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Item No. 3

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P.(C) NO. 73 OF 2023

Thengujam Dinachandra

... Petitioner/s

-Versus-

State of Manipur and 5 others

... Respondent/s

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

01.02.2023

[1] Heard Mr. Kh. Tarunkumar, learned counsel for the petitioner and Mr. Shyam Sharma, learned Government Advocate for the state respondents; and Mr. L. Gunindro, learned counsel for the private respondent/PNB

[2] This writ petition has been heard and disposed of at the admission stage itself.

[3] Mr. Kh. Tarunkumar, learned counsel for the petitioner, represented that the petitioner is the owner of the land under Old Patta No. Nil New Patta No. 1819/4100 covered by C.S. Dag No. 3119/9154 measuring an area of .62 acre "Ingkhol Class" situated at Village No.76 of Mayang

Imphal as per the land record maintained by the SDC, Imphal West(s) Mayang Imphal.

[4] In the month of March, 2019, the respondent No.6 namely, L. Mahendra, had taken a loan for an amount of Rs. 1 crore from the erstwhile United Bank of India, MG Avenue Branch, Imphal to establish an industry for producing poultry feeds at Mayang Imphal under loan account No. 0254050033859. After getting the said amount from the bank, land filling process was done. Thereafter, the petitioner has given his property as security.

[5] Learned Counsel for the petitioner, further represented that he received a Notice from the Punjab National Bank, the respondent No.5 after the declaration of the Non-Performing Assets (NPA) as the petitioner could not repay his loan amount. Soon after the petitioner has received the notice, he submitted a representation on 28.04.2022 addressed to the respondents No. 3 to 5 (Bank officials). On receipt of his representation, a reply dated 02.05.2022, was given by the Chief Manager, Punjab National Bank, Imphal Branch, MG Avenue informing the petitioner that settlement of loan will depend upon the availability of security, its present value and prevalent rules of Punjab National Bank. So, he was advised to repay the entire overdue amount to avoid further action under SARFAESI Act, 2002. Thereafter, the Respondents Nos. 3 to 5, approached the District Magistrate, Imphal East (the Respondent No.2 herein) and the Respondent No.2 (District Magistrate, Imphal East) issued an order in exercise of powers conferred under Section

14(b) (1A) of the SARFAESI Act, 2002. In that order, the District Magistrate, Imphal East directed the Sub-Divisional Magistrate, Porompat was directed to take possession of such assets (s) and documents relating to the petitioner.

[6] Learned counsel for the petitioner further represented that challenging the said order of the respondents dated 10.01.2023, the present writ petition has been filed. The petitioner has sought for the relief in this writ petition as follows:-

- (i) call for the records of the case and issue rule nisi calling upon the respondents to show cause as to why the prayer prayed for by the petitioner shall not be granted. And after hearing them make the rule absolute.
- (ii) issue a writ of certiorari to quash/set aside the impugned order dated 10.01.2023 (Annexure A/8) as the same is not sustainable in the eyes of law.
- (iii) issue a writ of mandamus by directing the respondents to take up steps by following the due process of law while initiating steps for taking possession of the landed properties by fully complying with the Section 13 & 14 of the SARFAESI Act, 2002 in its true spirit and letter.

- (iv) pass any other appropriate writ/order/direction that this Hon'ble Court deems fit and proper.

AND

Pending disposal of the rule Your Lordships be pleased to grant ex-parte stay and interim relief by staying/suspending the operation of the impugned order dated 10.01.2023 (Annexure A/8). And/or pass any other appropriate interim relief that this Hon'ble Court deems fit and proper'.

[7] By arguing the above points, Mr. Tarunkumar, learned counsel for the petitioner prayed before this Court to admit the writ petition and prayed for granting interim order.

[8] This Court after hearing the arguments, issued the notice to the respondents. Accordingly, Mr. Shyam Sharma, learned Government Advocate for the Respondents No.1 and 2. Mr. Gunindro, learned counsel for the respondents Nos. 3 to 5 were appeared. Mr. Gunindro, learned counsel for the respondents Nos. 3 to 5 raised preliminary objection of the maintainability of the present writ petition.

[9] Mr. Gunindro, learned counsel for the respondents No. 3 to 5, represented that if the petitioner is aggrieved by the proceedings, under

section 14(b)(1A) of the SARFAESI Act, as ordered by the 2nd respondent, the petitioner have alternative remedy to approach the Debt Recovery Tribunal under section 17 of the SARFAESI Act. Without doing so, the petitioner have approached this Court under Article 226 of the Constitution of India which is not maintainable. Therefore, Mr. Gunindro, learned counsel for the respondents No.3 to 5 has produced a copy of the order passed by this Court in W.P.(c) No. 132 of 2019 dated 08.07.2022 and prayed this Court to dismiss the writ petition.

[10] Mr. Shyam Sharma, learned Government Advocate for the respondents No.1 and 2 has supported the arguments advanced by Mr. Gunindro, learned counsel for the respondents No.3 to 5.

[11] Mr. Tarunkumar, learned counsel for the petitioner, further represented that the 2nd respondent without following the procedure has purportedly passed under section 13 and 14 (B) of the SARFAESI Act which is totally illegal and the same should be set aside. He also raised some points seeking admission of the prayer for granting interim order before this Court.

[12] After hearing both the counsels and perusal of the records, admittedly, the petitioner is a guarantor for the respondent No.6 who offered to give a loan of Rs. 1 crore from the respondent No.3-5 (Bank).

[13] The respondent No.6 fails to repay the said loan amount, the Respondents No.3 to 5-Bank adopting SARFEAESI Act. Under the SARFEAESI Act, 2002. Accordingly, an application has been filed before the 2nd

respondent-District Magistrate, Imphal East under section 13 and 14 of the SARFAESI Act, 2002.

[14] Considering the submission made by the respondents No.3 to 5, the respondent No.2 has passed the impugned order under Section 14(B) of the SARFAESI Act, 2002. It is made clear that if the petitioner is aggrieved by the order passed by the 2nd respondent under Section 14(B) of the SARFAESI Act, 2002, the remedy is always open to the petitioner to approach the Tribunal under Section 17 of the SARFAESI Act, 2002 followed by an appeal under section 18 of the said Act. But the petitioner in this case without filing any case before the Tribunal under Section 17 of the SARFAESI Act, 2002, followed by right of appeal directly approach this Court under Section 226 of the Constitution of India which is totally not maintainable. Mr. Tarunkumar, learned counsel, during the course of the arguments has produced a copy of the order passed by a Division Bench of Madras High Court in W.P.(c) No. 950 of 2012 dated 17.04.2012. It is represented that while dismissing the writ petition filed by the petitioner, Hon'ble Division Bench of the Madras High Court has granted time to the petitioner to approach the Debt Tribunal under Section 17 of the SARFAESI Act, 2002 by granting interim order that the physical possession of their property should not be taken over from the petitioner was ordered. Therefore, he prayed this Court that same order may be passed in this case also.

[15] Mr. Gunindro, learned counsel for the respondents No.3 to 5, vehemently opposed in granting the interim order but he agreed that a

direction should be issued to the petitioner to approach the Debt Tribunal under section 17 of SARFAESI Act, 2002. Since the interim order granted by this Court, will amounts to admitting the writ petition under Article 226 of the Constitution of India. Therefore, he prayed this Court not to grant any interim order but direction may be issued to the petitioner to approach the Debt Record Tribunal.

[16] Admittedly, the petitioner has wrongly invoked the procedure under Article 226 of the Constitution of India before this Court. Since the remedy is only under section 17 of the SARFAESI Act before the Debt Recovery Tribunal. Therefore, after careful perusal of the records of both the parties and also the relevant provision of the SARFAESI Act, 2002, I am inclined to exercise my discretionary jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition is liable to be rejected except to direct the petitioner to approach the Tribunal.

[17] In the result:

- (a) the writ petition is disposed of;
- (b) the petitioner is at liberty to approach the competent authority as provided under section 17 of the SARFAESI Act by filing a proper application under section 17 of the SARFAESI Act, 2002 within 10(ten) days from the date of receipt of this order;

- (c) Till such time, the Respondents Nos. 3 to 5, are directed not taken over the petitioner's property and status quo shall be maintained.
- (d) It is further made clear that after the said period of 10(ten) days from the date of receipt of a copy of the order, if the petitioner is unable to get any legal protection from the competent authority, it shall be open to the respondent-bank to proceed in accordance with law.

JUDGE