

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8/12/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Writ Petition No.29573 of 2017

K.Vasuki

... Petitioner

Vs

1. The District Collector
Tirupur.
2. The Authorised Officer
The Federal Bank Ltd
Tirupur Industrial Finance
132 - A Deepa Complex
Mangalam Road, Karuvampalayam
Tiruppur 641 604.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration to declare the proceedings initiated under the SARFAESI Act with respect to agricultural property belonging to the petitioner and measuring 48 cents in S.F.Nos.53 and 32 cents in S.F.No.54 Mannarai Village of Tirupur District, as ultravires of Section 31 (i) of the SARFAESI Act.

For petitioner

... MS.P.T.Asha

for M/s.Sarvabhauman Associates

सत्यमेव जयते
O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner, has stood as a guarantor, for the loan availed by M/s. Sri Prasanna Tex, from Federal Bank Limited, Tirupur/second respondent. Property belonging to the petitioner, in S.Nos.53 and 54, measuring an extent of 0.48 acres and 0.32 acres (totally 80 cents), in Mannarai Village, Tirupur District has been mortgaged.

For the failure to discharge loan by M/s.Sri Prasanna Tex and others, Bank had issued a notice, under Section 13 (2) of

the SARFAESI Act, 2002, demanding a sum of Rs.5,48,78,081/-. Bank had issued a possession notice, dated 9/12/2016, under Section 13 (4) of the SARFAESI Act, 2002. Thereafter, on the application filed by the Bank, under Section 14 of the SARFAESI Act, 2002, seeking assistance for taking possession, District Collector-cum-District Magistrate, Tiruppur, has issued a notice, in Na.Ka.No.2397/2017/E3, dated 3/10/2017, calling upon the petitioner, guarantor and others to appear, for an enquiry, on 27/10/2017, at 4.30 p.m., with documents.

2. Being aggrieved, petitioner has filed the instant writ petition, for a writ of declaration, to declare the proceedings initiated under SARFAESI Act, 2002, with respect to the agricultural property, belonging to the petitioner, measuring 48 cents in S.F.Nos.53 and 32 cents, in S.F.No.54 Mannarai Village of Tirupur District, as ultravires of Section 31 (i) of the SARFAESI Act.

3. Inviting the attention of this Court, to the entries made in the Patta Pass Book, kist receipt, dated 16/3/2016, "A" register, dated 5/8/2016 and Section 31 (i) of the SARFAESI Act, and placing reliance on the decisions reported in (i). {2012 (5) CTC 257} ESHWAR PURUSHOTHAMAN GARDENS, rep. BY ITS PARTNER, P.E.PURUSHOTHAMAN, NAMAKKAL DISTRICT Vs. AUTHORISED OFFICER, INDIAN BANK ZONAL OFFICE, COIMBATORE, (ii). {2010 (4) CTC 710} MALLIGA AND 4 OTHERS Vs. 1. THE AUTHORISED OFFICER, UNION BANK OF INDIA, MADURAI AND ANOTHER, Ms. P.T.Asha, learned counsel for the petitioner submitted that when the provisions of the Act, do not apply to any security interest created in agricultural land, Bank for recovery, can take recourse only before the appropriate Civil Court and therefore, the entire action of the Bank, right from the inception of 13 (2) notice and thereafter, seeking assistance, under Section 14 of the Act, before the District Magistrate-cum-District Collector are without jurisdiction, and hence a writ of declaration is required to be issued by this Court, to declare the proceedings initiated, under the SARFAESI Act, as ultra vires.

4. As per Section 14 of the SARFAESI Act, the District Collector-cum-District Magistrate has to satisfy himself about the contents of the affidavit and pass suitable orders for taking possession of the secured assets. When the District Magistrate-cum-District Collector, has issued an enquiry notice, it is always open to the petitioner, to place all relevant facts and documents, before the said authority and seek for appropriate orders. In the light of the above, we are not inclined to issue any writ of declaration, as prayed for.

5. In view of the above, writ petition is dismissed. Bank would be at liberty to place contra evidence, if any. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs.
To

1. The District Collector
Tirupur.
2. The Authorised Officer
The Federal Bank Ltd
Tirupur Industrial Finance
132 - A Deepa Complex, Mangalam Road
Karuvampalayam, Tiruppur 641 604.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.87512

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