

## HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3949 of 2011

Bhakti Shekhar Mallik, son of late Shri P.B. Mallik, aged about 42 years, resident of B/11, Gokul Nagar, Mathpuraina, Raipur, Chhattisgarh  
**--- Petitioner**

### **Versus**

1. State of Chhattisgarh through the Secretary, Department of agriculture & Animal Husbandry Mantralaya, D.K.S. Bhavan, Raipur, Chhattisgarh.
2. Collector Raipur, Collectorate Raipur Distt. Raipur Chhattisgarh.
3. Canara Bank through the Chief Manger GE Road Telibandha Raipur Chhattisgarh.
4. Municipal Corporation Raipur through its Commissioner Opposite Head Post Office Jaistambha Chowk Raipur Chhattisgarh.
5. Tahsildar Raipur Distt. Raipur Chhattisgarh.
6. Shri Ramamshankar Singh S/o Shri Ravinath Singh R./o Suryoday Nagar Opposite Sharma Saw Mill Dhamtari Road Distt Raipur Chhattisgarh  
**--- Respondents**

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| For the applicant        | : | Mr. Amrito Das with Mr. K. Rohan, Advocate. |
| For State/R-1, R-2 & R-5 | : | Mr. Sumit Singh, Panel Lawyer               |
| For Respondent No.3      | : | Mr. Anup Majumdar, Advocate                 |
| For Respondent No.4      | : | Mr. Pankaj Agrawal, Advocate.               |

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**Hon'ble Shri Justice Goutam Bhaduri**

### **Order on Board**

**22.04.2019**

1. The present petition is against the order dated 02<sup>nd</sup> July 2011 passed by the District Collector in exercise of power under Section 14 of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for short "SARFAESI Act 2002") whereby the physical

possession of mortgaged land bearing Plot No. B/11 admeasuring 2080 sq.ft., which is situated at village Gokulnagar Mathpurena has been directed to be taken over.

2. Learned counsel for the petitioner would submit that as per section 31(i) of the Act, 2002, the provisions of SARFAESI Act would not be applicable to any security interest created towards agricultural land. He further submits that as per the documents, it would show that the loan granted for dairy farm would be deemed as agriculture loan, therefore, the property which is mortgaged cannot be subject of an attachment. An entire perusal of the documents along-with the petition do not show anywhere that the property i.e., Plot No.B/11 admeasuring 2080 sqft, is an agricultural land instead is a lease which is on record shows that on certain ground, lease was granted to the petitioner to establish a dairy farm. Section 31(i) of the SARFAESI Act 2002 would not be applicable to a security created in respect of agricultural land.
3. In order to establish that the property which is subject of mortgage was agricultural land, necessary documents could have been placed on record to show that agriculture was being carried out on Plot bearing No.B/11 admeasuring 2080 sqft. There is nothing on record to show that the land was assessed and used for agricultural purposes. Therefore, unless and until it is categorically established that the land which is subject of mortgage and subject of proceeding u/s 13(2) of the SARFAESI Act is an agricultural land, the same cannot be presumed by ancillary document otherwise the provisions of section 13 itself would be defeated. In absence

of any document to show that the land is agricultural land and is subject of proceeding u/s 14 of the Act 2002, the petition cannot be entertained.

4. At this stage, learned counsel for the respondents submits that in view of the case law reported in *2018 SCC OnLine SC 2349 ICICI Bank Ltd. Vs. Umakanta Mohapatra* the petitions like nature would not be maintainable.
5. Accordingly, the petition has no merit and is dismissed.

**Sd/-  
GOUTAM BHADURI  
JUDGE**