

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2843 OF 2015

Shri Satish S. Sapate and Others

..Petitioners

Vs.

State of Maharashtra and Others

..Respondents

WITH

WRIT PETITION NO.11313 OF 2016

Shri Jarandeshwar Sahkari Sakhar

Karkhana Ltd

..Petitioner

Vs.

The Maharashtra State Co-operative

Bank Ltd and Others

..Respondents

Mr. T. S. Ingale i/b Mr. Anand D. Landge, Mr. Nikhil Pawar, for the
Petitioner in WP.2843/15.

Mr. V. S. Kapse i/b Mr. Shailesh D. Chavan, for the Petitioner in
WP.11313/16.

Mr. C. P. Yadav, AGP, for Respondent Nos.1 to 3 in WP.2848/15.

Mr. P. G. Sawant, AGP, for Respondent No.1 in WP.11313/16.

Mr. G. S. Godbole a/w Mr. Sumit S. Kothari, for Respondent No.5 in
WP.2843/15 and for the Respondent No.2 in WP.11313/16.

Mr. Bhushan Walimbe a/w Ms Vrushali Penkar, for Respondent

No.1 in WP. 11313/16.

CORAM :- **S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**
DATE :- **DECEMBER 21, 2016.**

P. C.:

Having heard both sides and when there are multiple remedies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) available to the Petitioners to assail and challenge a sale under the SARFAESI Act, we cannot entertain these Writ Petitions.

2 We have found that there are disputed questions of fact and which include the plea of the Petitioners that in terms of the conditional allotment of the land by the Government / State to the Respondent No.6-Sugar Factory, this land could not have been disposed off. This would mean that no interest can be created in favour of any lender / bank even when 6th Respondent has set up a Sugar Factory and needs money and funds for its day to day operations and functioning. Whether this actually is the position and what are terms and conditions of the allotment and whether

any public property has been taken away surreptitiously, are all issues connected to the auction sale. The Petitioners are aware that there being auction sale under the SARFESI Act, they would have to approach the Debts Recovery Tribunal. That before they get any relief, they would have to abide by certain conditions imposed by the statute does not mean that the remedy is unavailable or is illusory. These matters are out of the purview of this Court's writ jurisdiction, by virtue of several pronouncements by the Hon'ble Supreme Court of India. Now, that Respondent No.6 - Sugar Factory has already approached the Debts Recovery Tribunal but its applications / appeals are dismissed on the ground of delay and even that order has been challenged by Respondent No. 6 before the Debts Recovery Appellate Tribunal. All the more, we are disinclined to entertain these Writ Petitions. The Writ Petitions are dismissed.

3 Needless to clarify that in the event the Petitioners approach the Debts Recovery Tribunal or the Appellate Tribunal, it would be open for the contesting Respondents / purchaser to point out that such persons claiming and styling themselves as members of Co-operative Sugar Factory, have no locus in law to

invoke the jurisdiction of the Tribunal. They lose their identity after becoming members of a Co-operative Society. The same merges in with that of the legal / corporate entity and cannot survive. Even such objections and contentions to the contrary can be raised and dealt with by the Debts Recovery Tribunal.

4 Both Writ Petitions disposed off.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)