HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.30728 OF 2016

ORDER: (*Per Hon'ble Dr. Justice Shameem Akther*)

This writ petition, under Article 226 of the Constitution of India, is filed seeking a writ of *mandamus* declaring the action of respondents in bringing the agricultural lands covered in memorandum of deposit of title deed dated 24.03.2011 registered as document No.1389/2011 before the Sub-Registrar, Jadcherla through e-auction notice dated 20.08.2016 by way of sale dated 23.09.2016 or any other date by tender/auction/tender-cum-e-auction by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), as amended in violation of the law and procedure including Section 31(i) of the SARFAESI Act against the Rulings of Courts; and a consequential direction to set aside all the SARFAESI proceedings in connection with the agricultural properties covered in the said memorandum of deposit of title deed.

2. Petitioner No.1 is a company under the name and style of M/s. Sheetal Breeding Farm Private Limited and petitioner Nos.2 and 3 are its Managing Director and Director respectively. The nature of business of petitioner No.1-company is agricultural business, i.e., poultry farm. In connection with agricultural business, petitioner Nos.2 and 3, who are husband and wife, approached the respondent-bank and requested to sanction agricultural term loan and cash credit loan. After due procedure, respondent-bank sanctioned agricultural term loan for Rs.3,40,00,000/- and

open cash credit of Rs.1,10,00,000/- totally Rs.4,50,00,000/- and obtained a memorandum of deposit of title deed dated 24.03.2011 registered before the Sub-Registrar Office, Jadcherla, vide Doc.No.1389/2011 dated 24.03.2011 and also obtained one immovable property worth of more than Rs.5 crores. Before obtaining loan, petitioner No.2 approached Venco Research and Breeding Farm Limited to supply poultry and poultry needs and, in turn, they issued a letter dated 27.08.2007 and basing on the same, the respondent-bank sanctioned the loan. Thereafter, due to climatic conditions, the poultry business of petitioner No.1-company slow down and they committed default in payment of loan amounts and the banker made the petitioners' account as 'Non-performing Asset'. On 26.12.2014, the petitioners approached the respondent-bank requesting to release one of mortgaged immovable property i.e., building bearing Plot No.92, for disposal and to pay an amount of Rs.3.85 crores and the respondent-bank gave permission for disposal of the said property subject to remitting the same in the petitioners account. The petitioners sold away the said property and remitted the sale proceeds nearly Rs.4 crores to the respondent-bank and the entire cash credit loan was paid and some of the loan under agricultural term loan is only due. Though the petitioners are paying the loan instalments, the respondent-bank instead of following the procedure as contemplated under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the RDB Act') for recovery of the loan amount due, by filing O.A. before the proper Tribunal, they utilized SARFAESI proceedings and pressurizing the petitioners. The petitioners stated that the Revenue Divisional Officer and Tahasildar issued certificates mentioning the properties referred under deposit of memorandum of title deeds sought for auction presently are agricultural lands and Section 31(i) of the SARFAESI Act is barred for taking proceedings in connection with the property of agricultural lands. The respondent-bank acted highhandedly exceeding their jurisdiction by issuing e-auction notice dated 20.08.2016 by conducting the auction of agricultural lands on 23.09.2016 and thus, they violated the principles of natural justice. Therefore, the petitioners approached this Court by filing the present writ petition.

3. This Court on 12.09.2016, while issuing notice to the respondents, granted stay of all further action including auction of the agricultural lands notified under the impugned e-auction notice dated 20.08.2016.

4. The respondents filed counter along with vacate stay petition, i.e., W.V.M.P. No.4335 of 2016, contending that the petitioners have been availing various credit facilities from the respondent-bank since 2008 and constructed six layer sheds, grower sheds, brooding sheds, feed godown, AC plant, labour quarters, manager quarters, watchman shed, supervisor quarters, guard shed, etc., and the photos taken at the time of inauguration of the poultry unit and also at the time of issuing possession notice also shows that the property is not an agricultural land. The petitioners committed default in repayment of the credit facilities granted under various heads and the respondent-bank issued a demand notice dated 01.12.2015 demanding a sum of Rs.3,07,28,292-85 ps as on 30.11.2015 together with interest, as such, the respondent-bank proceeded further under the SARFAESI Act and issued possession notice dated 04.02.2016, which was duly affixed on the outer door of the property, sent by registered post to the petitioners and published in two daily news papers as contemplated under Section 13(4) read with Rule 8(1) of the SARFAESI Act. It is further contended that in the

registered memorandum of deposit of title deed in document No.1389/2011 dated 24.03.2011, it is specifically mentioned in the description of property under the head 'Present development' that poultry shed and other related infrastructure belonging to M/s. Sheethal Breeding Farms Pvt Limited which have been constructed with finance from Andhra Bank, Kothapet Branch, Hyderabad on the above lands. So, it is clear that the property offered as security is not 'agricultural land' and it is poultry shed and the same is not exempted under Section 31(i) of the SARFAESI Act and relied on the decisions of this Court in **Gajula Exim v. Andhra Bank**[1] and **D.Ravichandran v. Indian Overseas Bank**[2] and another decision of the Hon'ble Supreme Court in **CIT v. Raj Benay Kumar Saha Roy**[3]. The respondent-bank filed proceedings under Section 14 of the SARFAESI Act before the District Magistrate, Mahaboobnagar District, and the District Magistrate on 15.06.2016, passed orders for taking physical possession of the property and accordingly, the Tahasildar, Jadcherla has been appointed and he took physical possession on 22.06.2016 and delivered the same to the respondent-bank and the petitioners have not challenged the possession notice issued by the respondent-bank or the proceedings issued by the District Magistrate, Mahaboobnagar under Section 14 of the SARFAESI Act. Therefore, the respondent-bank prays to dismiss the writ petition.

5. Heard Sri R. Siva Sai Swarup, learned counsel for the petitioners, and Smt. V.Dyumani, learned counsel for the respondents.

6. Learned counsel for the petitioners would submit that the petitioners are paying the loan instalments regularly; the respondent-bank,

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[1] AIR 2008 AP 184
[2] 2006(2) MLJ 134
[3] (1952) 32 ITR 466 (SC)

instead of following the procedure as contemplated under the RDB Act for recovery of loan amount due, utilized the SARFAESI proceedings and pressurizing the petitioners to pay the loan; the Revenue Divisional Officer and Tahasildar issued certificates mentioning the subject property is agricultural land and under Section 31(i) of the SARFAESI Act, no agricultural land can be put to auction; and the respondent-bank acted highhandedly exceeding its jurisdiction by issuing an e-auction notice dated 20.08.2016 and conducted sale on 23.09.2016, violated the principles of natural justice.

7. On the other hand, the learned counsel for the respondent-bank would submit that the loan was obtained for poultry business and to construct six layer sheds, grower sheds, brooding sheds, feed godown, AC plant, labour quarters, manager quarters, watchman shed, supervisor quarters, guard shed, etc., accordingly, they were constructed and poultry business has been carried out by the petitioners; the subject land is not an agricultural land; the petitioners committed default in repayment of loan amount and ultimately, the respondent-bank proceeded under the SARFAESI Act and issued possession notice dated 04.02.2016 and a notice in two daily newspapers was published under Section 13(4) read with Rule 8(1) of the SARFAESI Act to sell the mortgaged property; in the registered memorandum of deposit of title deed No.1389/2011 dated 24.03.2011, there is specific mention of description of subject property under the head 'Present development' Poultry shed and other related infrastructure belonging to petitioner No.1-poultry farm; and so, the subject land is not agricultural an land and it is a poultry shed and the same is not exempted under Section 31(i) of the SARFAESI Act. He would further submit that the respondent-bank filed proceedings under Section 14 of the SARFAESI Act, the District Magistrate passed orders on

15.06.2016 for taking physical possession of the property and accordingly, the Tahasildar, Jadcherla has been appointed and he took physical possession on 22.06.2016 and delivered the same to the respondent-bank; the petitioners have not challenged the same; and ultimately, prayed to dismiss the writ petition.

8. In view of contentions putforth by both sides, the point for determination is, whether the e-auction notice dated 20.08.2016 and the sale dated 23.09.2016 including the proceedings under the SARFAESI Act in connection with the subject property covered by memorandum of deposit of title deed dated 24.03.2011 registered as document No.1389/2011 in the office of the Sub-Registrar, Jadcherla, are liable to be set aside?

9. Admittedly, the petitioners have obtained a term loan of Rs.3,40,00,000/- and open cash credit of Rs.1,10,00,000/-, totally Rs.4,50,00,000/- from the respondent-bank by deposit of title deed dated 24.03.2011 registered the same before the Sub-Registrar, Jadcherla, vide document No.1389/2011 dated 24.03.2011. It is also an admitted fact that the petitioners have committed default in payment of loan amount. It is also admitted that the petitioners have constructed six layer sheds, grower sheds, brooding sheds, feed godown, AC plant, labour quarters, manager quarter, watchman shed, supervisor quarters, guard shed, etc., and conducting poultry business in the subject land. As per records, the petitioners committed default in various heads and were declared as NPA, the respondent-bank issued demand notice dated 01.12.2015 demanding to pay a sum of Rs.3,07,28,292-85 ps as on 30.11.2015 together with interest and, in default of payment of the said amount, the respondent-bank proceeded under the provisions of the SARFAESI Act and issued provisional notice dated

04.02.2016, the same was published in two daily newspapers, as required under Section 13(4) read with Rule 8(1) of the SARFAESI Act. There is specific mention in document No.1389/2011 dated 24.03.2011 registered in the office of Sub-Registrar of Jadcherla that poultry sheds and other related infrastructure belonging to M/s. Sheetal Breeding Farm Private Limited, have been constructed with finance from Andhra Bank, Kothapet Branch on above lands. It is also not in dispute that the poultry sheds, etc., were constructed and the poultry business has been carried on by the petitioners over subject land. The specific contention of the petitioners is that the subject land, wherein poultry sheds are constructed, is agricultural land and it cannot be attached and sold as per the provisions of Section 31(i) of the SARFAESI Act. This Court in **Gajula Exim's** case (supra 1) and **D.Ravichandran's** case (supra 2), observed that though the poultry sheds and other buildings were constructed in the agricultural land, bank is entitled to sell the same under the SARFAESI Act. The Hon'ble Supreme Court in **Raj Benay Kumar Saha Roy's** case (supra 3), held that the agriculture in its primary sense denotes cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the said land.

10. It is appropriate to extract the provisions of Section 31(i) of the SARFAESI Act, which reads as hereunder:

> "31. **Provisions of this Act not to apply in certain cases**.– The provisions of this Act shall not apply to–
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> (i) any security interest created in agricultural land;"

In the decisions of this Court in **Gajula Exim's** case (supra 1) and **D.Ravichandran's** case (supra 2), the poultry sheds and other buildings constructed in the agricultural land can be subject to the proceedings of the SARFAESI Act. Admittedly, no agricultural activity is being carried over the subject land. In view of construction of poultry shed and other related structures over the subject land, it lost the character of agricultural land. Further it is appropriate to state that the learned counsel for the respondent-bank has brought to our notice, the provisions of Section 7 and the amendment made to Section 7 of the A.P. Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006. Section 7 of the said Act before amendment reads as follows:

> "7. Act not to apply to certain lands: -
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> Nothing in this Act shall apply to–
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> (a) Lands owned by the State Government;
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> (b) Lands owned by a local authority and used for any communal purposes so long as the land is not used for commercial purposes;
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> (c) Lands used for religious or charitable purposes;
>
> (d) Lands used by owner for household industries involving traditional occupation, not exceeding one acre;
>
> (e) Lands used for such other purposes as may be notified by the Government from time to time;

The amendment made to Section 7 of the said Act is, addition of item (f) after the item (e), namely, -

> "(f) Lands used for Aquaculture, Dairy and Poultry."

The said amendment has come into effect from 02.01.2006. In view of the same, the subject land, which is being used for poultry, is not an agricultural land and it is not covered by Section 31(i) of the SARFAESI Act. No illegality has been committed by the respondent-bank in invoking the provisions of the SARFAESI Act.

11. In the circumstances stated supra, all the contentions raised on behalf of the petitioner do fail. It is not appropriate to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is devoid of merits and it is liable to be dismissed.

12. In the result, the Writ Petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date: 20-04-2017
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