

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.12.2018

DELIVERED ON : 21.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.14553 of 2017 and  
W.M.P.Nos.15689 & 15778 of 2017

- 1 M/s.Parsn Medicinal Plants Pvt. Ltd.  
No.22 Pasumarthi Street  
Kodambakkam  
Chennai-600 024  
Rep. by its Director K.L.Swamy
- 2 M/s. Cocount Groves Pvt. Ltd.  
No.22 Pasumarthi Street  
Kodambakkam  
Chennai-600 024  
Rep. by its Director K.L.Swamy .. Petitioners
- v.
- 1 Indian Bank  
ARMB-I, Wellington Estate  
No.55 Ethiraj Salai  
Egmore, Chennai - 600 008
- 2 Mr.San Diego Martin सत्यमेव जयते  
Martin Lottery Agencies Ltd.  
Daisy Plaza  
No.355-359, 6th Street  
Gandhipuram, Coimbatore
- 3 The Registrar  
Debts Recovery Tribunal - II  
Chennai
- 4 The Registrar  
Debt Recovery Appellate Tribunal  
Chennai
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records pertaining to the order dated 24.04.2017 made and passed in R.A.(S.A) No.38/2011 on the file of the Debt Recovery Appellate Tribunal, Chennai the 4th respondent, quash the same as illegal, arbitrary, erroneous, materially irregular and meritless.

For Petitioners : Mr.Rajeeve Mehra, Senior Counsel  
for Mr.R.Nagasundaram

For Respondents : Mr.Jayesh B. Dolia - for R1  
Mr.R.Srinivas - for R2  
R3 & R4 - Tribunal

O R D E R

V.K.TAHILRAMANI, CHIEF JUSTICE

The petitioners have filed the above Writ Petition to issue a Writ of Certiorari to call for the records pertaining to the order dated 24.04.2017 made in R.A.(S.A) No.38 of 2011 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same.

2. The brief case of the petitioners is as follows:-

(i) According to the petitioners, G.Venkateswaran of Sujatha Films and his wife, Sujatha were made Directors of the petitioners' Companies. The said G.Venkateswaran mortgaged agricultural lands measuring an extent of 72.06 acres in Mamallapuram Village, in favour of the 1st respondent-Bank. Since the borrowers committed default in repaying the loan amount, the 1st respondent-Bank filed an application in O.A.No.81 of 2007 on the file of the Debts Recovery Tribunal-II, Chennai, claiming the outstanding amount. Subsequently, the 1st respondent-Bank on 30.06.2004 also issued notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as "SARFAESI Act"). On 04.12.2004 possession notice was issued by the Respondent-Bank. Thereafter, the property was sold in auction in March 2009 and the 2nd respondent was the successful bidder for a sum of Rs.55.25 crores. The Sale Certificate was also issued in the name of the 2nd respondent.

(ii) The petitioners have challenged the possession notice and the sale in S.A.No.23 of 2006 on the file of the Debts Recovery Tribunal-II, Chennai. The Debts Recovery Tribunal reserved the appeal in S.A.No.23 of 2006 for orders on 25.07.2006. Thereafter, the petitioners have filed two applications in I.A.Nos.374 and 375 of 2006 to reopen and to raise additional grounds in the Securitisation Appeal. The petitioners sought to raise an issue stating that the 1st respondent cannot proceed against the mortgaged property for the reason that the lands are agricultural land and they are exempted under section 31(i) of the SARFAESI Act. S.A.No.23 of 2006 was dismissed by the Debts Recovery Tribunal on 13.12.2006.

(iii) As against the order passed by the Debts Recovery Tribunal, the petitioners preferred an appeal in R.A. (S.A) No.505 of 2006 before the Debt Recovery Appellate Tribunal. In the said appeal, the petitioners have also filed an application for stay in I.A.No.60 of 2007 and the Appellate Tribunal, by order dated 01.02.2007, granted an order of interim stay on condition that the petitioners pay a sum of Rs.6.50 crores in three installments and the matter was posted on 1.3.2007. On 1.3.2007, as there was no representation for the petitioners, the Debt Recovery Appellate Tribunal, Chennai dismissed the appeal for non-prosecution. An application to set aside the order was preferred, being R.M.A.No.5 of 2007. Since the petitioners did not comply with the conditional order, the application was dismissed by the Appellate Tribunal on 24.05.2007.

(iv) Challenging the said order, the petitioners have filed Civil Revision Petition in C.R.P.No.2583 of 2007. This Court, by order dated 07.09.2007, set aside the order passed in R.M.A.No.5 of 2007, which was filed by the petitioners to set aside the order dated 01.03.2007 in R.A. (S.A) No.505 of 2006 and gave liberty to the petitioners to withdraw the appeal, pending before the Debt Recovery Appellate Tribunal. The order passed in C.R.P.No.2583 of 2007 was challenged by the 1st respondent-Bank before the Hon'ble Supreme Court in S.L.P. (Civil) No.21528 of 2007 and the Apex Court, by order dated 26.11.2007, dismissed the Special Leave Petition.

(v) Based on the orders of the Hon'ble Supreme Court and this Court,, the Debt Recovery Appellate Tribunal, Chennai, by order dated 20.12.2007, permitted the petitioners to withdraw the appeal in R.A. (S.A) No.505 of 2006. Thereafter, on 30.01.2008, the petitioners preferred Review Application in R.A.No.1 of 2008 against the order made in S.A.No.23 of 2006, before the Debts Recovery Tribunal-II, Chennai.

(vi) The Debts Recovery Tribunal-II, Chennai, by order dated 26.02.2009, dismissed the Review Application in R.A.No.1 of 2008. Against which, the petitioners preferred R.A. (S.A) No.38 of 2011 before the Debt Recovery Appellate Tribunal, Chennai and the Appellate Tribunal, by order dated 24.04.2017, dismissed the appeal and confirmed the order passed by the The Debts Recovery Tribunal-II, Chennai in R.A.No.1 of 2008 in S.A.No.23 of 2006. Challenging the order passed by the Debt Recovery Appellate Tribunal, the petitioners have filed the present Writ Petition.

3. The brief case of the 1st respondent is as follows:-

(i) According to the 1st respondent, the original proceeding was initiated in the year 1997 for the recovery of Rs.7.95 crores along with interest. After giving credit to the recoveries to the tune of Rs.59.35 crores, still there is huge amount of Rs.135 crores outstanding in the loan account. Further, the 1st respondent contended that the Review Application filed by the petitioners is not maintainable under Order XLVII, Rule 7 of Civil Procedure Code. The 1st respondent has stated that the Debt Recovery Appellate Tribunal and the Debts Recovery Tribunal have rightly dismissed the Review Application. The 1st respondent has also stated that the petitioners have not established that the mortgaged lands are agricultural lands, therefore, they are not exempted under section 31(i) of the SARFAESI Act.

(ii) Further, the 1st respondent has stated that the possession of the property sold to the auction purchaser is with him and the sale was concluded and registered before the jurisdictional Sub-Registrar on 03.08.2009. In these circumstances, the 1st respondent prayed for dismissal of the Writ Petition.

4. The brief case of the 2nd respondent is as follows:-

(i) The 2nd respondent while narrating the background of the case has also stated that the property was auctioned on 30.03.2009 and it was sold for Rs.55.25 crores to him. The entire amount was deposited and the Sale Certificate was issued to him on 07.05.2009. Further, the 2nd respondent has stated that the Review Application filed by the petitioners before the Debts Recovery Tribunal is not maintainable. Further it has been stated that the petitioners have not established that the secured assets are agricultural lands. When no liberty was obtained by the petitioners in R.A. (S.A) No.505 of 2006 for filing a Review Application, the same is not maintainable. Further, the 2nd respondent has stated that the lands sold to him is not an agricultural land. In these circumstances, the 2nd respondent prayed for dismissal of the Writ Petition.

5. Heard Mr.Rajeeve Mehra, learned Senior Counsel for Mr.R.Nagasundaram, learned counsel appearing for the petitioner, Mr.Jayesh B. Dolia, learned counsel appearing for the 1st respondent and Mr.R.Srinivas, learned counsel appearing for the 2nd respondent.

6.1 The main contention raised by Mr.Rajeeve Mehra, learned Senior Counsel appearing for the petitioners is that the mortgaged land is an agricultural land and therefore, the same is exempted under section 31(i) of the SARFAESI Act. The learned Senior Counsel also submitted that the Adangal extract for the year 2016-2017 would also establish that the land is an agricultural land. That apart, the learned Senior Counsel also contended that even in the sale deeds pertaining to the mortgaged lands, it has been mentioned that the lands are agricultural lands and therefore, the Tribunal should not have brought the property to sale. Further, the learned Senior Counsel submitted that the Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal should not have dismissed the Review Application, which order is being challenged in this Writ Petition.

6.2 The learned Senior Counsel appearing for the petitioners also relied upon the definition of 'Agriculture' under the Tamil Nadu Estates Land Act, 1908, wherein it has been defined as the cognate expressions shall include horticulture. Since the petitioners have planted coconut trees in the mortgaged lands, the learned Senior Counsel submitted that planting coconut trees should also be construed as 'Agriculture', which is exempted under section 31(i) of the SARFAESI Act.

6.3 In support of his contention, the learned Senior Counsel relied upon the following judgments:-

(i) 1968 SCC online AP 172 [Officer In charge -(Court of wards) Paigah, Sir Vicar-ul-Umra, Hyderabad v. The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad], wherein the Hon'ble Supreme Court held as follows:-

"34. As the observations would show, the Bench was not dealing with land which was vacant but which was readily capable of being put to agricultural use without the necessity of taking any further steps for conversion of the physical character of the land to put the land in a cultivate condition. Further if the construction placed by the Bench is to be accepted, it amounts to giving a narrow and restricted meaning to the expression "agricultural land" which, as we have held earlier, is not permissible. As a result of the foregoing discussion, the position may be summarised thus:-

(1) The words "agricultural land" occurring in Sec. 2 (e)(i) of the Wealth Tax Act should be given the same meaning as the said expression bears in Entry 86 of List I and given the widest meaning;

(2) The said expression not having been defined in the Constitution, it must be given the meaning which it ordinarily bears in the English language and as understood in ordinary parlance;

(3) The actual user of the land for agriculture is one of the indicia for determining the character of the land, as agricultural land.

(4) Land which is left barren but which is capable of being cultivated can also be "agricultural land", unless the said land is actually put to some other non-agricultural purpose, like construction of buildings or an aerodrome, runway etc., thereon, which alters the physical character of the land rendering it unfit for immediate cultivation;

(5) If land is assessed to land revenue as agricultural land under the State revenue law, it is a strong piece of evidence of its character as agricultural land;

(6) Mere enclosure of the land does not by itself render it a non-agricultural land;

(7) The character of land is not determined by the nature of the products raised, so long as the land is used or can be used for raising valuable plants or crops or trees or for any other purpose of husbandry;

(8) The situation of the land in a village or in an urban area is not by itself determinative of its character"

(ii) MANU/KE/2347/2010 [ Muhammed Basheer K.P. v. The Deputy General Manager and Anr.], wherein the Division Bench of Kerala High Court held as follows:-

"13. With the above, as rightly noticed by the learned single Judge, "agricultural land" is not a term defined in the Act. Nor is the word "agriculture". Then, how is the term "agricultural land" to be understood?

14. The Apex Court said in *R.D. Saxena v. Balram Prasad Sharma*, (2000) 7 SCC 264 that where a statute does not define a term used in it, the legislature should be presumed to have used that word in its ordinary dictionary meaning. In *Diwan Bros. v. Central Bank of India*, (1976) 3 SCC 800, the Apex Court stated that it is a well-settled principle of interpretation of statutes that where the Legislature uses an expression bearing a well-known legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood. In that precedent, *Craies on Statute Law* is quoted to state that there is a well-known principle of construction, that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted, unless a contrary intention appears and further, that the rule as to words judicially interpreted applies also to words with well-known legal meanings, even though they have not been the subject of judicial interpretation.

15. A survey of the precedents would show that the general sense of a term in which it has been understood in common parlance is adopted for understanding the scope of the terms 'agriculture', 'agricultural purpose', 'agricultural land' etc. in different context where the statute that fell for consideration did not give any definition for such terms. Looking at *Commissioner of Income Tax, West Bengal v. Raja Benoy Kumar Sahas Roy*, AIR 1957 SC 768 and *CWT v. Officer-in-charge (Court of Wards), Paigah*, (1976) 3 SCC 864, it could be seen that the ordinary dictionary meaning of the terms are applied, however, maintaining in focus, the purpose of the legislation, so as to avoid any unreasonable interpretation by which there could be exclusions or exemptions which are never contemplated by the legislature. It has been held in *Raja Benoy Kumar Sahas Roy* (supra) as follows:

"If the term 'agriculture' is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it will be seen that the term 'agriculture' receives a wider interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea

that there must be at the bottom of it cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations."

16. "Agricultural land" is that species of land which could be said to be either used or ordinarily used for agricultural purposes. "Agricultural land" must have a connection with an agricultural user or purpose. It is on the nature of user that the meanings of 'agricultural purpose' and 'agriculture' become relevant. Popular and authoritative Dictionaries say that "agriculture" is the art or science relating to the practices of cultivating the land. Agriculture is the process by which human skill is expended upon land. Human labour, with or without the aid of implements, tools and machines, is employed utilising the art or science of cultivating the ground. In its good sense, it means farming, horticulture, forestry etc., including the allied pursuits, preparation of land or fields in large quantities, preparation of soil, planting of seeds, raising and harvesting of crops etc. In certain shades, agriculture also includes management of livestock etc. But primarily, it is understood as the process of putting land to use in the growing of crops by employing human skill and labour upon land. As noted above from Raja Benoy Kumar Sahas Roy (supra), agriculture includes raising, on the land, of products which have some utility either for consumption or for trade and commerce. The term 'agriculture' cannot be defined or understood by the nature of the products cultivated. No such classification is conceivable unless specifically provided for, having regard to the specific need to make such classification. If such classification is to provide different consequences of a piece of statute law, including its applicability, we definitely think that such classification should be found explicit on the clear expressions in that particular statute.

17. The primary exercises in agriculture cannot be treated as an activity alien to agriculture, even if it

relates to growing and harvesting of product or crop which goes in for consumption otherwise than as an edible item. Rubber sap is a biological product generated from the rubber trees which are grown as plantations, utilising human skill and labour, by carrying out an agricultural process starting with preparing the lands for the cultivation. Rubber saplings are generated by different modes; by germination of seeds or by botanical manipulations like grafting, budding etc. Those saplings are planted, watered, provided with manure and otherwise cared for, to grow them up. The said process is nothing but 'agriculture'. The mere fact that the product that is ultimately taken from the rubber trees is sap that goes into processing or consumption other than as food is no intelligible criteria to say that rubber sap taken from the rubber trees is not an agricultural produce, in common parlance, or that cultivation of rubber is not agriculture and still further, that lands on which rubber is cultivated is not agricultural land.

20. When the Bill leading to the Act was introduced, to replace the predecessor Ordinance, the Statement of Objects and Reasons, in clause 2(m), specifically referred to the intention to provide for the non-application of the proposed legislation to security interests in agricultural lands. The purpose of using the term "agricultural land" in the Act, to wit, in Section 31(i) thereof, is to provide that the Act shall not be applied to security interests created on such lands. Yet, the legislature though it fit not to define the term "agricultural land" for the purpose of the Act. It expressed no intention to classify agricultural lands on any basis. Had it intended, nothing prevented such intention being expressed in the enactment itself. We look at the issue from this angle also because, in hand is a provision that makes an exemption from the application of a statute, which is pre-dominantly penal in nature, as regards securitisation and attendant proceedings involving the enforcement of rights of creditors against debtors. The conclusion is obvious; that the clear legislative intention is that the term "agricultural land" in Section 31(i) of the Act would be applied without culling out any exemption from that term on the basis or nature of crop or the cultivation that is made on that land. All that is required is that it should be an agricultural land."

(iii) 2012 (5) CTC 257 [Eshwar Purushothaman Gardens v. Indian Bank], wherein the Division Bench of this Court held as follows:-

"16. The scope and ambit of Section 31 of the SARFAESI Act came up for consideration before the High Court of Kerala in Mohammed Basheer, K.P. v. Deputy General Manager and Anr. (Judgment dated 11 February 2010 - W.A.No.155 of 2010). The Division Bench indicated that the agricultural land is that species of land which could be said to be either used or ordinarily used for agricultural purposes. The Bench said

"16. 'Agricultural land' is that species of land which could be said to be either used or ordinarily used for agricultural purposes. 'Agricultural land' must have a connection with an agricultural user or purpose. It is on the nature of user that the meanings of 'agricultural purpose' and 'agriculture' become relevant. Popular and authoritative Dictionaries say that 'agriculture' is the art or science relating to the practices of cultivating the land. Agriculture is the process by which human skill is expended upon land. Human labour, with or without the aid of implements, tools and machines, is employed utilising the art or science of cultivating the ground. In its good sense, it means farming, horticulture, forestry etc., including the allied pursuits, preparation of land or fields in large quantities, preparation of soil, planting of seeds, raising and harvesting of crops etc. In certain shades, agriculture also includes management of livestock etc. But primarily, it is understood as the process of putting land to use in the growing of crops by employing human skill and labour upon land. As noted above from Raja Benoy Kumar Sahas Roy's case (supra) agriculture includes raising, on the land, of products which have some utility either for consumption or for trade and commerce.

The term "agriculture" cannot be defined or understood by the nature of the products cultivated. No such classification is conceivable unless specifically provided for, having regard to the specific need to make such classification. If such classification is to provide different consequences of a piece of statute law, including its applicability, we

definitely think that such classification should be found explicit on the clear expressions in that particular statute."

7.1 Countering the submissions made by the learned Senior Counsel appearing for the petitioners, Mr. Jayesh B. Dolia, learned counsel appearing for the 1st respondent submitted that the Review Application filed by the petitioners is not maintainable in law, since the appeal filed by the petitioners before the Debt Recovery Appellate Tribunal contravened the provisions of Order XLVII, Rule 7 of CPC. Further, the learned counsel submitted that as of today, more than Rs.135 crores is outstanding in the loan account. Further, the learned counsel submitted that the plea raised by the petitioners that the lands are agricultural lands and therefore, they are exempted under section 31(i) of the SARFAESI Act is after thought and the same was not raised at the earliest point of time.

7.2 That apart, the learned counsel appearing for the 1st respondent also submitted that the lands are not agricultural lands and in an extent of 72.06 acres, there are only few coconut trees standing, therefore, the land cannot be construed as agricultural land. Further, the learned counsel submitted that the sale was concluded in favour of the 2nd respondent and he has also paid the total sale amount of Rs.55.25 crores and the sale certificate was also issued in his favour and the same was also registered. Hence, at this stage, the sale made in favour of the 2nd respondent should not be disturbed.

7.3 In support of his contention, the learned counsel appearing for the 1st respondent relied upon the following judgments:-

(i) 1972 (2) SCC 364 [Kunjukutty Sahib, Etc., Etc. v. The State of Kerala and Anr.], wherein the Hon'ble Supreme Court held as follows:-

"25. Now as observed by the High Court in the passage already re-produced, transfer of land to the landless occupant of the hut, though not expressly so mentioned is only for the purposes connected with agriculture and the land in this passage is expressly stated to mean agricultural land. The term agricultural land, it may also be pointed out, is used in the judgment of the High Court in the sense of the definition contained in Art. 31A (2) (a) (iii) of the Constitution. The High Court has further stated, and it is not shown that this is incorrect, that in none of the cases before it, is there any allegation that any person unconnected with agriculture is claiming the benefit

of ss. 75 to 80G of the Act. In fact all the lands, with which the present cases are concerned, are agricultural lands constituting estates as contemplated by Art. 31-A of the Constitution. This is what the High Court says in the Judgment:

"It might be that the expression, 'agrarian reform' is wide enough to include ameliorative measures for agriculturists, unrelated to right's in land, but, in the context of Article 31 -A, it can comprise only measures affecting rights in estates and we shall hereafter use the expression in that limited sense.

It would appear that all the lands held by the petitioners in these cases are agricultural lands-at any rate, no arguments have been addressed before us on the footing that any of them are not; the assertions in some of the petitions, such as that a paddy land is not agricultural land because for part of the year, when it is under water, fishing is profitably conducted thereon, or that a coconut garden is not agricultural land because it happens to be situated within a city, have been rightly forgotten. We might here repeat that we are using the term, 'agri- cultural land' in the sense relevant in the context of Article 31-A, namely, in the sense of the definition in subclause (iii) of cl. 2(a) of that article. It is the purpose for which the land is held, not its accidental use at a particular point of time,, that determines whether it is agricultural land or not. If the land is held for purposes of agriculture or for purposes ancillary thereto (such as, for pasture or for the residence of cultivators of land, agricultural labourers or village artisans), it is agricultural land. Otherwise not. We suppose that something or other can be, and often is, grown on any vacant land, but that would not necessarily make it agricultural land for our purposes. To give an example, the possibility of cultivating, or even the actual cultivation of, what is essentially a building site in the heart of a town would not make, it agricultural land. It is the,

purpose for which it is held that determines its character and the existence of a few coconut trees or a vegetable, patch on the land cannot alter the fact that it is held for purposes of building and not for purpose of agriculture."

(ii) 1976 (3) SCC 864 [ Commissioner of Wealth Tax, Andhra Pradesh v. Officer-In-Charge (Court of Wards), Paigah], wherein the Hon'ble Supreme Court held as follows:-

"6. In Raja Benoy Kumar Sahas Roy's case (supra), the question before this Court was whether income from forest lands derived from sal and piyasal trees "not grown by human skill and labour" could constitute agricultural income. The test applied there was whether there was some integrated activity which could be described as agricultural operation yielding income. It was pointed out that, although, a mere wild or spontaneous growth of trees, not involving the employment of any human labour or skill for raising them, could not be agricultural income, yet, when there was a forest more than 150 years old, which had been carefully nursed and attended to by its owners, the income would be agricultural. It is true that this case is not a direct authority upon what is "agricultural land." Nevertheless, it goes a long way in helping us to decide what could be agricultural land. We think that this must be land which could be said to be either actually used or ordinarily used or meant to be used for agricultural purposes. In other words, "agricultural land" must have a connection with an "agricultural user or purpose. It is on the nature of the user that the very large number of definitions and authorities discussed by this Court, in Raja Benoy Kumar Sahas Roy's case (supra), have a direct bearing. In that case, this Court held that the wider meaning given to agricultural operations, such as breeding and rearing of live-stock, poultry farming, or dairy farming will not be applicable. It held that the correct test to apply would be to find out whether human labour had been applied to the land itself, in order to extract from its natural powers, added to or aided by other natural or artificial sources of strength to the soil a product which can yield an income.

7. In the case before us, the question is a connected one. Here also the term "agricultural land" has not been defined. That, however, does not mean that the land to be considered can be divorced from its actual or natural or ordinary user. If all land which is capable of being used for agriculture, could be intended to be excluded from "assets", practically every type of land, including that covered by buildings, would fall within that class. Hence, it seems to us to be impossible to adopt so wide a test as would obviously defeat the purpose of the exemption given. Apparently, agricultural land is excluded from the definition of "assets" as it was thought that Parliament was not competent to impose taxes which will fall-on agricultural land. Whatever may be the reason for the exemption, we think that the exemption is connected with the user of land for a purpose which must be agricultural. It is an enactment to tax "wealth" which includes all that is ordinarily understood as "assets". 'The person claiming an exemption of any property of his from the scope of his assets must satisfy the conditions of the exemption.'

(iii) 1993 Supp(4) SCC 707 [Sarifabibi Mohmed Ibrahim (SMT) and others v. Commissioner of Income Tax, Gujarat], wherein the Hon'ble Supreme Court held as follows:-

"12. Whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of this Court and the High Courts, but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a consideration of all of them - a process of evaluation. The inference has to be drawn on a cumulative consideration of all the relevant facts. "

8.1 Mr.R.Srinivasan, learned counsel appearing for the 2nd respondent submitted that the 2nd respondent is a bona fide purchaser as early as in the year 2009 and after a lapse of 9 years, the sale made in favour of the 2nd respondent should not be set aside. Further, the learned counsel submitted that the mortgaged lands are not agricultural lands for the reason that in an extent of more than 72 acres, there are only very few coconut trees standing there. That apart, the learned counsel

also submitted that no agricultural operations are going on in the said lands.

8.2 Further, the learned counsel appearing for the 2nd respondent submitted that in the absence of any evidence produced by the petitioners to establish that the lands are agricultural lands, the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal have rightly rejected the case of the petitioners. The learned counsel further submitted that the petitioners have dragged on the matter by filing several applications from the year 1997. The learned counsel also submitted that the appeal filed against the order passed in the Review Application is not maintainable in view of the provision of Order XLVII, Rule 7 of CPC.

8.3 In support of his contention, the learned counsel appearing for the 2nd respondent relied upon the following judgments:-

(i) 1994(2) SCC 753 [ Shankar Motiram Nale v. Shirolalsing Gannusing Rajput] wherein the Hon'ble Apex Court held as follows:-

"1. This appeal is obviously incompetent. It is against an order of a Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7 of CPC bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal. No costs."

(ii) 2004 (13) SCC 677 [ M.N. Haider and others v. Kendriya Vidyalaya Sangathan and others] wherein the Hon'ble Apex Court held as follows:-

"4. We are unable to accede to this request. In none of these cases has it been considered that once a special leave petition against the main order has been dismissed it would not be open to challenge the main order again. Further it is settled law (cases of Shankar Motiram Nale v. Shirolalsing Gannusing Rajput reported in 1994(2) SCC 753 and Suseel Finance & Leasing Co. v. M.Lata reported in 2004(13) SCC 675 may be looked at] that a special leave petition is not maintainable against an order in a review petition. These authorities have not been shown or considered by this Court whilst passing the above orders. Once SLP is not maintainable no orders can/should be passed thereon except to dismiss the same. In view of the settled position, the above mentioned orders cannot be considered to be precedent."

9.1 On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it could be seen that for the loan availed by M/s.Sujatha Films Limited on 08.02.1999, the petitioners' property, measuring an extent of 72.06 acres in Mamallapuram Village, was mortgaged to the 1st respondent-Bank. One late G.Venkateswaran and his wife Sujatha Venkateswaran were Shareholders and Directors in the petitioners' companies and also in Sujatha Films Limited. Since the borrowers, viz., Sujatha Films Limited, failed to repay the loan amount to the bank, the 1st respondent-bank filed an application in O.A.No.1552 of 1998 before the Debts Recovery Tribunal-II, Chennai. The said application was subsequently re-numbered as O.A.No.2018 of 2001 and thereafter re-numbered as O.A.No.81 of 2007 and the same is also pending before the Debts Recovery Tribunal-II, Chennai. During the pendency of the

said Original Application, on 30.06.2004, the 1st respondent issued a statutory demand notice under section 13(2) of the SARFAESI Act to the borrower, Sujatha Films Limited and the guarantors, viz., the petitioners herein, calling upon them to pay a sum of Rs.32,47,05,634.76 together with further interest. Since the borrowers and the guarantors failed to pay the amount, the 1st respondent issued possession notice dated 04.12.2004 under section 13(4). Subsequently, the sale notice dated 23.09.2005 was issued to the borrowers and the guarantors and the same was published on 02.10.2005.

9.2 Thereafter, the petitioners filed I.A.No.640 of 2004 in O.A.No.2018 of 2001 before the Debts Recovery Tribunal-II, Chennai, contending that without withdrawing the Original Application, no action under the SARFAESI Act could be initiated. The said application was dismissed by the Debts Recovery Tribunal on 10.01.2006. Thereafter, sale notice was published on 22.01.2006. Challenging the same, the petitioners have filed an application in M.A.No.332 of 2006 before the Debts Recovery Tribunal-II, Chennai and an order of stay was granted in the said application. The order passed by the Debts Recovery Tribunal-II, Chennai in I.A.No.640 of 2004 was confirmed by this Court as well as by the Hon'ble Supreme Court in S.L.P. Nos.5177 and 5179 of 2006. Thereafter, the petitioners have filed an appeal in S.A.No.23 of 2006 on the file of the Debts Recovery Tribunal-II, Chennai, challenging Section 13(4) notice.

9.3 It is pertinent to note that in S.A.No.23 of 2006, the only contention raised by the petitioners was that the 1st respondent-bank cannot proceed under the SARFAESI Act, without withdrawing the Original Application. When the orders were

reserved in S.A.No.23 of 2005 on 25.07.2006, the petitioners filed I.A. Nos.374 and 375 of 2006 to reopen the appeal and to raise additional grounds contending that the mortgaged land is an agricultural land and therefore, the same is exempted under section 31(i) of the SARFAESI Act. Even in the affidavit filed in support of the application to raise additional grounds, it has been stated that the petitioners came to know that the property is an agricultural land only after they received the Adangal extract dated 07.08.2006.

9.4 By order dated 13.12.2006, the Debts Recovery Tribunal-II, Chennai, dismissed the appeal in S.A.No.23 of 2006 and also the applications in I.A.Nos.374 and 375 of 2006. Aggrieved over the same, the petitioners have filed an appeal before the Debt Recovery Appellate Tribunal in R.M.A.No.5 of 2007 and by order dated 01.02.2007, the Debt Recovery Appellate Tribunal, directed the petitioners to deposit a sum of Rs.6.50 crores in 3 installments. As per the order dated 01.02.2007, the petitioners should pay the 1st installment on or before 28.02.2007. The Debt Recovery Appellate Tribunal posted the matter on 01.03.2007 for reporting compliance of the 1st installment. When the matter was taken up for hearing on 01.03.2007 before the Debt Recovery Appellate Tribunal, as there was no representation on behalf of the petitioners and as the petitioners did not deposit the 1st installment, the Appellate Tribunal, dismissed the appeal for non-prosecution and also for non-compliance of the order dated 01.02.2007.

9.5 Thereafter, the petitioners have filed an application in I.A.No.505 of 2007 to restore the appeal in R.M.A.No.5 of 2007 on 24.05.2007. However, the Debt Recovery Appellate Tribunal had dismissed the said application.

9.6 As against the dismissal of I.A.No.505 of 2007, the petitioners filed a Civil Revision Petition in C.R.P.No.2583 of 2007 and this Court, by order dated 07.09.2007 for the purpose of withdrawing the appeal in R.M.A.No.5 of 2007, set aside the order passed by the Debt Recovery Appellate Tribunal in I.A.No.505 of 2007.

9.7 In view of the order passed by this Court, the Debt Recovery Appellate Tribunal, permitted the petitioners to withdraw R.M.A.No. 5 of 2007 on 20.12.2007. Thereafter, the petitioners have filed Review Application in R.A.No.1 of 2008 seeking to review the order dated 13.12.2006 made in S.A.No.23 of 2006 on the file of the Debts Recovery Tribunal-II, Chennai. By order dated 26.02.2009, the Debts Recovery Tribunal-II, Chennai, dismissed the R.A.No.1 of 2008.

9.8 Challenging the order passed in R.A.No.1 of 2008, the

petitioners have filed Writ Petition in W.P.No.4686 of 2009 to quash the order dated 26.02.2009. The Division Bench of this Court, by order dated 26.03.2009, dismissed the Writ Petition. The petitioners have also filed an appeal in S.A.No.95 of 2009 challenging the sale notice dated 26.02.2009. Pursuant to the sale notice dated 26.02.2009, the property was sold on 30.03.2009 in favour of the 2nd respondent for a sum of Rs.55.25 crores and the sale certificate was also issued to him on 07.05.2009.

9.9 As against the order passed in W.P.No.4686 of 2009 and the order dated 27.03.2009 passed in S.A.No.95 of 2009, on the file of the Debts Recovery Tribunal, the petitioners preferred appeals by filing S.L.P.Nos.7707 and 4309 of 2009 before the Hon'ble Supreme Court and the Apex Court, by order dated 08.05.2009 dismissed both the Special Leave Petitions and directed the petitioners to approach the Debt Recovery Appellate Tribunal. Thereafter, on 24.07.2009, the possession of the property was handed over to the 2nd respondent and the title deeds were also handed over to him on 25.07.2009. Thereafter, on 03.08.2009, the sale certificate was registered in the Office of the Sub-Registrar.

9.10 As against the order passed in Review Application in R.A.No.1 of 2008, the petitioners have filed an appeal in S.A.No.359 of 2009 before the Debt Recovery Appellate Tribunal. The petitioners have also filed an application in I.A.No.942 of 2009 in S.A.No.359 of 2009, seeking for waiver of pre-deposit. The matter was taken up by the Debt Recovery Appellate Tribunal, Mumbai, for the reason that the Chairperson of the Debts Recovery Tribunal, Chennai, had retired by then. The Debt Recovery Appellate Tribunal, Mumbai, by order dated 05.08.2009 passed an order holding that the petitioners need not make any pre-deposit to maintain the appeal on the ground that the 2nd respondent had deposited the entire sale consideration.

9.11 The 2nd respondent challenged the said order before this Court in C.R.P.No.2467 of 2009 and the 1st respondent-Bank also challenged the same by way of Writ Petition in W.P.No.17016 of 2009. This Court, by order dated 16.06.2010, allowed the Civil Revision Petition and also the Writ Petition. As against the same, the petitioners, preferred appeals by filing S.L.P. Nos.2074 to 2078 of 2011. The Hon'ble Supreme Court by order dated 25.02.2011, disposed of the Civil Appeals by directing the Debt Recovery Appellate Tribunal to hear and dispose of the appeal on all questions of law, within two months time. Thereafter, the appeal in R.A. (S.A) No.38 of 2011 was taken up for hearing, which was filed against the dismissal of the Review Application in R.A.No.1 of 2008 in S.A.No.23 of 2006 on the file of the Debts Recovery Tribunal-II, Chennai.

10. The Debt Recovery Appellate Tribunal, by order dated 20.07.2012, set aside the order passed in R.A.No.1 of 2008 and remitted the matter back to the Debts Recovery Tribunal-II, Chennai, for fresh consideration.

11. Aggrieved over the same, the 2nd respondent filed a Writ Petition in W.P.No.6986 of 2013 and this Court, by order dated 27.02.2014, disposed of the Writ Petition by remitting the matter back to the Debt Recovery Appellate Tribunal for passing appropriate orders as directed by the Hon'ble Supreme Court in its order dated 25.02.2011 and also made it clear that all issues available to the parties concerned could be raised before the 1st respondent including the issue relating to the maintainability of the appeal as per the directions issued by the Apex Court. After remand, the Debt Recovery Appellate Tribunal dismissed the appeal in R.A.(S.A) No.38 of 2011, by order dated 24.04.2017.

12. As already stated, the petitioners had not taken the plea that the secured assets were agricultural lands at any point till the orders were reserved in S.A.No.23 of 2006 on the file of Debts Recovery Tribunal-II, Chennai. Only after the orders were reserved in S.A.No.23 of 2006 on 25.07.2006, the petitioners filed I.A.Nos.374 and 375 of 2006 to reopen the appeal and to raise additional grounds contending that after receipt of the Adangal extract dated 07.08.2006, the petitioners came to know that the mortgaged land is an agricultural land and therefore, the same is exempted under section 31(i) of the SARFAESI Act.

13. The Debts Recovery Tribunal, by order dated 13.12.2006, dismissed the appeal in S.A.No.23 of 2006 and also the applications in I.A.Nos.374 and 375 of 2006. Thereafter, the petitioners have filed the Review Application in R.A.No.1 of 2008 in S.A.No.23 of 2006 on the file of the Debts Recovery Tribunal-II, Chennai and the Debts Recovery Tribunal-II, Chennai, by order dated 26.02.2009, dismissed the Review Application on the ground that there is no error apparent on the face of the record. While dismissing the Review Application, the Debts Recovery Tribunal observed that the petitioners had not taken the plea that the secured asset was an agricultural land at any point of time till orders were reserved on 25.07.2006 and gave a specific finding that the mortgaged land cannot be construed as an agricultural land. The petitioners have not established either before the Debts Recovery Tribunal or before the Debt Recovery Appellate Tribunal that the land in question was put to agricultural use at any point of time. They have also not stated that they have earned agricultural income from the said land.

14.1 The actual condition and intended use should be seen for coming to a conclusion whether the land is an agricultural land or not. The objects of the exemption is to encourage cultivation and actual utilisation of land for agricultural purposes. If there is neither anything in its 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.

14.2 To ascertain the true character and the nature of the land, it must be seen whether the land has been put to use for agricultural purposes for a reasonable span of time prior to the relevant date and further whether on the relevant date the land was intended to be put to use for agricultural purposes for a reasonable span of time

14.3 Section 31(i) of the SARFAESI Act states in clear terms that the provisions of the Act shall not apply to any security interest created in agricultural land. The Act, however, does not define the term 'Agricultural land'. When we take stock of the Statement of Objections and Reasons for enacting the SARFAESI Act, it is evident that the said Act was enacted to enable the banks and other financial institutions to realise the long-term assets, manage problems of liquidity, assets liability, mis-matches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.

14.4 Therefore, the object of this Act is to improve the recovery process by vesting the powers with the banks and financial institutions and powers to take possession of secured assets and sell them in case the borrowers commit default in repayment of the loan. If that is the object of enactment, in the absence of any concrete evidence produced by the petitioners with regard to the character of the land, the land cannot be construed as an agricultural land.

15. In the absence of any evidence produced by the petitioners, the Debts Recovery Tribunal has rightly come to the conclusion that the land is not an agricultural land. Merely on account of presence of few coconut trees in an extent of 72 acres shall not make the land as an agricultural land.

16. That apart, when this issue was not raised in S.A.No.23 of 2006, the petitioners cannot seek for review of the order on a new ground. Further, the application filed by the petitioners to raise the issue with regard to section 31(i) was also dismissed by the Debts Recovery Tribunal on 13.12.2006 and the dismissal of the said application cannot be construed as an error apparent on the face of the record.

17. It is settled position that in the guise of review, the Review Applicant cannot re-argue the matter. The Review Application cannot be construed as an appeal in disguise.

18.1 In the case on hand, the petitioners have re-argued the appeal in S.A.No.23 of 2006 in the Review Application in R.A.No.1 of 2008. When the Debts Recovery Tribunal had dismissed the Review Application in R.A.No.1 of 2008, the petitioners preferred an appeal R.A. (S.A) No.38 of 2011. The petitioners have filed the Review Application under section 22 (2)(e) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

18.2 On a reading of Section 22(2), it is clear that the Tribunal and the Appellate Tribunal shall, for the purposes of discharging their functions under the SARFAESI Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, while trying a Review Application. In other words, while trying a Review Application under Section 22(2)(e) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the provisions of Order XLVII of Civil Procedure Code should be applied.

18.3 Under Order XLVII Rule 7 of CPC, an order rejecting the Review Application is not appealable. An order of the Court, rejecting the application for review shall not be appealable, but, an order granting the application may be objected to at once by an appeal from the order granting.

19. The ratio laid down by the Honble Supreme Court in the judgments reported in 2004 (13) SCC 677 1994(2) SCC 753 [ cited supra ] squarely applies to the case on hand.

20. Though there is no dispute with regard to the judgments relied upon by the learned Senior Counsel appearing for the petitioners, since the facts and circumstances differ from the case on hand, the same are not applicable to the present case.

21. In the case on hand, the petitioners have filed an appeal in R.A.(S.A) No.38 of 2011 on the file of the Debt Recovery Appellate Tribunal, Chennai, challenging the rejection of the Review Application in R.A.No.1 of 2008, on the file of the Debts Recovery Tribunal-II, Chennai. Therefore, as per the provisions of Order XLVII Rule 7 CPC, the appeal preferred by the petitioners in R.A.(S.A) No.38 of 2011 on the file of the Debt Recovery Appellate Tribunal, Chennai, is not maintainable.

22. It is also pertinent to note that this Court, while disposing of the Civil Revision Petition in C.R.P.No.2583 of 2007, by order dated 07.09.2007, only granted permission to withdraw the Securitisation Appeal, in R.A. (S.A) No.505 of 2006 on the file of the Debt Recovery Appellate Tribunal, Chennai and no liberty was granted to the petitioners to prefer a Review Application in S.A.No.23 of 2006.

23. When an appeal has been preferred against the original order, i.e., the order passed in S.A.No.23 of 2006 in the appeal in R.A. (S.A) No.505 of 2006 before the Debt Recovery Appellate Tribunal, the petitioners cannot prosecute the Review Application in the very same original order without obtaining leave from the higher forum.

24. It is also pertinent to note that after the sale of the property in favour of the 2nd respondent in the year 2009, the petitioners while filing the appeal in R.A.(S.A) No.38 of 2011 sought for waiver of pre-deposit on the ground that the bank had recovered a sum of Rs.55.25 crores and therefore, there is no necessity for making pre-deposit. After taking that stand, the petitioners are challenging the very sale made in favour of the 2nd respondent on the ground that the mortgaged land is an agricultural land. The petitioners were raising their contentions in piece-meal manner and their conduct would only establish that their aim is only to drag on the litigations for an indefinite period. The property was sold in the auction on 30.03.2009 for a sum of Rs.55.25 crores to the 2nd respondent and the sale certificate was issued to him on 07.05.2009. The possession was also handed over to the 2nd respondent on 24.07.2009, the title deeds were handed over to him on 25.07.2009 and the sale certificate was registered on 03.08.2009. The 2nd respondent, who has been in possession of the property since 2009, in his counter has asserted that the land is not an agricultural land and no agricultural operation was going on in the land. The Debt Recovery Appellate Tribunal and the Debts Recovery Tribunal have rightly dismissed the Review Applications.

25. For the reasons stated above, we do not find any ground to interfere with the order passed by both the Tribunals. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Rj

To

1 Indian Bank  
ARMB-I, Wellington Estate  
No.55 Ethiraj Salai  
Egmore, Chennai - 600 008

2 The Registrar  
Debts Recovery Tribunal - II  
Chennai

3 The Registrar  
Debt Recovery Appellate Tribunal  
Chennai

+2cc to Mr.TKM.Saikrishnan, Advocate SR.No.89240

+1cc to Mr.Aiyar and Dolia, Advocate SR.No.89365

+1cc to Mr.R.Srinivas, Advocate SR.No.89536

W.P. No.14553 of 2017 and  
W.M.P.Nos.15689 & 15778 of 2017

GJ II(CO)  
GMY(09/01/2019)

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