

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION Nos.16494, 18108 & 28301 OF 2018

COMMON ORDER : (Per the Hon'ble Sri Justice Ramesh Ranganathan)

W.P.No.16494 of 2018 is filed by the applicant in S.A.No.134 of 2012 (the principal borrower), and W.P.No.28301 of 2018 is filed by the owner of the lands, offered as security for the loan extended by the Bank in favour of the petitioner in W.P.No.16494 of 2018, questioning the validity of the order of the Debts Recovery Tribunal dated 16.04.2018, treating the lands offered as security by the petitioner in W.P.No.28301 of 2018 (the guarantor) as non-agricultural lands falling within the ambit of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act').

W.P.No.18108 of 2018 is filed by the petitioner in W.P.No.16494 of 2018 aggrieved by the order passed by the Chief Judicial Magistrate, Sangareddy, in CrI.M.P.No.42 of 2018 dated 26.04.2018, appointing an Advocate Commissioner to take possession of the property mortgaged in favour of the respondent-Asset Reconstruction Company. It is stated by Sri A.Sudarshan Reddy, Learned Senior Counsel appearing on behalf of the petitioner, that, pursuant to the order passed by the Chief Judicial Magistrate, Sangareddy, the 1st respondent has put a lock on the subject property (i.e the lands bound by a compound wall).

The disputes, in these writ petitions, revolve mainly around the question whether the provisions of the SARFAESI Act would apply to lands classified in the revenue records as “agricultural lands” irrespective of whether or not they are put to use for agricultural purposes. The petitioners’ claim that the subject lands are agricultural lands exempt from the provisions of the SARFAESI Act in view of Section 31 (i) thereof which stipulates that the provisions of the SARFAESI Act shall not apply to any security interest created in agricultural land.

It would suffice, for the disposal of all these three writ petitions, if the facts in W.P.No.16494 of 2018 are noted. The petitioner, a Private Limited Company, is a dealer in automobiles. They approached the respondent Bank, in the year 2003, seeking extension of credit facilities and offered lands, admeasuring Ac.45.45 situated in Sy.Nos.134, 135, 137, 139, 136/3 and 136/4, at Chinnakanjara Village, Patancheru Mandal, Medak District, as collateral security. The petitioners claim that the collateral security offered by them, for availing the credit facilities extended by the respondent Bank, are agricultural lands; and when the respondent Bank sought to put the mortgaged property to sale, by auction notice dated 04.02.2012 fixing the auction date as 12.03.2012, they filed S.A.No.134 of 2012 seeking a declaration from the Debts Recovery Tribunal, Hyderabad that the auction notice be declared null and void, and all measures taken by the respondent-Bank under Section 13 (4) of the SARFAESI Act be set aside.

In its order, in S.A.No.134 of 2012 dated 12.07.2013, the Debts Recovery Tribunal held that the lands, covered under the schedule property in the S.A, were agricultural lands exempt under Section 31 (i) of the SARFAESI Act; and the respondent Bank could not invoke the provisions of the SARFAESI Act to proceed against the schedule property.

S.A.No.134 of 2012 was allowed and all measures taken by the respondent Bank, under Section 13 (4) of the SARFAESI Act, against the schedule property including the auction notice dated 04.02.2012, were set aside. Aggrieved thereby, the respondents approached the Debts Recovery Appellate Tribunal at Kolkata, filing Appeal No.282 of 2013.

In its order dated 07.07.2014, the DRAT observed that the sole basis, of the claim of the respondent herein (appellant before the DRAT), that the subject lands were not agricultural lands, was the notification issued in G.O.Ms.No.9 dated 05.01.2001, whereby the State Government had introduced a new scheme for development of industries, under the Industrial Policy 2000-2005, dispensing with the need for conversion of land from agricultural use to industrial use; the said notification, by itself, was not sufficient to demonstrate that the secured asset ceased to be agricultural land; the said G.O disclosed the intention of the Government to retain agricultural lands in that locality as such, and there was no objection for conversion of other agricultural lands into industrial plots; and this did not mean that, automatically, all agricultural lands in that zone should be treated as non-agricultural lands.

The DRAT noted the submissions, urged on behalf of the appellant, that, owing to misconception, further evidence was not adduced about the actual conversion of that land, and the appellant had proceeded on the premise that it would suffice merely to produce the notification. It held that the appellant did not produce any shred of evidence to demonstrate and display that the said agriculture property, which once remained agriculture property, admittedly ceased to be agriculture property by virtue of non-agricultural operations on it. However, taking note of the submission of the appellants that evidence be permitted to be adduced by them to prove and establish that the said land, which was once agriculture land, ceased to be used as agricultural land, the DRAT observed that it would not be just and proper for it to entertain new evidence.

The DRAT considered it proper to give one more opportunity to the appellant-Reconstruction Company to establish, before the Debts Recovery Tribunal, the real nature of the said land as on the date of issuance of the Section 13 (2) notice under the SARFAESI Act. The matter was remanded to the Debts Recovery Tribunal to give due opportunity of hearing to both sides, to permit them to adduce additional evidence relating to the nature of the lands, and to dispose of the S.A on merits within two months from the date of receipt of the order.

After remand by the Debts Recovery Appellate Tribunal, by its order dated 07.07.2014, the respondent-Reconstruction Company appears to have filed its additional counter affidavit on 14.02.2018 (more than 3 ½ years after the matter was remanded by the Debts Recovery

Appellate Tribunal). Along with its counter before the DRT, the respondent Reconstruction Company filed a copy of the declaration certificate dated 12.12.2017, issued by the Village Revenue Officer, wherein it is recorded that the subject lands belonged to the Managing Director and the Director of the petitioner Company; in the said lands, no agricultural operations were being carried on from the past several years; no cultivation was being carried on in the said lands; and the said land was not suitable for agriculture, as trees were raised and there was no evidence to show that agricultural operations were going on. The petitioners herein do not appear to have filed their reply to this affidavit filed by the respondent Reconstruction Company, or with respect to the said certificate issued by the Village Revenue Officer.

Relying on the judgments of the Supreme Court, in **CIT v. Raj Benoy Kumar Saha Roy¹**; **Commissioner of Income Tax Gujarat-II v. Siddarth J. Desai²**; **Krishna Rao v. 3rd Wealth Tax Officer³**; **Commissioner of Wealth Tax, Andhra Pradesh v. Officer-in-charge (Court of Wards) Paigha⁴**; and **Gajula Exim v. Andhra Bank⁵**, the Debts Recovery Tribunal, in its order dated 16.04.2018, held that, while the applicant had relied upon the sale deed in support of their submission that the subject lands were agricultural lands and had produced adangals/pahani copies and photographs showing ploughing of the lands, these photographs only depicted the ploughing of the lands, and no photographs had been filed to show that crops have been raised in the

¹ (1952) 32 ITR 466 (SC)

² (1983) ITR Vol. 139 page 628

³ AIR 1965 Mysore III

⁴ (1976) 3 SCC 864

⁵ AIR 2008 AP 184

said lands even pertaining to the prior period; copies of the photographs, filed on behalf of the respondent-Bank, showed that no agricultural activity was being carried on in the application schedule property; and the respondent Bank had also filed the certificate issued by the Village Revenue Officer dated 12.12.2017, which would justify the application schedule property being treated as non-agricultural land, and not falling within the ambit of Section 31 (i) of the SARFAESI Act, for it to be exempted from the provisions of SARFAESI Act and the Rules made thereunder.

Sri A. Sudarshan Reddy, learned Senior Counsel appearing on behalf of the petitioners, would draw our attention to two opinions given by the counsel for the Bank on April 11, 2003, based on which the credit facilities were sanctioned to the petitioners, which record that the subject lands were agricultural lands, and have classified some part of these lands as wet, and some others as dry; to the pattadar passbooks issued, under the A.P. Rights in Land and Pattadar Passbooks Act, 1971, in favour of the land owners; to the pahanies for some of the earlier years; to certain cheques issued by the Government of Telangana under the Rythu Bandu Scheme, to submit that all these documents go to show that the subject lands were put to agricultural use, and failure to put the agricultural lands to use for one particular year would not, by itself, justify these lands being treated as non-agricultural lands. Learned Senior Counsel would also submit that, once these lands are classified as agricultural lands in the revenue records, it is only if these lands are converted to non-agricultural purposes, after complying with the

provisions of the Andhra Pradesh Agricultural Land (conversion for non-agricultural purposes) Act, 2006 and the Rules made thereunder, would they cease to be agricultural lands thereafter; and the mere fact that agricultural operations were not carried on for some time would not result in these lands losing the character of agricultural lands.

On the other hand Mrs. Kalpana Ekbote, learned counsel for the 1st respondent, would submit that it is only with a view to protect the interests of agriculturists was Section 31 (i) inserted in the SARFAESI Act; mere classification of lands, as agricultural lands, would not, by itself, remove these lands from the ambit of the provisions of the SARFAESI Act; it is only agricultural lands, put to use for agricultural purposes, which are exempt from application of the provisions of the SARFAESI Act, by virtue of Section 31 (i) thereof; the certificate issued by the Village Revenue Officer would show that no agricultural operations were being carried on in the said lands; the mere fact that these lands may have been treated as agricultural lands, and credit facilities being extended to the borrower on these lands being furnished as security, would not result in their being excluded from the ambit of the provisions of the SARFAESI Act, as these lands have not been put to agricultural use for the past several years. She would rely on the judgments of the Supreme Court in **ITC Limited v. Blue Coast Hotels Ltd**⁶, and **Indian Bank and another v. K. Pappireddiyar and another**⁷.

⁶ 2018 LawSuit (SC) 232

⁷ Judgment of the Supreme Court in Civil Appeal No.6641 of 2018 dated 20.07.2018).

In **Blue Coast Hotels Ltd**⁶, the Industrial Financial Corporation of India (IFCI) had entered into a corporate loan agreement with Blue Coast Hotels for a sum of Rs.150 crores. The agreement provided for the creation of a special mortgage to secure the corporate loan. The mortgaged property comprised of the whole of the debtor's hotel property, including the agricultural land on which the debtor was to develop villas. The debtor defaulted in repayment of the loan, rendering their account a Non-Performing Asset. A notice under Section 13 (2) of the SARFAESI Act was followed by a notice under Section 13 (4) thereof. No order was, however, passed by the respondent-financial institution, under Section 13 (3A) of the said Act, on the objections filed by the borrower under Section 13 (2) thereof. The application filed by the debtor, before the Debts Recovery Tribunal, was disposed of setting aside the earlier notice issued under Section 13 (2) on the ground of non-compliance with Section 13 (3A) of the said Act. The appeal, preferred thereagainst, was allowed by the Debts Recovery Appellate Tribunal. Thereafter, the writ jurisdiction of the High Court was invoked, and eventually the matter went up in appeal to the Supreme Court.

On the issue of whether the agricultural lands, offered as security, could be included in the notice for recovery of the secured loan, the Supreme Court relied on **Kunjukutty Saheb v. State of Kerala**⁸, and observed that the security interest was created in respect of several parcels of land, which were meant to be a part of a single unit i.e., the five start hotel in Goa; some parcels of land, now claimed as agricultural

⁸ 1972 2 SCC 364

land, were apparently purchased by the debtor from agriculturists, and were entered as agricultural lands in the revenue records; the debtor had applied to the revenue authorities for conversion of these lands to non-agricultural lands, which was still pending; these lands were mortgaged in favour of the creditors under a deed dated 26.02.2010; since no security interest could be created in respect of agricultural lands, and yet it was so created, showed that the parties did not treat the land as agricultural land or that the debtor had offered the land as security on this basis; while the total land, on which the Hotel was located, was of an extent of 1,82,225 sq. mtrs, an extent of 2335 sq. mtrs were used for growing vegetables, fruits, shrubs and trees for captive consumption of the hotel; there was no substantial evidence about the growing of vegetables, but what seemed to be on the land were some trees bearing curry leaves and coconut, and this amounted to 12.8% of the total area.

After examining the contents of the corporate agreement, the Supreme Court observed that the mortgage was intended to cover the entire property of the Goa Hotel; the parties themselves understood that the lands in question were not agricultural; and having regard to the use for which they were put to, and the purpose of such use, they were indeed not agricultural lands. After referring to its earlier judgments in **Commissioner of Wealth Tax, Andhra Pradesh⁴** and **Kunjukutty Saheb v. State of Kerala⁸**, the Supreme Court observed that, having regard to the character of the land and the purpose for which it was set apart, the land in question was not agricultural land, and the High Court had misdirected itself in holding that the land was agricultural land

because it stood as such in the revenue entries, even though the application made for its conversion was still pending.

This judgment is sought to be distinguished by Sri A. Sudarshan Reddy, learned Senior Counsel, contending that, unlike in **Blue Coast Hotels Ltd**⁶ where the entire property on which the Goa Hotel was located was under mortgage, and only a small portion thereof (around 12.5%) was utilized for planting trees and growing vegetables for captive consumption of the hotel, the subject lands were purely agricultural land; it is not the case of the respondent-Reconstruction Company that these lands were used for any other purposes, industrial, residential or otherwise, or that the petitioners had sought to convert these lands for non-agricultural purposes; and the observations of the Supreme Court, in **Blue Coast Hotels Ltd**⁶, cannot be read out of context to bring the subject agricultural lands to sale, under the provisions of the SARFAESI Act, merely because it was not put to agricultural or any other use for a few years.

It is unnecessary for us to examine the submission made by Sri A. Sudarshan Reddy, learned Senior Counsel, on whether or not the law declared by the Supreme Court in **Blue Coast Hotels Ltd**⁶, would apply to the facts of the present case, as the said judgment in **Blue Coast Hotels Ltd**⁶ was referred with approval in a subsequent three Bench judgment of the Supreme Court in **K. Pappireddiyar**⁷, and it was observed:

“.... The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question

whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart.

The Division Bench of the Madras High Court has failed to adjudicate on the basic issue as to whether the land in respect of which the security interest was created, was agricultural in nature. The DRT rejected the objection of the debtor that the land was agricultural. In appeal, the DRAT reversed that finding. **Apart from referring to the position in law, the impugned judgment of the High Court contains no discussion of the material which was relied upon by the parties in support of their respective cases; the Bank urging that the land was not agricultural while the debtor urged that it was. 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 totality 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, we are of the view that it would be appropriate and proper to set aside the judgment of the High Court and to remit the proceedings for being considered afresh.....” (emphasis supplied).

In view of the law declared by the Supreme Court, in **K. Pappireddiyar**⁷, mere classification of the lands, in the Revenue records, as agricultural is not conclusive of the question whether the SARFAESI Act does or does not apply; whether a parcel of land is agricultural must be deduced, as a matter of fact, from the nature of the land, the use to which it was being put on the date of creation of the security interest, and the purpose for which it was set apart.

While the judgment of the Supreme Court in **Blue Coast Hotels Ltd**⁶ (judgment delivered on 19.03.2018) was not brought to the notice of the Debts Recovery Tribunal, the judgment in **K. Pappireddiyar**⁷ was delivered by the Supreme Court after the impugned order was passed by the Debts Recovery Tribunal. As the tests to determine whether or not the mortgaged lands are agricultural lands, falling outside

the ambit of the SARFAESI Act in view of Section 31 (i) thereof, require a factual determination of (1) the nature of the land, (2) the use to which the land was being put to, on the date of creation of the security interest, and (3) the purpose for which it was set apart, the Debts Recovery Tribunal would, therefore, be required to examine (in cases where the applicability of Section 31(i) of the SARFAESI Act, to the mortgaged property, is put in issue) whether application of the aforesaid tests to the facts before it would show that the subject lands are agricultural lands falling outside the ambit of the SARFAESI Act in view of Section 31 (i) thereof.

None of these tests have been applied by the DRT, to the facts of the case before it, possibly because several of these documents, which are now placed before us, were not brought to its notice. We cannot ignore the fact that the Debts Recovery Appellate Tribunal had given the respondent herein another opportunity of adducing evidence before the DRT; and the respondent- Bank/Re-construction Company had filed an affidavit, enclosing a copy of the certificate of the Village Revenue Officer dated 12.12.2017 as evidence, only on 14.02.2018 more than three and half years after 07.07.2014 when the DRAT had disposed of the appeal filed by the respondent-Bank and had remanded the matter to the DRT. We consider it appropriate, in such circumstances, to also give the petitioner herein an opportunity to place all relevant material, before the Debts Recovery Tribunal, in support of their claim that the subject lands are agricultural lands falling within the ambit of Section 31(i) of the SARFAESI Act, to enable the DRT to decide, in accordance with the

law declared by the Supreme Court in **Blue Coast Hotels Ltd⁶** and **K. Pappireddiyar⁷**, whether the subject lands are agricultural lands excluded from the ambit of the SARFAESI Act in view of Section 31 (i) thereof.

Smt. Kalpana Ekbote, learned counsel appearing on behalf of the first respondent, would submit that, while proceedings have already been initiated against the petitioners herein under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'RDDB Act'), that would not disable them from proceeding against the petitioners under the SARFAESI Act also. Section 37 of the SARFAESI Act stipulates that the provisions of the said Act and Rules shall be in addition to, and not in derogation of, among others, the RDDB Act. We are, therefore, in agreement with the submission of Smt. Kalpana Ekbote that, merely because the Bank has initiated proceedings under the RDDB Act, would not preclude them from initiating/ continuing proceedings under the SARFAESI Act.

It must, however, be borne in mind that, unlike the provisions of the SARFAESI Act which do not permit Banks to put agricultural lands to sale for recovery of its debts, the provisions of the RDDB Act do not bar sale of agricultural lands for recovery of the debts due to the Banks. Suffice it, therefore, to make it clear that, mere pendency of proceedings under the SARFAESI Act before the Debts Recovery Tribunal, would not disable the respondent Bank/Reconstruction Company from proceeding with the O.A. filed by them under the RDDB Act and, thereafter, from taking action, for recovery of the debts due, by putting

the subject agricultural lands to sale in terms of the provisions of the RDDB Act.

The impugned order passed by the DRT is set aside, and S.A.No.134 of 2012 is restored to file. The petitioner in W.P.No.16494 of 2018 shall file their additional affidavit before the Debts Recovery Tribunal enclosing thereto all such documents, which they consider relevant to establish that the subject lands are agricultural lands under Section 31(i) of the SARFAESI Act, within three weeks from today. The respondents shall file their counter-affidavit within two weeks thereafter. Considering that S.A.No.134 of 2012 was filed six years ago in the year 2012, we consider it appropriate to direct the Debts Recovery Tribunal to decide S.A.No.134 of 2012 with utmost expedition and, in any event, not later than two months from the date of receipt of a copy of this order.

As the petitioners in W.P.No.28301 of 2018 (owners of the subject lands offered as security for the loan extended to the petitioner in W.P.No.16949 of 2018) were granted leave to prefer an appeal against the order of the Debts Recovery Tribunal, in S.A.No.134 of 2012 dated 16.04.2018, they shall stand impleaded as respondent Nos.2 and 3 in S.A.No.134 of 2012. It is open to them also to file their respective affidavits enclosing documentary evidence, in support of their claim that the subject lands are agricultural lands falling under Section 31(i) of the SARFAESI Act, within three weeks from today.

In so far as W.P.No.18108 of 2018 is concerned, possession of the subject lands has been taken by the respondents, pursuant to the order passed by the Chief Judicial Magistrate, Sangareddy, under Section 14

of the SARFAESI Act. While Smt. Kalpana Ekbote, learned counsel for the respondent, would submit that there was no interim order in the petitioners' favour, during the pendency of S.A.No.134 of 2012 before the Debts Recovery Tribunal, Sri A.Sudershan Reddy, learned Senior Counsel appearing on behalf of the petitioners, is not in a position to state whether or not the petitioners had the benefit of an interim order during the pendency of proceedings before the DRT in S.A.No.134 of 2012. Even if the impugned order, had not been passed by the DRT and S.A.No.134 of 2012 was pending before the Debts Recovery Tribunal, the respondent was not disabled from taking action against the petitioners, including by approaching the Chief Judicial Magistrate under Section 14 of the SARFAESI Act to take possession of the subject lands. While we see no reason to interdict the action of the respondent herein in taking possession of the subject property, suffice it, to protect the interest of the petitioners herein, to direct the respondents not to put the subject property to sale till orders are passed afresh by the Debts Recovery Tribunal.

While several contentions are put forth in challenge to the validity of the proceedings issued by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, suffice it to leave these questions open for examination, if need be, after the Debts Recovery Tribunal passes an order afresh and in accordance with law.

All the three Writ Petitions are, accordingly, disposed of. No order as to costs. As a sequel thereto, Miscellaneous Applications, if any, pending in these Writ Petitions stand closed.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

September 4, 2018.

Note:

Issue C.C. within a week.

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