dated 08.03.2021 passed by the District Magistrate, Kheda, the Mamlatdar, Kathlal took over the possession of land/property and handed over the same to the Bank on 09.08.2021, which was in turn handed over to the petitioners by the Bank. Thus, the very same Mamlatdar who handed over the possession of the subject property to the Bank, later illegally mutated the Entry in favour of the VAT Department. A public notice dated 09.08.2021 came to be issued in the financial Express Newspaper.

5.4. The petitioners sold the subject land to Spartex Synthetics Private Limited – respondent no.6 herein by way of registered sale deed bearing No.421 of 2022 dated 14.02.2022. The said sale deed came to be executed in favour of the respondent no.6 herein, wherein, it was represented by the petitioners that there was no encumbrance of any State Authorities on the subject land.

5.5. The effect of both the registered documents were not given by the revenue authorities in the revenue records, and therefore, the petitioners and the respondent no.6 were under bona fide impression that there is no encumbrance on the subject land.

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5.6. In January 2026, the respondent no.6 was desirous of selling the land/property, and therefore, asked one of the consultants to verify the title of the property. Upon scrutiny of the revenue records, shockingly, there was a charge recorded in the revenue records over the subject land/property in favour of the State VAT Department by Entry No.12724, which was certified on 10.05.2022. Neither the petitioners nor the respondent no.6 received any notice under Section 135D of the Gujarat Land Revenue Code, 1879, for certification of the said entry in the revenue records. The respondent no.6 contacted the petitioners and informed about such charge recorded vide Entry No.12724. The said charge with respect to VAT dues relating to the period prior to the date of the execution of registered sale deed bearing No.421 of 2022 dated 17.02.2022. Resultantly, the petitioners were in breach of their representations and assurances regarding marketability of the title of the subject land/property.

5.7. The respondent no.6 called upon the petitioners to take necessary action for clearance of the said charge over the subject land/property, failing which the respondent no.6 would take legal action against the petitioners. The petitioners assured the respondent no.6 that the petitioners had purchased the property in auction under the provision of SARFAESI Act, 2002, and they would take necessary steps to ensure marketability of title of the

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said land/property. The petitioners sent a Notice to the VAT Department on 19.03.2026, more particularly, respondent nos.1 to 3, calling upon them to forthwith revoke or vacate their attachment over the subject land/property. Simultaneously, the petitioners also applied and received a copy of the order dated 24.01.2022 referred in Entry No.12724 passed by the respondent authorities.

5.8. In spite of receipt of such Notice as referred to herein above, the respondents have not revoked the charge over the subject property, and in view thereof, the petitioners have no option but to approach this Court, having prayed for the following reliefs:

> *"7.0 The Petitioners, therefore, pray that this Hon'ble Court may be pleased to:-*
>
> *A. Issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ directing the Respondent No. 1, 2 and 3 to quash and set aside Entry No. 12724, at **Annexure D** to this petition, as well as attachment order dated 24.01.2022, at **Annexure F** to this petition, passed by State Tax officer, Ghatak-52-kapadwanj whereby a charge is marked in their favor on the Property purchased by the Petitioners being "Revenue Survey No. 782-2, khata no. 1474 admeasuring 8977 sq mtrs situated at village Pithai, taluka Katlal, district Kheda" in the interest of justice.*
>
> *B. This Hon'ble High Court be pleased to direct the Respondents to remove the entry of charge i.e. Entry No. 12724, at **Annexure D** to this petition, from the records of the said Property being "Revenue Survey No. 782-2, khata no. 1474 admeasuring 8977 sq mtrs situated at village Pithal, taluka Katlal, district Kheda" in the interest of justice.*

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C. This Hon'ble Court may be pleased to declare that the Petitioners have first right over the said Property purchased in e-auction from secured creditor Bank of Baroda under the provisions of SARFAESI Act, 2002 which would override the claim of the Respondent No. 1, 2 and 3 under Section 26E of the SARFAESI Act, 2002 in the interest of justice.

D. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to restrain the Respondents to take any steps in respect of the said Property pursuant to the Entry No. 12724, at ***Annexure D*** *to this petition and to the attachment order dated 24.01.2022, at* ***Annexure F*** *to this petition, passed by State Tax officer, Ghatak-52-kapadwanj and to further prohibit the Respondents from taking any further steps in relation to the said properties.*

E. xxx."

6. Learned advocate Mr.Aditya A. Gupta appearing for the petitioners submitted that the action of the respondent authorities in creating charge over the subject land/property by order dated 24.01.2022, which has resulted in Entry No.12724 in the revenue records, is contrary to the provisions of Section 26-E of the SARFAESI Act, 2002, which would have overriding effect over the VAT Act upon notifying of Section 26-E with effect from 01.09.2016 vide Notification dated 01.09.2016 in the official gazette.

6.1. It is submitted that the aforesaid issue is no longer *res integra*, the same having attained finality in the case of *Punjab National Bank vs. Union of India and others*, Civil Appeal No.2196 of 2012 decided on 24.02.2022.

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6.2. Placing reliance on the aforesaid submissions, it is submitted that the present petition be allowed.

7. Learned AGP Ms.Tanushree Shrimal is not in a position to dispute the aforesaid settled legal position.

8. Mr. Yuvraj Thakore, the learned advocate appearing for the private respondent no.6 supports the submissions advanced by the learned advocate appearing for the petitioners.

9. Having heard the learned advocates appearing for the respective parties, the petitioners herein participated in the e-auction held on 24.02.2021 by the Bank of Baroda (respondent no.7) and emerged as successful bidders. Upon payment of Rs.2,04,48,000/-, a sale certificate dated 09.08.2021 was issued by the Bank of Baroda in favour of the petitioners. The said sale certificate is duly registered before the Sub-Registrar Office, Kathlal, on 22.09.2021.

10. The petitioners, in turn, sold the subject property to the respondent no.6 by way of a registered sale deed bearing No.421 of 2022 dated 14.02.2022. The charge of the State VAT Department by Entry No.12724 was certified on 10.05.2022, clearly, the said charge is subsequent to the auction proceedings. The priority of charge created in favour of the secured creditor and the steps undertaken by it under the provisions of the

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SARFAESI Act, 2002 supersede all other claims.

11. The said issue is no longer *res integra*, the same having attained finality in the case of Punjab National Bank (supra).

12. It is apposite to reproduce Section 26E of the SARFAESI Act, 2002, which came to be notified, with effect from 01.09.2016, vide Notification dated 01.09.2016 which reads thus:

> *"**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 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."*

12.1. It is apposite to refer to the judgment and order passed by this Court in Special Civil Application No.10314 of 2021 dated 06.04.2022, relevant paragraphs read thus:

> *"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 provisons 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*

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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*

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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

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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."

(b). xxx."

12.2. The decision rendered by the Division Bench of this Court in the case of ***Kalupur Commercial Cooperative Bank Ltd. & Anr. vs. State of Gujarat & Anr.***, *2020 (1) GLR 625*, relevant paragraph nos.31 to 35 read thus:

"31. We may, at the outset, clarify that the Government of India, Ministry of Finance, notified the provisions of Section 26(E) on 1st September 2016. The copy of the Notification issued by the Government of India, published in the Official Gazette Part-II, Section 3, at Serial No.2142 dated 1st September 2016 has been placed on record. The Notification reads as under :

"MINISTRY OF FINANCE
(Department of Financial Services)
NOTIFICATION
New Delhi, the 1st September, 2016

S.O. 2831 (E).--In exercise of the powers conferred by sub-section (2) of section 1 of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016), the Central Government hereby appoints the 1st day of September, 2016 as the date on which the following provisions of the said Act shall come into force, namely :-

Sr. No. Sections
1 Sections 2 and 3 (both inclusive);
2 Sections 4 [except clause (xiii)];
3 Section 5 and 6 (both inclusive);
4 Sections 8 to 16 (both inclusive);

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5 Sections 22 to 31 (both inclusive);
6 Sections 33 to 44 (both inclusive).

[F.No. 3/5/2016 DRT]
ANANDRAO VISHNU PATIL, Jt. Secy."

32. Section 31B has been inserted in the Recovery of Debts and Bankruptcy Act, 1993 (herein after referred to as "the RDB Act") by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, w.e.f. 1.9.2016, which contains a non-obsante clause and which expressly provides that the secured debts shall be paid in priority over all other debts and Government dues including the State taxes.

33. Apart from the fact that Section 31B of the RDB Act is a later enactment, the language of the said provision also clearly indicates the intention of the Parliament to give precedence even over the Government dues notwithstanding anything to the contrary in any other law.

34. We are sure of one thing that there exists no repugnancy in the two legislations. The intention of the Parliament could not be said to nullify the State enactment providing the first charge on the property. The legislations have been made by the Central Government and the State respectively under Entries I and II of the Schedule and not of the Concurrent List. The amendment made by the Parliament is to give priority to the secured creditors vis-a-vis the State dues without speaking about the first charge. This aspect was duly considered by the Supreme Court in the case of Central Bank of India (supra). The amended provision, i.e. Section 26E of the SARFAESI Act and Section 31B of the RDB Act, would have been different as indicated by the Apex Court in the case of Central Bank of India (supra).

35. While it is true that the Bank has taken over the possession of the assets of the defaulter under the SARFAESI Act and not under the RDB Act, Section 31B of the RDB Act, being a substantive provision giving priority to the "secured creditors", the same will be applicable irrespective of the procedure through which the recovery is sought to be made. This is particularly because Section 2(la) of the RDB Act defines the phrase "secured creditors" to have the same meaning as assigned to it under the SARFAESI Act. Moreover, Section 37 of the SARFAESI Act clearly provides that the provisions of the SARFAESI Act shall be in addition to, and not in derogation of inter-alia the RDB Act. As

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such, the SARFAESI Act was enacted only with the intention of allowing faster recovery of debts to the secured creditors without intervention of the court. This is apparent from the Statement of Objects and Reasons of the SARFAESI Act. Thus, an interpretation that, while the secured creditors will have priority in case they proceed under the RDB Act they will not have such priority if they proceed under the SARFAESI Act, will lead to an absurd situation and, in fact, would frustrate the object of the SARFAESI Act which is to enable fast recovery to the secured creditors."

13. Considering the aforesaid judgment as referred to herein-above, 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 31 of the SARFAESI Act, 2002, the secured creditor shall have the first charge on the secured assets. In the facts of the present case, it is not in dispute that the petitioners herein are auction purchasers of the subject matter land in question, in auction proceedings undertaken by the respondent no.7 - Bank under the SARFAESI Act, 2002 and further charge of the secured creditor is prior to the charge created by the respodnent VAT department. The charge of the secured creditor shall precede over the charge of the VAT authority, i.e. the respondent nos. 1 to 3 authority.

14. For the reasons as referred hereinabove, the present petition is required to be allowed and the same is hereby ***allowed***. The mutation entry of charge being no.12724 under the Gujarat Value

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Added Tax Act, 2003, is directed to be removed from the land of the petitioners, i.e. 'Revenue Survey No. 782-2, Khata No. 1474, admeasuring 8977 square meters situated at village:Pithai, Taluka: Kathlal, District Kheda', within a period of ***12 (twelve) weeks*** from the receipt of the order. Rule is made absolute. Direct service is permitted.

Sd/-

(A. S. SUPEHIA, J)

Sd/-

(VAIBHAVI D. NANAVATI,J)

Pradhyuman/sb-2

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