



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE MRS.JUSTICE **N.SESHASAYEE**

W.P.[MD].No.5464 of 2017

and

W.M.P (MD) .No.4380 2017

M/s.Agni Knowledge Foundation,
duly rep by its Chairman and Managing Trustee,
Dr.P.Kanniappan, NH-45, Trichy Road,
Morepatti, Vadamadurai,
Dindigul 624 802. : Petitioner

Vs.

The Authorised Officer,
Central Bank of India,
Dindigul Branch, No.22, Pensioner's Street,
Dindigul 624 001. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records and quash the impugned demand notice dated 01.12.2016, issued by the respondent bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets of Enforcement of Security Interest Act, 2002, as illegal, without jurisdiction and against the provisions of Section 31(i) of the SARFAESI Act and Trust Act.

For Petitioner : Mr.P.C.Harikumar and Associate

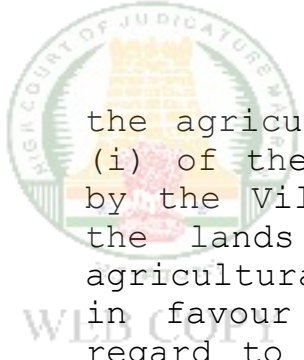
O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.P.C.Harikumar, learned counsel for the petitioner.

2. The petitioner is a trust, represented by its Managing Trustee. Aggrieved by the action of the respondent bank in issuing notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets of Enforcement of Security Interest Act, 2002, [for brevity, the "SARFAESI Act"], the petitioner has come up with this Writ Petition.

3. The learned counsel for the petitioner would contend that the security interest created in respect of the immovable property, measuring to an extent of 8 acres and 92 cents in Morepatti Village and Panchayat, Dindigul District, part of which is owned by the Trust, which has established an Architectural College to an extent of 3.55 acres of land and the remaining extent of 4.45 acres of land is owned by three trustees. It is submitted that no security interest can be created in respect of



the agricultural lands and there is a clear bar under Section 31 (i) of the SARFAESI Act. By referring to the certificates issued by the Village Administrative Officer, it is submitted that all the lands totally measuring to an extent of 5.36 acres are agricultural lands and there is no valid security interest created in favour of the respondent bank over those properties. With regard to the remaining extent of 3.55 acres of lands, which is owned by the Trust, the security interest has been created by the trustees, without obtaining permission from the Competent Civil Court. Therefore, it is stated that such document itself is non est in the eye of law.

4. In our considered view, the present attempt made by the petitioner is to protract the proceedings initiated under the SARFAESI Act. Admittedly, the notice issued by the respondent bank under Section 13(2) of the SARFAESI Act is a show cause notice and therefore, it is for the petitioner to submit their objections. On facts, we find that the petitioner trust as well as the trustees have given their reply on 24.01.2017 and 30.01.2017, respectively, to the impugned notice dated 01.12.2016.

5. The learned counsel for the petitioner would submit that as of today, the respondent bank has not issued any notice under Section 13(4) of the SARFAESI Act. In our considered view, the issue as to whether the land is an agricultural land or not is a question of fact. Furthermore, the certificate issued by the Village Administrative Officer is not a conclusive proof to show that the land continues to be an agricultural land. In any event, these issues have to be agitated by the petitioner before the appropriate forum as and when time comes for initiating such an action. Thus, at this juncture, we are not inclined to entertain the Writ Petition. Accordingly, while rejecting the relief sought for by the petitioner, we leave it open to the petitioner to canvass all those points raised by the petitioner in the reply to the impugned notice before the respondent bank. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

+1cc to M/S.P.C.Harikumar and Associate, Advocate SR.No.18694

ORDER MADE IN
W.P. [MD] .No.5464 of 2017
28.03.2017