

No tax recovery from purchaser when bank had sold mortgaged property without sharing proceeds with tax dept.

Summary – The High Court of Gujarat in a recent case of Prajakta M. Shah, (the Assessee) held that where bank had disregarded communication of Revenue department that borrower of bank had dues with revenue, and it had also not shared with it sale proceeds of mortgaged property, it would be a dispute between revenue department and bank; and same could not harm title of purchaser of mortgaged property

Facts

- Company BSB took loan from bank. The director mortgaged personal property to bank. The company failed to repay its loan.
- The bank filed application before Debts Recovery Tribunal. The bank assigned its debts to asset reconstruction company ARCIL. The mortgaged property of director was sold by ARCIL to one 'A' and the said property was released from the personal guarantee of the directors. Thereafter, the petitioner purchased the said property from 'A' to whom property was sold by ARCIL.
- The Tax Recovery Officer issued an order of attachment on property for outstanding tax dues of the directors.
- On application:

Held

- Mere communication to the bank by the Income-tax Department conveying that Income-tax Department had to recover huge amount of tax from the Director, its HUF and company would not take shape of the attachment of the property which can be so in terms of rule 48 of the procedure for recovery of tax long after the property was sold to 'A' who in turn, sold part of it to the petitioner. At best, this communication put the bank to notice that the borrower had also other dues. It only guards the bank against a possible future claim from the income tax department. However, in any case, such communication would not make the title of the petitioner imperfect. Despite such communication by the income-tax department to the bank, the moot question would be, did the department have a prior charge over the property which before raising of the dues of the department was already mortgaged in favour of the financial institution? Even if the bank had disregarded such a communication of the income-tax department and not shared with the department proceeds of the sale of such property, at best may be a dispute between the income tax department and the bank and in any case, cannot harm the petitioner who was the subsequent purchaser for consideration without notice.
- On such grounds, petition is allowed. Impugned attachment is lifted *qua* the properties in question.