IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.08.2018

Pronounced on : 04.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.10483 of 2018
and
W.M.P.No.12435 of 2018

State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, First Floor,No.1112,
Avinashi Road , Coimbatore - 641 037.
Represented by its Asst. General Manager .... Petitioner

vs.

1. The District Collector,
(District Magistrate),
Tirupur District, Tirupur.

2. M/s.Balu Spinning Mills Pvt.Ltd.,
Rep. by its Managing Director,
Registered Office at S.F.No.239/3,
239/2, Karaipudur, Kunnangalpalayam,
Veerapandi (Post), Tiruppur - 641 605.

3. Tmt.B.Rajalakshmi

4. Mr.B.Arun Eashwar

5. Ms.B.Roopa

6. Ms. Roopalakshmi Cotton Spinning Mills Pvt Ltd.,
239/2, Karaipudur, Kunnangalpalayam,
Veerapandi (Post), Tiruppur 631 605.
(Respondents 2 to 6 were impleaded by an
order dated 06.06.2018 in W.MP.No.16860/2018) ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the impugned proceedings in K.Dis.3330/2017/C3 dated 13.03.2018 on the file of the respondent and to quash the said impugned order, being in derogation of the statutory provisions and decisions of the

Hon'ble Supreme Court of India and consequenty direct the respondent to pass appropriate order in the petitioner's application dated 18.02.2017 under Section 14 of SARFAESI Act, rendering necessary assistance to the petitioner to take vacant physical possession of all secured assets as set out therein.

For Petitioner : Mr.Omprakash, Senior Counsel,
for Mr.P.Elaya Raj kumar
for M/s.Ramalingam and Associates.

For Respondents : Mr.V.Prabhu, Government Advocate,
for Mr.M.Sricharan Rangarajan,
Addl.Government Pleader for R1
: Mr.T.Saikrishnan for R2 to R6.

O R D E R

Instant writ petition filed by the State Bank of India is directed against the order dated 13.03.2018 passed by the District Magistrate and District Collector, Tirupur District in K.Dis.3330/2017/C3 dated 13.03.2018. The District Magistrate by the order impugned herein has refused to take physical possession of two properties in proceedings initiated by the petitioner under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, herein after called as SARFAESI Act, on the ground that property in S.F.No. 886/1 & 882/2 of Chinnaputhur Village is an agriculture land and is therefore outside the ambit of SARFAESI Act and property in S.F.No.119/5 and 120 (PattaNo.2110 & 2111) of Karaiputhur Village, Palladam Taluk belongs to 19 people including the guarantor and is not sub-divided and the boundaries cannot be identified.

2. M/s.Balu Spinning Mills Pvt. Ltd., herein after called as the Borrower availed credit facility to the tune of Rs.113.58 crores from the petitioner, State Bank of India. The respondents 2 to 6 stood as guarantors for repayment of the loan. Borrower committed default in repayment of dues and the petitioner classified the account of borrower as a Non Performing Asset.

3. Demand notice under Section 13(2) of the SARFAESI Act was issued calling upon the borrower and the guarantors to pay the outstanding sum of Rs.188,33,03,827.27 On the failure to clear the dues within the stipulated period of 60 days, the authorized Officer of the petitioner bank issued a notice under Section 13 (4) of the SARFAESI Act and took symbolic possession of the assets mortgaged to the bank to secure the loan. The Bank filed an application on 18.02.2017 under Section 14 of the SARFAESI Act, before the District Collector, Tirupur collectorate for taking physical possession of the mortgaged properties. The

District Collector cum District Magistrate did not provide assistance to take possession of the properties. The Bank filed a writ petition before this Court in W.P.No.33194/2017. This Court by an order dated 19.12.2017 directed the District Magistrate cum District Collector, Tirupur to dispose of the application dated 18.02.2017 within four weeks from the date of receipt of the copy of the order.

4. In compliance of the order passed by this Court the District Collector passed the impugned order on 13.03.2018. The order being a very short one is reproduced as under:-

> " The Authorised Officer/Chief Manager of the State Bank of India, Stressed Assets Management Branch (SAMB), Coimbatore has submitted a petition u/s 14(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 praying for suitable orders/directions to take possession of the schedule mentioned secured assets belonging to M/s.Balu Spinning Mills Pvt.Ltd., represented by Tmt.B.Rajalakshmi and three others to hand over the same to the petitioner bank, as per the provisions of the Section 14 1(a) of the said Act, 2002 in order to realize the defaulted loan Rs.86,70,19,716/- as on 31.01.2017 from the borrowers.
>
> On perusal of the Memorandum of Deposit of Title deeds in respect of immovable properties vide under Doc.No.7728/2010 dated 15.07.2010, Doc.No.7729/2010 dated 14.07.2010, Doc.No.2718/2012 dated 20.06.2012, and reports received from the Tahsildars concerned.
>
> In the reference 2nd cited letter the Tahsildar, Palladam has inspected the field and reported that in S.F.No.119/5 and 120 (Patta No.2110 & 2111) of Karaiputhur Village is jointly holding Tmt.Rajalakshmi and 19 members and it was not a subdivided properties.
>
> In the reference 3rd cited, the Tahsildar, Dharapuram has inspected the field and reported that in S.F.No.886/1 and 882/2 of Chinnaputhur Village has agriculture lands. And it was informed to the Authorised officer for filling of revised application in the reference 4th cited. But the Authorised officer not yet to file the fresh application.
>
> Hence, I ordered that the physical possession of the margaged properties cannot be taken and handed over to the bank for below mentioned defects.
>
> 1. As per the Sec 31(i) of SARFAESI Act 2002 security interest in agricultural land cannot be enforced in as much as same is exempted.
>
> 2. In S.F.No.119/15 and 120 (Patta No.2110 & 2111) of Karaiputhur Village, Palladam Taluk is an undivided properties and it is jointly holding Tmt.Rajalakshmi and 19 others. Hence the boundaries can't be

identified.

If the above defects are rectified and resubmitted by the authorised officer to this office it may be considered under Section 14(1) of SARFAESI Act 2002."

5. Challenging this order the bank has filed the instant writ petition. The bank did not implead the borrower and the guarantors in the writ petition. This Court by order dated 19.12.2017 directed the bank to implead the borrower and guarantors. The borrower and guarantors have been impleaded.

6. A perusal of the order of the District Collector shows that the District Collector declined to provide assistance to take possession of the two properties on the ground that property in S.F.No. 886/1 and 882/2 of Chinnaputhur Village is an agriculture land, therefore outside the ambit of the SARFAESI Act and property in S.F.No.119/5 and 120 (PattaNo.2110 & 2111) of Karaiputhur Village, Palladam Taluk is jointly held by Tmt.B.Rajalakshmi, (one of the gaurantors) and 19 members and it had not been sub-divided.

7.Heard the learned counsel for the parties.

8.The learned counsel appearing for the petitioner bank contends that the District Collector cannot adjudicate on the nature of property (as to whether it is agriculture land or not). He has to verify as to whether the contents of the affidavit filed by the authorized officer of the secured creditor along with application under Section 14 of the SARFAESI Act are correct or not. The objection as to whether these properties can be attached and sold or whether they are outside the purview of the SARFAESI Act has to be adjudicated only by the Debuty Recovery Tribunal in an application under Section 17 of the SARFAESI Act.It was also contended that the boundaries of the property mortgaged have been given in the sale deed and posession of the demarcated property has to be taken.

9. On the other hand, the learned counsel for the District Collector and the learned counsel for the borrower would contend that the proceedings under Section 14 of the SARFAESI Act are adjudicatory in nature and the Collecter has to prima facie satisfy himself as to whether the property is available for taking possession under the provisions of the SARFAESI Act.

10. The short question that arise for consideration is as to whether the District Magistrate while dealing with an application under Section 14 of the SARFAESI Act can go in to the question of title or the nature of properties or whether his satisfaction is limited only to verify the contents in the application filed under Section 14 of the SARFAESI Act by the secured creditor.

11. Section 14 of the SARFAESI Act, has been enacted for the purpose of taking possession or control of secured assets, at the request made in writing by the secured creditor to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset is situated.

12.Section 14 of the SARFAESI Act reads as under:-

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor, declaring that –

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period sixty days notice as required by the provisions of sub-section (2) of Section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice required from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii)the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorized Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of Section 13 read with S

(ix)Section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with;

Provided further that on receipt of the affidavit from the Authorized Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit passed suitable orders for the purpose of taking possession of the secured assets [within a period of 30 days from the date of application]:

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him, -

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorized by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this Section shall be called in question in any court or before any authority.”

13. In 2013, the Section was amended and proviso was inserted. The proviso stipulated that a secured creditor who is seeking intervention of the Magistrate under Section 14 of the SARFAESI Act is required to file an affidavit furnishing the information comtemplated under various sub-clauses (i) to (ix). The information that is required to be furnished in the affidavit filed by the secured creditor are that:

(i) There was a loan transaction under which a borrower is liable to repay the loan amount with interest,

(ii) there is a security interest created in a secured asset belongings to the borrower,

(iii) that the borrower committed default in the repayment,

(iv) that a notice contemplated under Section 13(2) of the SARFAESI Act was in fact issued,

(v) in spite of such a notice, the borrower did not make the repayment,

(vi) the objections of the borrower had in fact been considered and rejected,the reasons for such rejection had been communicated to the borrower, etc.

The second proviso mandates the CMM/DM before passing orders has to satisfy himself of the contents of the affidavit.

14. SARFAESI Act was brought into force for enforcement of security interest created in favour of a secured creditor without the intervention of courts. Section 14 of the SARFAESI Act is method for taking possession of the secured assets. Before the amendment Section 14 of the SARFAESI Act was only a ministrial function to be performed by the CMM/DM. The Proviso requires the authorised officer of a secured creditor to file an affidavit. That the affidavit must touch upon the 9 (nine) points indicated in clauses (i) to (ix) of the first proviso and the satisfaction of the CMM/DM in regard to the contents of such affidavit is condition precedent before passing a suitable order, as per provisos. This is clearly meant to prevent secured creditors wreaking havoc by applying under Section 14 of the SARFAESI Act for taking possession of a particular property identifying it as a secured asset. The second proviso mandates the need for examining the factual correctness of the assertions made in the affidavit by the CMM/DM.

15.The question is whether the CMM/DM discharges quasi judicial duty or is mandated to assist secured creditor in taking possession of secured asset Section 14 of the SARFAESI Act provides an avenue for the secured creditor, when faced with resistance by the borrower or anyone else, or when the borrower simply refuses to surrender possession, to seek administrative assistance of the CMM/DM to facilitate taking of possession of a secured asset and/or documents in relation thereto to ultimately enable the secured creditor to put up the secured asset for sale and to recover its dues.

16. The Section does not indicate that the CMM/DM exercises any judicial power. The legal niceties of the transaction between the secured creditor and the borrower are not to be examined by the CMM/DM. The purpose of Section 14 of the SARFAESI Act is to restrain secured creditors or their assignees from taking possession, by force. A borrower/occupant cannot be made to lose possession by extra-legal means. Sub-section (4) of Section 13 of the SARFAESI Act or any other sub- section thereof does not authorise a secured creditor to barge into the secured asset for taking its possession by force. It is thus plain and clear that a secured creditor is not authorised to exert force while taking possession and that is left only to the CMM/DM, as the case may be, in the exercise of his power under Section 14 of the SARFAESI Act and for this purpose the CMM/DM does not discharge any judicial function.

17. The Honourable Supreme Court in 2013 SCC 9 635, Standard Chartered Bank Vs Noble Kumar & others under Section 14 held as under:-

" 25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal neceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset."

(underline supplied)

18. When question arose as to whether the possesion of a property in which security interest has been created, can be taken by evicting the tenant in the property and whether the District Magistrate/District Collector has the authority to evict the tenant from the property. The Honourable Supreme Court in Harshad Govardhan Sondagar Vs International Assets Reconstruction Co Ltd and others, 2014 6 SCC had observed by Para 25 and 26 as under:-

> "25. The opening words of sub-section (1) of Section 14 of the Sarfaesi Act make it clear that where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor "under the provisions of the Act", the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof. Thus, only if possession of the secured asset is required to be taken under the provisions of the SARFAESI Act, the secured creditor can move the Chief

Metropolitan Magistrate or the District Magistrate for assistance to take possession of the secured asset. We have already held that Section 13 of the SARFAESI act does not provide that the lease in respect of a secured asset will get determined when the secured creditor decides to take the measures in the said Section. Hence, possession of the secured asset from a lessee in lawful possession under a valid lease is not required to be taken under the provisions of the SARFAESI Act and the Chief Metropolitan Magistrate or the District Magistrate, therefore, does not have any power under Section 14 of the SARFAESI act to take possession of the secured asset from such a lessee and hand over the same to the secured creditor. When, therefore, a secured creditor moves the Chief Metropolitan Magistrate or the District Magistrate for assistance to take possession of the secured asset, he must state in the affidavit accompanying the application that the secured asset is not in possession of a lessee under the valid lease made prior to creation of the mortgage by the borrower or made in accordance with Section 65-A of the Transfer of Property Act prior to receipt of a notice under sub-section (2) of Section 13 of the SARFAESI Act by the borrower. We would like to clarify that even in such cases where the secured creditor is unable to take possession of the secured asset after expiry of the period of 60 days of the notice to the borrower of the intention of the secured creditor to enforce the secured asset to realise the secured debt, the secured creditor will have the right to receive any money due or which may become due, including rent, from the lessee to the borrower. This will be clear from clause (d) of sub-section (4) of Section 13,which provides that in case the borrower fails to discharge his liability in full within the notice period, the secured creditor may require, at any time by notice in writing, any person who has acquired any of the assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

26. The opening words of sub-section (1) of Section 14 of the SARFAESI Act also provides that if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of the Act, the secured creditor may take the assistance of the Chief Metropolitan Magistrate or the District Magistrate. Where, therefore, such a request is made by the secured creditor and the Chief Metropolitan Magistrate or the District Magistrate finds that the secured asset is in possession of a lessee but the lease

under which the lessee claims to be in possession of the secured asset stands determined in accordance with Section 111 of the Transfer of Property Act,the Chief Metropolitan Magistrate or the District Magistrate may pass an order for delivery of possession of secured asset in favour of the secured creditor to enable the secured creditor to sell and transfer the same under the provisions of the SARFAESI Act. Sub-section (6) of Section 13 of the SARFAESI Act provides that any transfer of secured asset after taking possession of secured asset by the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset. In other words, the transferee of a secured asset will not acquire any right* in a secured asset under sub-section (6) of Section 13 of the SARFAESI Act, unless it has been effected after the secured creditor has taken over possession of the secured asset. Thus, for the purpose of transferring the secured asset and for realising the secured debt, the secured creditor will require the assistance of the Chief Metropolitan Magistrate or the District Magistrate for taking possession of a secured asset from the lessee where the lease stands determined by any of the modes mentioned in Section 111 of the Transfer of Property Act."

19. The Honourable Supreme Court did not hold that the Magistrate will adjudicate the issue as to whether a valid tenancy was created or not. What the Supreme Court held was that the tenant could not be forcibly evicted from the propery and his tenancy rights could not be distinguished by the secured creditor by taking recourse to Section 14 of the SARFAESI Act. It is pertinent to note that, after judgement of the Honourable Supreme Court of India, the parliament inserted Sub Section 4-A in Section 17 of the SARFAESI Act, whereby a tenant can approach the Debt Recovery Tribunal claiming that he cannot be evicted for the purpose of enforcement of security interest and the Tribunal has to examine as to whether the tenancy should expired or stood determined or contrary to Section 65-A of Transfer of Property Act, 1882 or contrary to terms of the mortgage or was created after the issuance of the default and demand by the bank under sub section (2) of Section 13 of the of the SARFAESI Act.

20. The Honourable Supreme Court in the case of Indian Bank Vs. Pappireddy and others dated 20.07.2018 in CA.No.6641/18 observed as under:-

"Para 8..... Whether a particular piece of land is agricultural in nature is a question of fact. In the decision of this Court in Blue Coast Hotels Limited (Supra), a security interest was created in respect of several parcels of land which were meant to be a part of a single unit, for establishing a hotel in Goa. Some of the parcels were purchased by the debtor from agriculturists and were entered as agricultural lands in the revenue records. The debtor had applied to the revenue authoritiy for the conversion of the land to non-agricultural use, but the applications were pending. This Court held that the fact that the debtor had created a security interest was indicative of the position that the parties did not treat the land as agricultural land. The undisputed position was that the hotel was located on 1,82,225 square metres of land of which 2,335 square metres were used for growing vegetables and fruits for captive consumption.

10....Both having regard to the two-judge Bench decision in Blue Coast Hotels Limited and as explained above, the question as to whether the land is agricultural has to be determined on the basis of the totally of facts and circumstances including the nature and character of the land, the use to which it was put and the purpose and intent of the parties on the date on which the security interest was created. In the absence of a specific finding, wer are of the view that it would be appropriate and proper to set aside the judgement of the High Court and to remit the proceedings for being considered afresh."

21. It is pertinent to mention here that the said decision of the Honourble Supreme Court arose from proceedings initiated before the Debt Recovery Tribunal. The Debt Recovery Tribunal rejected the objection of the debtor, in that case the land was put in for agricultural use. The DRAT reversed the findings and the Honourable High Court upheld the finding of the DRAT.

22. It is also settled that any person aggrieved by any of the measures referred to in sub section (4) of Section 13 of the SARFAESI Act taken by secured creditor or authorized officer under chapter 3 of the SARFAESI Act can make application to Debt Recovery Tribunal objecting to the enforcement of the security interest. In fact, the Honourable Supreme Court in Harshad Govardhan Sondagar Vs International Assets Reconstruction Co Ltd and others, 2014 6 SCC had observed by Para 32 as under:-

"32. When we read sub-section (1) of Section 17 of the SARFAESI Act, we find that under the said sub-section "any person (including borrower)", aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under the chapter, may apply to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken. We agree with Mr.Vikas Singh that the words "any person" are wide enough to include a lessee also"

23. In the case in hand, the proceeding arise from the order of the Collector. The Honourable Supreme Court in Indian Bank Vs. Pappireddy and others (supra) held that whether the land is agricultural or not has to be determined on the basis of the totality of facts and circumstances including the nature of the land, the use to which it was put and the purpose of the intention of the creditor. The question as to whether the Magistrate can adjudicate on the issue as to whether on the date when the secured interest was created, the parties intended to use the property as agricultural land or not, the answer to the question should be no, because the Magistrate is not acting as a Court. The Magistrate under Section 14 of the SARFAESI Act is only expected to have a primafacie view as to whether the contents in the affidavit are true or not. The Magistrate is not competent to decide as to what was the intention of the properties at the time when the secured interest was created. This can be adjudicated by DRT in an application under Section 17 of SARFAESI Act. The intention of Section 14 of the SARFAESI Act is only to protect the debtor from the use of forcible eviction by the secured. The Magistrate is expected to issue notice to the borrower regarding the application filed under Section 14 of the SARFAESI Act, so that the debtor is not caught unaware and can take steps to approach the DRT under the SARFAESI Act.

24. The order of the Collector would show that, he has relied on various entries made in the patta and adangal. A patta need not necessarily show as to whether the property is being put to agricultural land or not. Many times a change in land use is not reported and entries in patta are not altered. There is nothing to show as to what was the intention of respondents 2 to 6 when they mortgaged the property and whther they intented to use the property as agricultural land. Undoubtedly, factory premises is situated in a portion of the land that is mortgaged. This issue can be adjudicated only by initiating appropriate proceedings before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. The Collector therefore could not have relied only on the entries in patta to come to the conclusion that, the property is being used for agricultural purpose. It is further pertinent to note that, the sale deed reflects the property as "Punjai land". Punjai land can be defined as dry land put in agricultural use, just because the sale deed reflects the land as punjai that does not mean that it is automatically agricultural land which is only means that the source of irrigation would be the well or rain. The description in the sale deed or patta cannot be finally determinated as to what is being done on the land. The Disrict Collector has therefore erred in deciding that the land mortgaged was an agricultural land, and therefore outside the ambit of the

SARFAESI Act.

25.Similarly, the Magistrate has refused to render assurance to take possession of the land in S.F.No.119/5 and 120 (Patta No.2110 & 2111) of Karaiputhur village, Palladam Taluk on the ground that the property is undivided. A perusal of the mortgage deed would show that exact boundaries of the property which have been mortgaged. When the boundaries have been specified, it is not open for the borrower/guarantor to raise an objection that the property is undivided.

26. The Magistrate while exercising his power under Section 14 of the SARFAESI Act cannot go in to the questions of title. The Magistrate while exercising his function under Section 14 of the SARFAESI Act is not functioning as a Court. The Magistrate is only to satisfy himself that the contents in affidavit are correct. He has to issue notice to the borrower and any person who is likely to be dispossessed or evicted from the property. A borrower if he has an objection that the property is an agriculture land and outside the purview of the Act or a co-owner who wants to contend that the entire property is not available for taking possession and sale has to approach the Debt Recovery Tribunal. Determination on the above aspects can be done only by the Tribunal and not by the District Collector/District Magistrate while exercising his power under Section 14 of the SARFAESI Act.

27. The order of the District Collector has to be set aside. The guarantor or any person interested in the property may if adviced, can move to Debt Recovery Tribunal and establish as to whether the lands in S.F.No.886/1 and 882/2 are agriculture lands outside the purview of the SARFAESI Act and the land in S.F.No.119/5 and 120 (Patta No.2110 & 2111) is undivided joint family property. Such application may if advised to be filed within 3 weeks from today. The District Collector is directed not to process the application for a period of 3 weeks from the date of receipt of this order. The tribunal on receipt of the application shall proceed to hear the case uninfluenced by any of the observations made in this order. Be it noted that this Court has not decided the issue regarding the nature of property, one way or other. Only the question of the jurisdiction of the District Collector has been decided by this Court in the instant Writ petition. Accordingly the writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

pkn
To

1. The District Collector,
   (District Magistrate),
   Tirupur District, Tirupur.

+2 Ccs to M/s. Ramalingam and Associates sr 61125.
+1 CC to Mr.T. Saikrishnan, advocate sr 60929.
+1 CC to Govt. Pleader sr 60995.

W.P.No.10483 of 2018
and
W.M.P.No.12435 of 2018

SR(CO)
SP(31/10/2018)