IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 22.03.2017
CORAM
THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

C.R.P.(PD)(MD).Nos.1278 and 1279 of 2015
M.P.(MD)Nos.1 and 1 of 2015

1. M/s.Pavai Alloys and Steels (P) Ltd.,
   Rep., by Managing Director,
   Mr.V.Kuppusamy

2. Mr.V.Kuppusamy
3. Mr.K.Umashankar
4. Mr.K.Bhaskaran
5. Mrs.B.Brinda .. Petitioners in both CRPs.

..vs..

The Authorized Officer,
Indian Bank, Tiruchengode Branch,
T.G.N.Complex, West Car Street,
Anna Salai, Tiruchengode,
Namakkal District 637 211. .. Respondents in both CRPs.

Prayer in C.R.P.(PD)No.1278 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 05.12.2014 made in I.A.Nos.1810 of 2014 in S.A.No.340 of 2014, on the file of the Debts Recovery Tribunal, Madurai.

Prayer in C.R.P.(PD)No.1279 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 31.03.2015 made in I.A.No.1887 of 2014 in S.A.No.340 of 2014, on the file of the Debts Recovery Tribunal, Madurai.

For Petitioners : M/s.VASTLAW Associates

COMMON ORDER
(Orders of this Court was made by **S.MANIKUMAR, J.**)

Revision Petitions arises against the orders in I.A.No.1810 of 2014 in S.A.No.340 of 2014, dated 05.12.2014 and I.A.Nos.1887 of 2014 in S.A.No.340 of 2014, dated 31.03.2015, on the file of the Debts Recovery Tribunal, Madurai.

2. The litigative status of the parties are maintained in this Civil Revision Petition.

3. The 1st Petitioner is a Private Limited Company, duly registered under the Provisions of Companies Act, 1956 and represented by the 2nd Petitioner, who is the Managing Director of the said company. Petitioners 3 to 5 are the directors of the 1st Petitioner Company. During the year 1995, the Company was promoted by three directors, viz., V.Kuppusamy, P.Palaniyammal (Since, deceased) and K.Umashankar,

4. It is submitted that the Government of Tamilnadu have declared Paravathivelur Taluk, Namakkal District as Most backward Area and announced concession in Electricity, Waiver of sales tax, and capital subsidy to the Industrialists, who intend to start/commence new industries in said area. The company obtained project report from Tamilnadu Industrial Investment Corporation, Namakkal, who has certified that the project as viable. Therefore, the 1st Petitioner company (hereinafter referred to as "the company") submitted loan proposal to Tamilnadu Industrial Investment Corporation, Namakkal for availing Term Loan of Rs.90.00 lakhs for establishment of a New Industrial unit for manufacturing Steel Re Rolling Rods. The TIIC has sanctioned Rs. 86.00 lakhs as Term loan to the 1st Petitioner Company.

5. The petitioners have further submitted that after availing the abovesaid term loan, the company has commissioned the said project. Thereafter, the company approached Tamilnadu Mercantile Bank, Tiruchengode, requesting them to sanction Working Capital as Cash Cerdit Loan Limit of Rs.50.00 lacs for the company. Subsequently, the 1st petitioner Company has fully repaid the Term Loan to TIIC, during the year 2000 itself. That apart, the company also availed Medium Term Loan from Tamilnadu Mercantile Bank Ltd., and the company has been repaying cash credit loan and MTL loan regularly and without and default, whatsoever.

6. It is further submitted that during the year 2008, the company has approached the respondent-Bank for takeover of existing liability, due to Tamilnadu Mercantile Bank and for sanction of additional credit facilities. Accordingly, on 25.06.2008, the respondent has sanctioned the abovesaid loan. Subsequently, the company was provided with subsequent credit facilities, by the respondent bank, on the basis of the performance of the company.

7. The petitioners have further submitted that due to poor power supply and low voltage, the company was unable to run its machineries viably and continuously thereby, affecting the turn over and break even to be achieved. The power shortage was 10% to 40% from the year 2009 to May 2014. Apart from that, due to

unauthorized power shut downs up to 13 hours a day, the unit was unable to plan its production. Hence the company could not achieve full production capacity. That apart, there was frequent undeclared power cut without and prior intimation. The company was not allowed to purchase electricity power from outside source. Due to short supply of raw materials, labour problem, increase in Electricity consumption charges factory maintenance (Furnace Replacement) the company could not run the factory profitably.

8. The respondent Bank has charged exorbitant and high rate of interest for the abovesaid loan facilities, granted to the company, which became sick from November 2013 onwards due to financial problem, lack of adequate infrastructure and unprecedented Government Policies. In the abovesaid circumstances, repayment of the petitioner company was sometimes irregular. Hence, the loan accounts of the company was classified as NPA as on 17.07.2014 and the respondent bank initiated SARFAESI proceedings.

9. The respondent-Bank has issued demand notice, dated 24.07.2014, under Section 13(2) of the SARFAESI Act. After the receipt of the same, the company gave a detailed objections, under Section 13(3A) of the Act, claiming that certain mortgaged properties are agricultural properties and hence, they are exempted under Section 31(i) of the SARFAESI Act. Without considering the same, the respondent has issued Possession Notice, dated 15.10.2014, under Section 13(4) of the SARFAESI Act, and took symbolic possession of the properties.

10. Further, the respondent-bank has issued Sale Notice, dated 01.11.2014, published in Dinathanthi Daily, bringing four items for sale, fixing the date of sale on 04.12.2014 (Item No.1 & 2) and on 05.12.2014 (Item No. 3 & 4). Aggrieved by the above Possession Notice and Sale Notice, the petitioners have preferred an appeal in S.A.No. 340 of 2014, under Section 17 of the Act, before DRT, Madurai, with regard to Item No.3 of the sale notice alone, on the ground that the said item properties are agricultural properties and that they have been undervalued. To prove that the properties are agricultural land, the petitioners have produced revenue records, photographs and possession certificate along with the appeal papers. The Petitioners have given consent for sale of the other items.

11. Pending appeal, the petitioners have filed I.A.No.1810/2014, seeking stay of all further proceedings, till disposal of the appeal and after hearing both sides, the DRT, Madurai, by its order dated 05.12.2014 (on the date of sale) upheld the plea of the respondent therein that the schedule properties are non-agricultural properties, but granted interim stay on the ground that the properties are undervalued. It is the contention of the respondent Bank that before the order of stay,

they had conducted the sale for Item No.3 properties, but the sale has not been confirmed.

12. Along with the stay petition, the petitioners have filed an application in I.A.No.1887 of 2014 in S.A.No.340 of 2014, for appointment of an Advocate Commissioner to inspect and report the character of the schedule properties. The respondent bank also filed their detailed counter affidavit in the said petition. After hearing both sides, the DRT, Madurai, vide its order, dated 31.03.2015, dismissed the application, on the grounds that the subject properties are non agricultural properties and that there is no necessity for an Advocate Commissioner to inspect.

13. In the above orders, the DRT, Madurai, while dealing with the plea that the item properties are agricultural properties, has passed similar orders. However, it is worthwhile to extract the relevant paragraphs from the order made in I.A.No.1887 of 2014 in S.A.No.340 of 2014, dated 31.03.2015, as follows:

> "6. The main contention that the subject five properties items in S.No.3 are (also) agricultural properties and cultivation is being done and in support of their contention, the applicants relied on their objections dated 22.09.14, town survey land register of Spl. Thasildar dated 27.10.14, Adangal extract - Fasli years 1421 to 1424 dated 28.10.14 and 30.10.14, certificate of Thasildar dated 28.10.14 and valuation report dated 29.10.14.
>
> 7. The Valuation report filed by the Applicant at page No.46 is obtained on 31.10.14. At page No.50 at point no.9- it is classified as 'semi-urban'. At point no.7 page 51, type of use to which it can be put it is mentioned as " agricultural land certified by VAO/Tahsildar". Further at Page No.48 the valuer declared that he had inspected the lands on 29.10.14. The valuation filed by the Applicants is not given by an approved valuer. Apart from this, from the report it is clear that, from his personal inspection, he has not stated/commented whether they are agricultural lands or agricultural activities are being carried out or any crops raised. He relied on the certificate issued by VAO. Further, it is interesting to note that the Engineer has taken photographs of the said lands where a name board describing the lands as 'agricultural lands' was installed and then photographs were taken with the said name Board. No where the valuer certified that on his inspection, he found them as agricultural lands and agricultural operations are being carried

out on the said lands. So it is clear the valuer has not supported that the subject lands in question are agricultural lands but relied on VAO certificate.

8. The Thasildar certificate (Form 69) at page No.35 does not indicate the nature of lands and crops grown at Old S.No.88/1a and 90/1b. This certificate is issued on 27.10.14. Whereas the same authority issued Adangal/other certificate on 28.10.14 & 30.10.14 at page No.36 to 39 indicate otherwise. In the Faslis filed at page No.36 to 37 SA it is mentioned the crops grown as maize. 0.16 acre in S.No.88/1a and 90/1b, 1.36.0 acre as coconut and ground nuts. Further at page no.36 to 39 it is mentioned that a well & building, borewell existed. These certificates were obtained after filing their objection to the demand notice. EC certificate filed by bank at pages 1 to 3 and pages 36 to 44 indicate these are punja lands, i.e. dependent on rains and not irrigated. It is very interesting to note that the said documents are extract from 'Tiruchengode Municikpal Town Survey Register'. This itself indicate that the properties are located within the purview of Municipality/its limits. Further, it is contended that for last 34 years, the Applicants are raising agricultural crops. However, there is no documentary evidence produced for the earlier periods especially purchase of seeds, manures,pesticides, labour charges and electricity bills. It is also pertinent to note here that the company is sick and not running the mill profitably from 2008 onwards (para no.9, page no.20 of objections) and it became sick from November, 2013 onwards due to financial problems. If the subject lands are being cultivated for 34 years, what happened to the said income including the said coconut trees? Where it is invested? What is the income derived per year? Where are the documents, evidences regarding purchase of seeds, manure, expenses and income derived?

9. After issuance of the Demand Notice dated 24.07.2014, the subject Revenue Records were obtained. It is submitted by the Respondent Bank that Namakkal District is most backward area and lacks power and other facilities, which indicate that these lands are not agricultural lands, cannot be clutivate due to lack of irrigation and electricity facilities.

According to the Respondent lands are situated at Tiruchengode Municipality.

10. The bank filed valuation reports dated 11.5.11, 18.03.10, 16.10.14 and 08.07.13 as additional documents dated 01.12.14 and page no.65-87 of the typeset dated 25.11.14. The valuation report dated 08.07.13 (page no.20 of additional typeset) obtained indicate that the subject lands is "'Commercial Class-I Type III" and the valuation report dated 16.10.14 (page no.67 of 1st typeset) indicate that they are commercial, residential and industrial locality and valuer submitted that they are vacant dry lands and not certified as agricultural lands. From these facts it is crystal clear that at the time of valuation reports, all the (different) valuers of the bank certified the subject lands as dry lands and located in commercial and industrial area. Further buildings existed. Considering all these facts it is clear these lands are not agricultural lands and no agricultural operations are being carried out since from the beginning or creation of mortgage.

11. Even assuming for arguments sake the revenue records registered them as agricultural lands it does not mean that these lands are used for cultivation and cultivation / agricultural activities like ploughing, irrigating, seedling, harvesting and cutting the crops is taking place continuously. In terms of the Hon'ble High Court AP Judgement in Gajula Exim (P) Ltd., Vs. Authorized offier, Andhra Bank 2008 (4) ALD 385=2009 (149) Company Cases 489. considering the nature of business, activities, and location of lands, it cannot to said that they continues to be Agricultural Lands and used continuously the agricultural operations. Under these circumstances, the lands in S.No.3 five items are not agricultural lands and not used for agricultural purpose since from the beginning or continuously.

12. The Applicant submitted that the lands belong to Company. The Applicant No.2 is the Managing Director of applicant No.1 and his lands also mortgaged. All these lands are meant for the business / Mill activities. Basing on which, the loan proposal was considered for the expansion of the business activity. The 1st petitioner company is cultivating and doing agricultural operations for the last 34 years by

growing agricultural crops every year (para no.14 of the stay petition) . Now the 1st Applicant has risen ground nut crops in the said lands besides coconut standing trees. Further stated there is open well belonging to 2nd Applicant). However, it is not clear 1st petitioner company is cultivating all the lands (S.No.1 to 4 of the sale notice) or only S.No.2 properties. Assuming for arguments sake that the company is also cultivating all the lands or some of the lands, the question arises now is how a company can do agricultural as business and any lease deeds executed leasing other lands in favour of Company. In the petition it is submitted that the company is doing business in the line of steel. The Company is manufacturing steel re-rolling rods. How a company formed for the purpose of manufacturing steel products can do business in other fields like agriculture? Is agriculture also another objective of the company? Whether Memorandum of Association permits the same? Whether in the balance sheet/financial statements the profits derived on these agriculture lands as shown as income and claimed exemption of tax, (if exempted for companies also) in the income tax returns or even by the 2nd Applicant in his Returns (and claimed exemption of tax as it is from agriculture)? Further doing agriculture by the company will definitely divert the main object of steel product as the agricultural operations requires more and constant supervision, attention, time and lobour. Further the Applicants submitted they have no objections for sale of these agricultural lands belonging to company. Therefore, it is evident that on the one hand Applicants contends that S.No.3 properties are agricultural properties and exempt u/s.31(i) of the SARFAESI Act. Whereas on the other hand, in respect of agricultural lands of company, claiming they are cultivated by the company for the last 34 years, but does not seek any exemption u/s.31(i). So the Applicants are blowing hot and cold.

13. The photos filed by the applicant reveals two interesting facts, the subject lands in question is having the compound wall in all sides almost with gate. When the lands are agricultural lands no compound wall will constructed or seen in most of the parts of the Villages. It is also interesting to note from

some of the photos (filed at page no.40 to 42 of SA by the petitioners) that in the back ground of these lands, there are several buildings/houses are seen. Further, at some of the photos at page No.40, there are some Iron / Aluminium sheets as part of compound wall or behind the brick compound with a Gate (right side). Even it can be seen another Iron Gate partly left side at page No.40 of the first photo. So, under any stretch of imagination these lands can be categorized as being used for the cultivation purpose and activity.

14. Irrespect of this above, it is most important to note that the loans are sanctioned for the expansion of the activities of the Company/Mill activities with in the aforesaid Collateral Security lands as well as the lands purchased in the name of the company for steel manufacturing purpose only. (Para No.12, Page No.4 of Reply given by the Authorised Officer on 08.10.2014). This is not disputed. From this it is crystal clear that having availed the loans, they have to expand the Mill activities in these lands and these lands cannot be used for any other purpose. This is implied contract between the Petitioner and Respondent bank as per the terms of sanction."

14. Assailing the orders made in I.A.No.1810 of 2014 in S.A.No.340 of 2014, dated 05.12.2014 and I.A.Nos.1887 of 2015 in S.A.No.340 of 2014, dated 31.03.2015, on the file of the Debts Recovery Tribunal, Madurai, the petitioners have filed the instant Civil Revision Petitions, on the grounds, in particular, as stated in C.R.P.(PD)No.1279 of 2015, filed against I.A.Nos.1887 of 2015 in S.A.No.340 of 2014,

"(i) It is submitted that the order dated 31.03.2015 in I.A.No. 1887 of 2014 in S.A.No. 340 of 2014 on the file of DRT, Madurai is against law, facts and equity and in gross violation of the SARFAESI Act, in so far as the Tribunal hastily and contrary to the facts jumped to the conclusion that the subject properties are no agricultural properties to enable the respondent to get over the exemption under the SARFAESI Act.

(ii) It is submitted that the impugned order dated 05.12.2014 is passed in clear misconception of facts and law and the same is liable to be set aside as being against the decision of the Hon'ble Supreme Court of India and several high courts in the matter of finding as to the nature of property sought to be proceeded under SARFAESI.

(iii) It is submitted that DRT, Madurai miserably failed to note and consider the documents produced by the petitioners in support to establish the schedule properties are agricultural properties. It has confused that the town survey land register and the adangal extract has been issued by the same authority. Even though the adangals has been obtained after the demand notice they have been issued for the past fasli years. The DRT, Madurai ought to have seen that nearly because the adangal has been obtained after the issuance of the demand notice, that doesn't mean that the contents of the addangal is false that to in any absence of any contra evidence produced by the bank.

(iv) It is submitted that the DRT, Madurai accepted and admitted that the schedule properties are punja lands where only dry crops can be cultivated during rainy season. But the Tribunal held contra to the said position unmindful of the fact that punja land will not change the character of the land. The DRT, Madurai failed to accept the fact that even in punja lands and dry lands agricultural activities can be carried on.

(v) It is submitted that the DRT, Madurai has come to a conclusion that the lands belong to the company and the company is not carrying on agricultural activities. But the fact remains that the lands belongs to the 2nd petitioner, individual and he is carrying on agricultural activities for the past 34 years and he has been showing agricultural income in his income tax returns.

(vi) It is submitted that the DRT, Madurai has not properly considered the photos produced by the petitioners. The photos clearly show that there are several tall coconut trees and irrigation well inside the schedule properties. How could these coconut trees grown immediately. Therefore the DRT, Madurai ought to have accepted that the 2nd petitioner has been carrying on agricultural activities in the lands of the schedule properties.

(vii) It is submitted that the DRT, Madurai has passed the above order accepting the arguments of the respondent back without there being any documentary proof and has merely relied on strange statements and by disbelieving the valid documents which establish the nature of property.

(viii) It is submitted that the DRT, Madurai has wrongly come to the conclusion that since the subject lands are having compound wall in all sides almost with gate, no agricultural activities can be carried out in such place. It is submitted that no Act does specify that agricultural lands should not have compound walls with gate.

(ix) It is submitted that the DRT, Madurai while considering the photos produced by the petitioners have noted the buildings but failed to appreciate/not that there are several tall coconut trees.

(x) It is submitted that the DRT, Madurai has accepted the additional documents filed by the petitioners i.e., income tax returns showing agricultural income of the 2nd petitioner and the certificate issued by the TNEB showing that the 2nd petitioner as an agriculturist, but failed to appreciate and make note of the same.

(xi) It is submitted that the DRT, Madurai has wrongly come to the conclusion that appointing an Advocate Commissioner will not serve any purpose. On the other land, if the Advocate Commissioner is appointed he could note down the standing crops and the trees and the well and pump in the schedule properties which are now with the possession of the respondent bank.

(xii) It is submitted that the DRT, Maduari has passed this impugned order simply by following the orders passed earlier in the stay petition. The DRT, Madurai failed to decide this application independently. It is submitted that the DRT, Madurai has passed the above order accepting the arguments of the respondent bank without there being any documentary proof.

(xiii) In any event the finding of DRT, Madurai with regard to the nature and character of the property is not legally sustainable and the same is liable to the set aside. In absence of which the petitioners would be seriously prejudiced in canvassing their pleas in the SA at the time of disposal of the matter."

Heard the learned counsel appearing for the parties and perused the materials available on record.

15. Before adverting to the rival submissions, it is relevant

to consider the nature of the property, at the time of creation of security interest and the purpose, for which, loan was availed for the purpose of application of the provisions of the SARFAESI Act.

16. As per Tamil Nadu Patta Pass Book Act, 1983, the word, "agriculture" includes, (a) horticulture; (b) the raising of crops, grass or garden produce; (c)the use by a agriculturist of land held by him, or part thereof, for grazing; (d)the use of any land for the purpose of raising manure crops; (e)dairy farming; (f)poultry farming; (g)livestock breeding; (h)growing of trees; and agricultural shall be construed accordingly.

17. Under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, the word "agriculture" is defined as under:

"3(1) agriculture includes --
(a) horticulture;
(b) the raising of crops, grass or garden produce;
(c) the use by a agriculturist of land held by him, or part thereof, for grazing;
(d) the use of any land for the purpose of raising manure crops ;
(e) dairy farming;
(f) poultry farming;
(g) livestock breeding;
(h) growing of trees;
and agricultural shall be construed accordingly."

18. Under the Tamil Nadu Town & Country Planning Act, 1971, the agricultural zone is defined, whereunder the lands used for all agricultural purposes, farm houses and buildings for agricultural activities, dairy and cattle farms, piggeries and poultry farms, water tanks and reservoirs, forestry, storing and drying of fertilizers and installation of electric machinery of not exceeding 15 horsepower may be allowed for the uses mentioned above, are the agricultural zone.

19. Material on record shows that the petitioners themselves have admitted that the loan sanctioned was for the purpose of establishment of a new industrial unit for manufacturing Steel Re Rolling Rods. As rightly observed by DRT, Madurai that loans are sanctioned for the expansion of the activities of the Company/Mill activities, by offering collateral security lands, purchased in the name of the company for steel manufacturing purpose. Having availed the loans for expansion of the mill activities in the subject property, it cannot be contended that certain mortgaged properties are agricultural properties and hence, they are exempted under Section 31(i) of the SARFAESI Act.

20. Upon perusal of the photographs submitted by the petitioners, DRT, Madurai has also observed that when the lands

are agricultural lands, there is no necessity for any compound wall with some Iron/Aluminium sheets. The Tribunal further observed that in the back ground of the lands, there are several buildings/houses.

21. In **Commissioner of Wealth Tax, Andhra Pradesh versus Officer-in-charge (Court of Wards), Paigah** reported in **AIR 1977 SC 113**, the Honble Supreme Court has considered whether the land in question was agricultural lands within the meaning of Section 2(e)(i) of the Wealth Tax Act. While dealing with said issue, the Hon'ble Supreme Court has indicated the relevant test to determine the issue as to whether a particular property is agricultural. It was observed that the determination of the character of land according to the purpose for which is meant or set apart and can be used is a matter which ought to be determined on the facts of each particular case. The Hon'ble Supreme Court has opined that, what is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land by some possible future owner or possessor, for an agricultural purpose. If there is nothing in the condition, nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with an agricultural purpose, the land could not be agricultural land for the purpose of earning an exemption under the Act.

22. In **Sarifa Bibi Mohmed Ibrahim and others v. Commissioner of Income Tax, Gujarat** reported in **1993 Supp (4) SCC 707**, the Honble Supreme Court has evolved as many as 13 factors/indicators in order to hold a land as an agricultural land, which are extracted as under:

> "(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?
>
> (2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?
>
> (3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?
>
> (4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?
>
> (5) Whether the permission under section 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom

(the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature?

(7) Whether the land, though entered in the revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?

(8) Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?

(9) Whether the land itself was developed by plotting and providing roads and other facilities?

(10) Whether there were any previous sales of portions of the land for non-agricultural use?

(11) Whether permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user?

(12) Whether the land was sold on yardage or on acreage basis?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"

23. Though the petitioners have filed number of documents, such as, adangal extract, valuation report, photographs and certificate issued by Tahsildar to establish that the secured asset is an agricultural land and therefore claimed that no security interest can be created therein and that the same has to

be excluded under the provisions of the SARFAESI Act, we are not in agreement with the claim of the petitioners, inasmuch as the above said documents themselves cannot be held to be conclusive proof that the secured property as an agricultural land and the claim of the petitioners will have to be established, that too, when the respondent-bank has been consistently disputing the nature of the land.

24. In **Eshwar Purushothaman Gardens v. AO, Indian Bank Zonal Office** reported in **2012 (5) MLJ 571**, the petitioner-firm therein, engaged in agricultural operations, made an application to Indian Bank, Coimbatore, requesting grant of term loan for agricultural operations. The petitioner therein offered their agricultural properties, as collateral securities. The bank sanctioned the loan, categorising it, as, "agricultural loan". After obtaining the loan amount, the petitioner engaged in various kinds of agricultural operations. The petitioner therein could not pay the loan amount, within the stipulated time. Application was given for one-time settlement. The proposal was not considered. Subsequently, the Bank issued notice, under Section 13(2) of the Act. The petitioner therein, submitted their reply, stating that the secured property is an agricultural land and as such, SARFAESI Act, 2002, has no application. The Bank overrulled the objection and issued possession notice, under Section 13(4) of the Act, which was challenged, on the grounds, inter alia that the loan in question was sanctioned for agricultural purpose and that security was created on agricultural land, and therefore, Bank is not entitled to invoke the provisions of the SARFAESI Act, 2002. Though the Bank has raised a plea of alternative remedy, after considering the statutory provisions of the SARFAESI Act, 2002 and case laws, a Hon'ble Division Bench of this Court quashed the notice, under Section 13(4) of the Act.

25. Though learned counsel appearing for the petitioners placed heavy reliance on the decision reported in **(2012) 5 MLJ 571 (Eshwar Purushothaman Gardens V. Authorised Officer, Indian Bank zonal Office, Coimbatore)**, the said judgment would not lead any support for the reason that in the above reported case, loan sanctioned was for agricultural purpose and therefore, petitioner therein offered their agricultural properties, as collateral securities. But in the present case, the loan sanctioned is for the expansion of the activities of the Company/Mill activities.

26. The other judgment in **J.Malliga v. The Authorised Officer, Union Bank of India** reported in **2010 (4) CTC 710**, relied on by the learned counsel for the petitioner, does not clearly indicate, as to whether, the loan sanctioned was for agricultural purpose. In the present case, loan sanctioned was for expansion of the activities of the Company/Mill activities, ie., the lands purchased in the name of the company for steel manufacturing

purpose and therefore, as rightly observed by the Tribunal, it is crystal clear that having availed the loans, the petitioners have to expand the Mill activities in these lands and that the same cannot be used for any other purpose.

27. Hence, we are of the view that the findings rendered by the DRT, Madurai, in both the applications in I.A.No.1887 of 2014 in S.A.No.340 of 2014, dated 31.03.2015 and I.A.Nos.1810 of 2015 in S.A.No.340 of 2014, dated 05.12.2014, cannot be interfered with. Both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

The Debts Recovery Tribunal,
Madurai.

+1cc to M/s.Special Government Pleader,SR.17385
+1cc to Mr.T.Govindasamy,Advocate,SR.17826
+1cc to M/s.VastLaw Associates,Advocate,SR.17827

skm
KK/SV MMS/SAR4-21.08.2017-15P-5C

C.R.P.(MD)Nos.1278 and 1279 of 2015
22.03.2017