

**Vincent Vs. Housing and Urban Development Corporation**

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**Court :** Kerala

**Decided On :** Jan-17-2003

**Reported in :** AIR2003Ker176; III(2003)BC148; 2003(1)KLT474;  
[2003]44SCL351(Ker)

**Judge :** K. Padmanabhan Nair, J.

**Acts :** Recovery of Debts due to Banks and Financial Institutions Rules, 1993 - Rules 2, 5(1), 5(2), 5(3), 5(4), 5(5) and 23; Recovery of Debts to Banks and Financial Institutions Act, 1993 - Sections 22

**Appeal No. :** O.P. No. 18605 of 2002

**Appellant :** Vincent

**Respondent :** Housing and Urban Development Corporation

**Advocate for Def. :** T.K. Venugopalan, Adv. and; P.S. Sreedharan Pillai, S.C.G.S.C.

**Advocate for Pet/Ap. :** Jacob Mathew Manalil, Adv.

**Judgement :**

**K. Padmanabhan Nair, J.**

1. Three strangers who filed a petition to get themselves impleaded in O.A. No. 42 of 2001 pending before the Debts Recovery Tribunal, Ernakulam are the petitioners in this Original Petition. In the petition it is averred that the petitioners entered into an agreement with one Ajith Associates Private Limited, a Company which is engaged in developing plots and constructing flats in Vyttila and Ernakulam. It is averred that the petitioners were allotted apartments in a multistoreyed complex which remains incomplete and the construction of which was undertaken by the Ajith Associates Private Limited in pursuance to the sale agreements. It is averred that the petitioners have paid the full amount which was due to the developer of the plot but he did not complete the construction and on enquiry it is understood that the Housing and Urban Development Corporation Ltd. (HUDCO for short) has filed an Original Application as O.A. No. 42 of 2001 before the Debts Recovery Tribunal, Ernakulam and that case was pending. According to them, the Company is only a contractor for the construction of the flats to be constructed for and on behalf of the petitioners. It was contended that the Company is not the owner of the flats and the HUDCO entered into an agreement fully knowing that the apartments do not belong to the contractor. It was also averred that the HUDCO is bound by the prior obligations and it has to honour the commitments made by the mortgagor. It is also averred that the attempt of the HUDCO is to effect sale of property in a clandestine manner so as to deprive the petitioners rights and so they are also necessary parties to the Original Application. They filed application on 17.1.2002 which is numbered as I.D. No. 459 of 2002 which is marked as Ext. P2 in this Original Petition. It is averred that the application was dismissed by the Registrar holding that the Original Application was disposed of. It was contended that the O.A. was heard and decided only on 18.1.2002 a date after the impleading application was filed. It is also averred that when the O.A. was called for hearing, the learned counsel appearing for the petitioners, who was present before the Tribunal submitted that the petitioners had filed an application and that application may be called in the Bench and he may also be heard. But that request was turned down and thereafter the Registrar of the Tribunal had dismissed the application on the ground that O.A. was dismissed. Hence the petition to quash the order passed by the Registrar and also the final order passed in the O.A.

2. The first respondent HUDCO has filed a counter affidavit stating that the Original Petition itself is not maintainable. It is stated that the petitioners have other effective remedies available under the Recovery of Debts due to Banks and Financial Institutions' Act, 1993 (Act for short). It is also contended that under Section 20 of the Act, an appeal is provided to the Appellate Tribunal against the orders of the Debts Recovery Tribunal. It is also stated that under R. 5(5) of the Debts Recovery Tribunal Procedure, Rules, 1993 (Rules for short) an appeal against the order of the Registrar is provided against the order passed by the Registrar before the Presiding Officer in Chamber. It is further stated that since the petitioners had failed to file an appeal either before the Debts Recovery Tribunal or before the Appellate Tribunal the Original Petition is not maintainable. It is also contended that the O.P. is not maintainable in view of the decision of the Supreme Court in Punjab National Bank v. O.C. Krishnan & Others (2001 (6) J.T. 408). It is also contended that even if there is an agreement between the petitioners and the first respondent, no relief can be sought based on the agreement in a proceeding under Article 226 of the Constitution of India. It is contended that the Debts Recovery Tribunal is not the competent forum to decide the issues raised by the petitioners and a civil court alone can adjudicate such matters. It is contended that the builder has availed of a loan from the HUDCO and since he committed default in repayment of the amount, the HUDCO filed the O. A. for recovery of the amount by sale of the properties mortgaged. It was also contended that the petitioners filed an impleading application only on 17.1.2002 on which date the order was fully dictated by the Presiding Officer in the open court hall of the Tribunal and at that time, the counsel for the petitioners was also present. It was contended that though the O.A. was filed in the year 2001, the petitioners did not take any action till the date of disposal of the O.A. and they have filed the impleading application in collusion with the borrower Company with mala fide intentions. It was also contended that the impleading petition was disposed of by a considered order. It was also contended that the O.A. came up before the Presiding Officer after several postings before the Registrar for steps at none of those postings, the petitioners came up with any claim. It is further contended that the petitioners' claim could be effectively got adjudicated at the time of recovery proceedings. Hence the first respondent prayed for disposal of the Original Petition.

3. Since in the O.P. allegations are levelled against the Presiding Officer that the O.A. was disposed of with full knowledge that the petitioners had filed petition for impleading and the Registrar is passing judicial orders notice was issued to the Debt Recovery Tribunal. The Presiding Officer, Debt Recovery Tribunal did not file any counter affidavit disputing the allegations levelled in the Original Petition.

4. In the O.P. specific allegations are raised against the Registrar that judicial orders were passed by him with mala fide intentions. It is also averred that the Registrar has no authority or jurisdiction to hold back an interim application. In the counter filed by the first respondent, it is averred that before the O.A. was taken up by the Presiding Officer for trial, there were several postings before the Registrar for steps and the petitioners could have filed the impleading petition at any one of such postings. In view of the allegations levelled against the Registrar in the O.P. and the admission made by the first respondent in the counter, I had issued notice to the Registrar and also the Assistant Registrar requiring them either to appear in person or through counsel and file affidavits stating their authority, provisions of Law, Rules or Regulations framed by the competent authority which confers powers on them to pass judicial orders.

5. The Registrar did not file any counter affidavit. The Assistant Registrar alone filed a counter affidavit stating that the petitioners in the O.P. filed an unregistered petition before the Debts Recovery Tribunal for impleading them in O.A. It is contended that the petition filed by the petitioners for impleading them in the O.A. was not registered as the judgment in the O.A. was already passed on 18.1.2002. It is contended that the Registrar is empowered under Section 23(ii) of the Rules, 1993 to take decision on registration of applications. It was also contended that the appropriate forum for preferring an appeal against the order of the Registrar is the Presiding Officer of the Tribunal. A copy of the order of the Registrar was provided to the petitioners for filing an appeal before the Presiding Officer of the Tribunal but instead of filing an appeal, they had filed the Original Petition before this Court. It is also averred that the order under challenge was passed by Sri V.G. Divakaran who was the Registrar at that period and he has since been repatriated to his parent department.

6. The stand taken by the respondents in this case is that in view of the provisions contained in the Rules and Regulations, the Registrar is empowered to pass the impugned order and also judicial orders. It is contended that the Presiding Officer can confer authority on the Registrar in view of Section 22 of the Act. Section 22(1) reads as follows:-

'22. Procedure and powers of the Tribunal and the Appellate Tribunal.--(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.'

So it is clear that the provisions of the Code of Civil Procedure as such are not made applicable but so far as the matters stated under Sub-section (2) of Section 22, the Tribunal is conferred with the powers of the Code of Civil Procedure. An argument was advanced by the learned counsel for the respondents relying on Section 22(2)(h) of the Act that the Tribunal itself has power to regulate its procedure. Section 22(2)(h) of the Act reads as follows:-

'(2) The Tribunal and the Appellate Tribunal shall have for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

- (a) .....
- (b) .....
- (c) .....
- (d) ..'..'
- (e) .....
- (f) .....

(h) any other matter which may be prescribed.'

7. A plain reading of Section 22(2)(h) shows that no such power is conferred on the Tribunal or the Appellate Tribunal as contended by the respondents. It only gives power to the Tribunal to exercise those powers which may be prescribed under the Act, Rules or Regulations. It does not give any unlimited power to the Tribunal.

8. Now I shall consider what exactly are the powers of the Registrar. Rule 2(g) of the Rules defines the word 'Registrar' as follows:-

'Registrar' means the Registrar of the Tribunal; Rule 4 provides that all applications shall be presented to the Registrar of the Bench. Sub-rule (2) gives right to a party to send the applications through posts also. The Receiver is bound to receive such applications. Rule 5 deals with scrutiny of the applications so received. Rule 5 reads as follows:-

'Presentation and scrutiny of applications.

(1) The Registrar, or, as the case may be, the officer authorised by him under Rule 4, shall endorse on every application the date on which it is presented or deemed to have been presented under that rule and shall sign endorsement.

(2) If, on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.

(3) If the application, on scrutiny, is found to be defective and the defect noted is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar, may allow the applicant such time to rectify the defect as he may deem fit.

(4) If the concerned applicant fails to rectify the defect within the time allowed in Sub-rule (3) the Registrar may by order and for reasons to be recorded in writing decline to register the application.

(5) An appeal against the order of the Registrar under Sub-rule (4) shall be made within 15 days of the making of such order to the presiding officer concerned in

chamber whose decision thereon shall be final.'

So a reading of Rule 5 makes it abundantly clear that the power of the Registrar is to scrutinise and ascertain whether all the formalities in filing the petitions are complied with. Sub-rule (2) provides that if the application is found to be in order, it shall be duly registered and given a serial number. If the application is defective and the defect noticed is formal in nature, the Registrar himself can allow the party to rectify the same. If the defect is not formal in nature, time has to be given to the party to cure the defects. Sub-rule (4) provides that if the party fails to rectify the defect within the time allowed, the Registrar may decline to register the application. It is very pertinent to note that he has not been given any power to 'reject' the application or 'dismiss' the same. He can only decline to register the same. The Legislature has consciously avoided using the words 'dismiss' or 'reject' in Rule 5(4) of the Rules. Further the Registrar may decline to register the application only if it is defective. If the party takes up a stand that there is no defect and insists that the application itself be posted before the Tribunal for deciding whether there is defect or not the Registrar cannot decline to register the application. In such a situation he is bound to post the unnumbered application itself before the Tribunal who has to take a judicial decision on the matter. The party can resort to the remedy provided under Rule 5(5) of the Rules if the application is defective and the Registrar had already passed the order declining to register the application. The right of appeal is provided only against the order passed by the Registrar declining to register the application and not against judicial order like the one passed in this case. So a reading of Sub-rules (1), (2), (3), (4) and (5) of Rule 5 makes it very clear that the power of the Registrar is only to see whether there is any defect in the application. In view of the provisions contained in Sub-rule (2) of Rule 5, if the application is not defective, the Registrar has no other option but to register it and assign a number to that application.

9. Rule 13 of the Rules provides that it is the duty of the Tribunal to notify the parties the date and place of hearing of the application. A reading of Rule 13 makes it clear that it is the duty of the Presiding Officer of the Tribunal to fix the date of hearing and even that power cannot be exercised by the Registrar. Rule 14 provides that every order of the Tribunal shall be in writing and shall be signed and

dated by the Presiding Officer of the Tribunal concerned. Rules 22 and 23 of the Rules are also very relevant.

10. Rule 22 deals with the powers and functions of the Registrar, Rule 22 reads as follows:-

'Powers and functions of the Registrar -

(1) The Registrar shall have the custody of the records of the Tribunal and shall exercise such other functions as are assigned to him under these rules or by the presiding officer by a separate order in writing.

(2) The official seal shall be kept in the custody of the Registrar.

(3) Subject to any general or special direction by the presiding officer, the seal of the Tribunal shall not be affixed to any order, summons or other process save under the authority in writing from the Registrar.

(4) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.'

Rule 23 of the Rules reads as follows:-

Additional powers and duties of Registrar

In addition to the powers conferred elsewhere in these rules, the Registrar shall have the following powers and duties subject to any general or special order of the presiding officer, namely:-

(i) to receive all applications and other documents including transferred applications;

(ii) to decide all questions arising out of the scrutiny of the applications before they are registered;

(iii) to require any application presented to the Tribunal to be amended in accordance with the rules;

(iv) subject to the directions of the presiding officer, to fix date of hearing of the applications or other proceedings and issue notices thereof;

(v) direct any formal amendment of records;

(vi) to order grant of copies of documents to parties to proceedings;

(vii) to grant leave to inspect the record of Tribunal;

(viii) dispose of all matters relating to the service of notices or other processes, applications for the issue of fresh notices or for extending the time for or ordering a particular method of service on a (defendant) including a substituted service by publication of the notice by way of advertisements in the newspapers;

(ix) to requisition records from the custody of any court or other authority.'

The learned counsel appearing for the respondents vehemently argued that the order under challenge is an order passed under Rule 23 of the Rules. It is argued that the Registrar can exercise the functions which are assigned to him by the Presiding Officer by a separate order in writing.

11. The Assistant Registrar who filed an affidavit has no case that any general or special order as contemplated under Rule 23(1) of the Rules is issued by the Presiding Officer. No such orders are produced also. It is true that Rule 23 provides that the Registrar can exercise those powers which are assigned to him by the Tribunal by a general or special order in writing. But there is no provision either in the Act, Rules or Regulations which confers power on a Presiding Officer of a Debt Recovery Tribunal to delegate the judicial functions which he/she will have to exercise under the Act, Rules or Regulations to a Registrar. There is a clear distinction between the administrative functions and judicial functions. Of course Rule 23(iii) confers powers on the Registrar to require a party to amend the application in accordance with law and Rule 23(v) confers powers to direct any formal amendment of records. Those orders are only formal. Rule 23(v) does not confer the Registrar power to order amendment of pleadings. So the Tribunal cannot issue any order conferring judicial power on the Registrar. Even if such an order is passed that order will be a nullity. The position is made more clear by the

Regulations framed under the Act. The Debts Recovery Tribunal Regulations of Practice, 1997 made applicable to New Delhi applies to the Debts Recovery Tribunals in Kerala also. Chapter IV contains regulations 11 to 13 which deal with the presentation, scrutiny, registration number and posting for interim/other orders. Regulation 11 provides that every application other than interlocutory application or applications shall be presented before the Registrar. Regulation 12 provides for maintenance of Order Sheet and Regulation 13 deals with registration and numbering of the applications. Regulation 13 is subject to the provisions contained in Rules 4 and 5 of the Rules. Regulation 13(f) specifically deals with interlocutory applications. It reads as follows:-

'13. Registration and numbering.-

.....

(f) Interlocutory applications filed along with the case or cases already instituted shall be numbered as I. A. No.... in O.A./R.D/P.T./M.A. No..... 199, as the case may be.'

The learned counsel appearing for the petitioners has argued that so far as an interlocutory application filed in a pending O.A., the Registrar cannot decline to number the same. He invited my attention to clauses contained in (a) to (c) of Regulation 13. But as I have already stated the provisions contained in Regulation 13 are subject to the provisions contained in Rules 4 and 5 of the Rules. So if an interim application filed in a pending case is defective the Registrar can decline to number the same.

12. Chapter V containing regulations 14 to 16 deals with proceedings before the Registrar of the Tribunal. Regulations 14 to 16 read as follows:-

'14. Matters to be listed before the Registrar.- Once an application or petition is registered the same shall be posted before the Registrar for ordering Notice and for completion of pleadings subject to the powers contemplated under Section 22 of the Act read with Rules 22 and 23 of the Debt Recovery Tribunal (Procedure) Rules, 1993, and such other functions as are assigned to the Registrar under the

said Rules or by me Presiding Officer by a separate order in general or special.

15. Cause list for Registrar.- Cases required to be dealt with by the Registrar shall be notified in separate Daily Cause List. The cases so notified shall be taken up by the Registrar in the serial order as indicated in the cause list.

16. Recording of proceedings.--Subject to the relevant provisions of the Act and the Rules of Procedure empowering the Registrar on hearing the parties/their legal practitioners and on perusing the records he may record his decisions in the case/cases in the order sheet and put his initials with date.'

Regulation 25 specifically deals with Interlocutory Applications. A reading of Regulation 16 shows that subject to the provisions in the Act and Rules, the Registrar can hear the parties and their Advocates and can record his decisions in the order sheet and put his initials. But that power can be exercised only in respect of the matters which are conferred on him. He can take decisions regarding the matters specified in Rule 23(ii) of the Rules. The order under challenge is not one falling under any of the provisions of Rule 23(2) of the Rules.

13. The relevant provisions in the Act, Procedure Rules and Regulations extracted above show that nowhere in the Act, Rules and Regulations of Practice any power has been conferred on the Registrar to reject or dismiss an interlocutory application. It is to be noted that the Registrar of the Tribunal is only a Chief Ministerial Officer. He is not invested with any judicial powers. There is absolutely nothing on record to show that the interim application filed by the petitioners is defective. In this connection, the averments contained in the counter filed by the first respondent is very relevant. In para 19 of the counter affidavit it is averred that the O.A. was posted before the Registrar on several occasions for steps and thereafter came up before the Presiding Officer on several occasions. The Presiding Officer though served with notice of the O.P. has not chosen to file any counter affidavit denying the allegations levelled against the Presiding Officer or Registrar. I do not find any reason to disbelieve the statement made by a responsible officer of the first respondent. The learned counsel appearing for the petitioners has submitted that the Registrar is allowing petitions, imposing costs and adjourning cases. In O.P. No. 25819 of 2002 it was found that when a witness

deposes before the Tribunal the necessary endorsement in the deposition sheet is made by the Registrar in spite of the provisions contained in Regulations 34 and 36 of the Regulations. The learned counsel for the petitioners submitted that the Registrar is discharging all judicial functions short of passing the final orders in O.As. and T.As. as if he is the Presiding Officer and the Presiding Officer is a mute witness to all these illegal acts.

14. Though the Tribunal is not bound by the provisions of the Code of Civil Procedure, it is bound to follow the principles of natural justice. According to the petitioners, the petition was filed on 17.1.2002 and it was rejected on that day itself on the ground that the main O.A. itself was disposed of. In view of the factual dispute, I have called for the file of O.A. No. 42 of 2001 of the Debt Recovery Tribunal Ernakulam and examined the same. The unnumbered petition was filed on 17.1.2002 after serving copy to the opposite side. The registry had noted that the case is also posted to that date. The endorsement on the petition shows that the petition was placed before the Registrar by the office with a note that the O.A. has been disposed of on 18.1.2002 and the I.A. therefore is infructuous. The initial bears the date 18.1.2002. It is seen that originally the Registrar had passed an order which reads as follows:-

'Need not be registered as the application cannot be entertained at this stage.'

The Registrar had affixed his initials also. That initial was scored off and the following sentence was subsequently added:

'The petition has come up for scrutiny after the disposal of the O. A. and hence not allowed.'

The date was originally written as 17.1.2002 and corrected as 18.1.2002. The endorsement originally made by the Registrar that the LA. need not be registered as the same cannot be entertained at that stage indicates that the same was made before the disposal of the O.A. But the copy issued to the petitioners and certified by the Registrar as true copy of the order reads as follows:-

'The petition has come up for scrutiny after the disposal of the O.A. and hence not allowed. Need not be registered as the application cannot be entertained at this stage.'

A comparison of the certified copy with the original order shows that the so-called certified copy is not a true copy of the original. Mala fides loom large from the copy issued. The only inference possible in the copy is that the sentences were rearranged to give an impression to the person reading the order that everything was done properly. It is nothing but judicial dishonesty and fraud. So the order passed by the Registrar in the unnumbered application disallowing the same is illegal and without jurisdiction.

15. I have perused the order sheet also. The order sheet shows that one portion of the proceedings of 17.1.2002 is typewritten. It reads as folio ws:-

'Applicant represented by counsel. Kept aside for hearing and disposal. Defendants neither present nor represented.'

The remaining portion of the order is hand written. It reads as follows:-

'Records perused. Heard the counsel for the applicant. For orders 18.1.2002.'

The first respondent-applicant in the O.A. has filed a counter affidavit asserting that the final order in the O.A. was actually dictated in the Bench on 17.1.2002 and that too in the presence of the Advocate appearing for the petitioner. It is very difficult to believe that after filing a petition for impleading and appearing before the Tribunal the counsel stood there as a silent spectator and allowed the Tribunal to dictate the order without making any representation. In paragraph 10 of the Original Petition it is specifically averred that the counsel appearing for the petitioners was present in the court on 18.1.2002 also and when the O.A. came up for hearing the counsel for the petitioners submitted that their applications may also be taken up and orders passed. The learned counsel appearing for the petitioners has submitted that the endorsement made by the Tribunal on the foot of the judgment itself will show that the judgment was dictated only on 18.1.2002. It is argued that the Tribunal has acted contrary to the fundamental principles of

natural justice. The only inference possible from the admitted facts is that the Tribunal was also aware of the filing of the impleading petition by the petitioners on 17.1.2002 but the O.A. was disposed of without giving them an opportunity to represent their case. According to the petitioners they spent huge amounts and with that amount, the defendants in the O.A. constructed the flats. The Tribunal ought to have considered the application filed by the petitioner before disposing of the O.A. especially in view of the fact that the application was not defective. But for reasons best known to the Presiding Officer, the O.A. was disposed of with undue haste and in violation of the principles of natural justice.

16. The next question to be considered is whether Ext. P4, the final order passed by the Debts Recovery Tribunal in O.A. 42 of 2001 is to be interfered with in this proceedings. The petitioners have challenged the final order passed also on the ground that the O.A. was not disposed of on 17.1.2002 and on that day itself the counsel appearing for the petitioners made a submission before the Debts Recovery Tribunal that such a petition has been filed and the same is pending; but the Recovery Tribunal surreptitiously prevented the petitioners from presenting their case and acted in a highly partisan manner by holding back the impleading petition until the O.A. is disposed of and thus the Tribunal has acted contrary to the fundamental principles of natural justice and hence the order passed by the Tribunal is liable to be interfered with in this case. I have already found that the Presiding Officer of the Tribunal was also aware of the fact that a petition for impleading was pending when the judgment in the O.A. was pronounced.

17. In spite of all these infirmities, I am of the view that it is not necessary in this case to exercise the extra ordinary jurisdiction vested in this Court under Articles 226 and 227 of the Constitution of India to set aside the orders passed in the application by the petitioners and the final order passed in the Original Application. The petitioners are not debtors, sureties or guarantors. They are not parties to the transaction between the first respondent HUDCO and the defendants in the O.A. They can have no defence against the claim put forward by HUDCO for realisation of money. Their objection can only be against the prayer for sale of the respective Flats occupied by them. According to the petitioners, the builder in this case had entered into a sale agreement as early as in the year 1992 and collected huge

amounts and using their funds, the building complex was constructed. According to them, the builder may have title over the land but they have no title over the Flats. According to the petitioners, the law in India is that a person can built in the land belonging to another and merely because such a construction is made in the land belonging to another the title of the building will not automatically vest with the owner of the land. The contention of the petitioners in the O.P. is that in view of the sale agreement they have got an interest over the land and the enforcement of the mortgage, if any, subsequently created by the builder in favour of HUDCO can be subject to their rights only. The learned counsel for the first respondent has vehemently argued that even if the petitioners are impleaded, they will not be in a position to resist the claim of HUDCO and their only claim is under an agreement for sale. It is argued that an agreement for sale will not confer the petitioners any right, title or interest over the property or the flats. It is pointed out that in view of the provisions contained in S. 54 of the Transfer of Property Act a person claiming under the sale agreement will not get any right. The learned counsel for the petitioners relying on the decisions reported in *Ram Baran v. Ram Mohit* (AIR 1967 SC 744), *Lalji Jetha v. Kalidas* (AIR 1967 SC 978) and *Bai Dosabai v. Mathurdas* (AIR 1980 SC 1334) has argued that even though an agreement for sale will not confer any title, the agreement to sale will create an interest in the land in favour of the intending purchaser and that interest is annexed to the land. I am of the view it is not at all necessary to enter into any finding on the disputed questions of facts in this proceeding. Further the first respondent has got a case that the remedy available to the petitioners is to approach a civil court and not the Debt Recovery Tribunal. So I leave the matters open to be decided by the appropriate authority in proper proceedings.

18. The Debts Recovery Tribunal could have given an opportunity to the petitionersto present their case. But still, the petitioners are not left without any remedy. Theproperties mortgaged can be sold only in accordance with the provisions contained inthe Income-tax (Certificate Proceedings) Rules, 1962 and also in accordance with theprovisions contained in the Second Schedule: Procedure for Recovery of Tax, Rule 11 ofthe Procedure for Recovery of Tax provides that where any claim is preferred to, orany objection is made to the attachment or sale of, any property in execution of a certificate, oil the ground that

such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. Rule 41 of the Income-tax (Certificate Proceedings) Rules, 1962 deals with resistance or obstruction to possession of immovable property sold by the Recovery Officer. Rule 11 of the Procedure for Recovery of Tax confers on the Tax Recovery Officer to investigate the claim and pass appropriate orders. If there is resistance after the sale, the purchaser has to make an application before the Tax Recovery Officer complaining about such resistance or obstruction and on receipt of such complaint, the Recovery Officer has to investigate the same. Further, the order passed by the Recovery Officer is appealable before the Tribunal itself and it is subject to further appeal to the Appellate Tribunal. Rule 11(6) of the Procedure for Recovery of Tax provides that a party against whom an order is made after investigation may institute a civil suit also Rule 47 of the Income-tax (Certificate Proceedings) Rules also provides for a suit against an order passed in a proceedings initiated on the application filed by the purchaser to deliver after removing the obstruction. So, a number of remedies are available to the petitioners. Therefore, I am of the view that though the action of the Registrar is without any authority or jurisdiction and the procedure adopted by the Tribunal is not proper and against the principles of natural justice it is not necessary to set aside the orders passed in the O.A. I am of the view that the Original Petition can be disposed of with liberty to the petitioners to take recourse to any of the remedies provided under the Rules which I have stated above. It is to be noted that the very purpose of establishing the Debts Recovery Tribunal being to expedite the disposal of the applications filed by the banks and to cut short the delay which is likely to create in prosecuting the proceedings before a civil court. If the Tribunals and its Officers are not following the procedure prescribed in the Act, Rules and Regulations that will only cause more delay in disposing the matter. If the procedures are not followed correctly, this Court will be constrained to interfere with the orders passed by the Tribunal which necessarily causes delay in disposing of the matters. In Delhi High Court Bar Association v. Union of India (JT 2002 (3) SC 131) the Supreme Court has considered the reasons for establishing the Banking Tribunals. It was held that though the provisions of the Code of Civil Procedure are not applicable the Tribunals and the Appellate Tribunals are to be guided by the principles of natural

justice while trying the matters before it.

19. I had issued notice to the Registrar and Assistant Registrar to appear in person or through counsel and file affidavits stating their authority to pass judicial orders. The Registrar did not appear and file any affidavit. The Assistant Registrar has filed an affidavit stating that the Registrar has since been repatriated to the parent department. Considering the fact that the Registrar has been since repatriated to his parent department, I am not passing any adverse remarks against the Registrar even though I have stated so in my order dated 7.11.2002 passed in C.M.P. No. 31705 of 2002 filed by the petitioners in the O.P. But, the facts and circumstances stated above show that unless persons having previous experience in the similar category or judicial matters are appointed as Registrar and Assistant Registrar of Debts Recovery Tribunals, the very purpose of constituting the Debts Recovery Tribunals will be defeated. If the Registrar is unable to distinguish the powers conferred on him under the Statute, Rules and Regulations and judicial functions to be discharged by the Tribunal, the orders similar to the one challenged in the O.P. are likely to be passed in future also. So, it is only just and proper that the Central Government while deputing persons for the post of Registrar and Assistant Registrar give preference to persons working in similar posts in different Courts or dealing with similar matters. So there will be a direction to the Central Government to give preference to persons having previous experience to the post of Registrar and Assistant Registrar to the extent maximum possible while filling up the post of Registrar and Assistant Registrars of the Debt Recovery Tribunals.

In the result, the Original Petition is disposed of without prejudice to the petitioners to file claim petitions before the Recovery Officer or to take recourse to any other remedies available to them under law.

A copy of this judgment shall be forwarded to the Finance Department of the Central Government for taking appropriate action.