

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* THE HON'BLE MS. JUSTICE J. UMA DEVI

+ W.P.NO.41122 of 2018

% Date: 15-11-2018

Between:

1. J. Srinivas, S/o. Subbarao, R/o. Devarapalli Village & mandal, West Godavari District.
2. J. Prashanthi, W/o. Srinivas, R/o. Devarapalli Village & Mandal, West Godavari District.

.... Petitioners

And

1. Union of India, rep. by its Principal Secretary, Department of Finance, Secretariat, New Delhi.
2. Indian Overseas Bank Asset Recovery Management Branch, Srinitya Complex, Visakhapatnam, rep. by its Authorized Officer.
3. Indian Overseas Bank Eluru, West Godavari District, rep. by its Branch Manager.

... Respondents

! Counsel for the Petitioners : Mr. T.V.S. Prabhakar Rao

^ Counsel for Respondent 1 : Mr. K. Lakshman A.S.G.

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? Cases referred

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

WRIT PETITION No.41122 of 2018

ORDER: (Per VRS,J.)

Challenging a possession notice issued under Section 13(4) of the SARFAESI Act, 2002, the guarantors have come up with the above writ petition.

2. Heard Mr. T.V.S. Prabhakar Rao, learned counsel for the petitioners.

3. The main ground of attack to the possession notice is that one of the properties covered by the possession notice is an agricultural land and that therefore, under Section 31(i) of the Act, the measures under Section 13(4) cannot be taken.

4. But the question as to whether one of the items is an agricultural land or not, is a question of fact. On this question of fact, the petitioners should invite a finding of fact from the Debts Recovery Tribunal.

5. Though the learned counsel for the petitioners contended that one of the items covered by the impugned possession notice is admittedly an agricultural land, we cannot test it by issuing notice and calling upon the respondent-bank to come on affidavit. Such an action on our part may defeat their right of defense to any proceeding, in a pure and simple question of fact. Therefore, leaving it open to the petitioner to approach on this score, the writ petition is dismissed.

6. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

15th November, 2018
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.20338 of 2018



15th November, 2018

Js.