



“The Crown’s preferential right to recovery of debts, over other creditors is confined to ordinary or unsecured creditors. The Common Law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. It is only in cases where the Crown’s right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that the King commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already.”

The dictum of law as laid by the Supreme Court is that the State’s preferential right to the recovery of debts over other creditors is confined to ordinary or unsecured creditors. The Supreme Court took the view that the Common Law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for the recovery of its debts over a mortgagee or pledgee of the goods or a secured creditor. It is true that ultimately the bank was not granted any relief, but the same was not granted in the peculiar facts of the case. Otherwise, the principle of law as explained is very clear. In no uncertain terms, the Supreme Court held that the appellant, i.e. the bank, was right in submitting that on the date on which the State of Karnataka proceeded to attach and sell the property of the partners of the firm mortgaged with the bank, it could not have appropriated the sale proceeds to the sales-tax arrears payable by the firm, thereby defeating the bank’s security. In taking such view, the Supreme Court relied on its earlier decision in the case of *CST v. Radhakishan*, (1979) 43 STC 4 : AIR 1979 SC 1588.

Court in para 19 held that Government dues only have priority over unsecured debts and in so holding the Court referred to a judgment in *Giles v. Grover* (1832) (131) English Reports 563 in which it has been held that the Crown has no precedence over a pledgee of goods.

*Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. and others*, reported in (2000)5 SCC 694 , (247) ITR 165 (SC)