

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT PETITION NO.21127 OF 2017

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The petitioners were hitherto the owner of the agricultural land in Survey Nos.75/1, 75/4 and 75/5. The said land was alienated in favour of M/s. Sowbhagya Projects Private Ltd, represented by its Chairman Sri Ch.Satyanarayana Reddy, by registered sale deeds dated 21.06.2012. M/s. Sowbhagya Projects Pvt. Ltd, in turn, mortgaged the said land to the respondent-Bank.

It is the case of the petitioners that the first petitioner's son was kidnapped; under threat and coercion, registered sale deeds were executed in favour of M/s.Sowbhagya Projects Pvt Ltd on 21.06.2012; the nature of the subject land is agricultural land; it is exempt under Section 31(i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity); and the petitioners have filed three suits for cancellation of the sale deeds dated 21.06.2012 i.e. in O.S.Nos.612, 122 and 173 of 2016 before the District Judge, Rajahmahendravaram.

While Sri P.R.K.Amarendra Kumar, learned counsel for the petitioners, would contend that the fact that the subject land is agricultural land is not in dispute and, as such,

cannot be the subject matter of SARFAESI proceedings, Sri P.Sri Harsha Reddy, learned counsel for the respondent-Bank, would contend that the complaint, against proceedings being initiated under the SARFAESI Act, is made not by the mortgagor i.e., M/s. Sowbhagya Projects Private Ltd. but by the petitioners who ceased to be the owners of the subject land on a registered sale deed being executed in favour of M/s. Sowbhagya Projects Private Ltd. on 21.06.2012.

While it is no doubt true that agricultural lands are exempt from the purview of the SARFAESI Act under Section 31(i) thereof, it is only if such a complaint is urged either by the mortgagor, or the guarantor of the loan sanctioned by the respondent-Bank to a borrower, can it be examined in proceedings under Article 226 of the Constitution of India. In the present case, the petitioner is neither the mortgagor, nor the guarantor of the loan taken by M/s.Sowbhagya Projects Private Ltd. from the respondent-Bank. It is the petitioners' case that they continue to be owners of the subject land, as the sale deeds, executed in favour of M/s.Sowbhagya Projects Pvt. Ltd (who mortgaged the subject lands in favour of the respondent-Bank), are liable to be cancelled on grounds of coercion and fraud. The fact that the Suits, in OS.Nos.62, 122 and 173 of 2016, are still pending before the District Judge, Rajamahendravaram, for cancellation of all the three sale deeds dated 21.06.2012, would mean that till the Suits are decreed, and the sale deeds are cancelled,

M/s.Sowbhagya Projects Private Ltd., would continue to remain the owner of the subject lands. Any grievance which the petitioners may have against M/s.Sowbhagya Projects Private Ltd. can only be agitated in the suits filed by them, and not in judicial review proceedings under Article 226 of the Constitution of India. As the complaint, that the subject lands are agricultural lands and are outside the purview of the SARFAESI Act, is made by a person who is not the owner of the subject land, we see no reason to entertain this Writ Petition at his behest.

Leaving it open to the petitioners to agitate their grievance, in the Suits filed by them, the Writ petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

28th August 2017
RRB