

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1973 of 2019

Order reserved on: 21-6-2019

Order delivered on: 1-7-2019

Arun Agrawal, S/o Late Devkinandan Agrawal, Aged about 43 years, R/o Village & Tehsil Manendragarh, District Koriya (C.G.)
---- Petitioner

Versus

1. Chhattisgarh State Revenue Board, through the Registrar, Bilaspur, District Bilaspur (C.G.)
2. The Collector, Koriya, District Koriya (C.G.)
3. Kaushal Arora, S/o Shri Karamchand Arora, Aged about , R/o Village & Tehsil Manendragarh, District Koriya (C.G.)
4. Indian Overseas Bank, Old Bus Stand, Telipara, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Prateek Sharma, Advocate.

For Respondents No.1 and 2 / State: -

Mr. Chandresh Shrivastava, Deputy Advocate General,
on advance copy.

For Respondent No.3 / Caveator:

Mr. B.D. Guru, Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner herein mortgaged the subject land bearing Khasra No.153/6, area 0.142 hectare and Khasra No.157/11, area 0.70 hectare, total area 0.212 hectare, situate at Purani Basti Road, Manendragarh, Koriya, in favour of Indian Overseas Bank in lieu of the loan advanced to him and it is a secured asset within the meaning of Section 2(zc) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(for short, 'the SARFAESI Act'). He defaulted in payment of loan and thereafter, the secured asset was subjected to sale under the provisions of Section 13(12) of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules of 2002'). The respondent No.4 Bank sold the suit property in favour of respondent No.3 herein Kaushal Arora for consideration on payment of Rs.41 lakhs and the said Bank issued sale certificate in favour of respondent No.3 on 21-11-2011. The said respondent No.3 herein made an application for mutation under Section 110 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') of the subject land in his favour which was objected to by the petitioner herein, but ultimately, by order dated 12-3-2012, the learned Tahsildar made an order in favour of respondent No.3 for mutation of the subject land in his name which was appealed by the petitioner before the Sub-Divisional Officer (Revenue), Manendragarh and the Sub-Divisional Officer (Revenue) on 27-9-2012 referred the matter to the Collector in light of the provisions contained in Section 165(6-a) of the Code holding that the suit land has been transferred in violation of the said provision without the permission of the Collector for the reasons to be recorded in writing which the Additional Collector considered on 11-7-2013 and finding the transfer to be violative of the provision contained in Section 165(6-a) of the Code declared the transaction void and directed that the possession of land be restored to the petitioner.

2. Feeling aggrieved and dissatisfied with the order of the Additional

Collector declaring the sale in favour to be void being violative of the provisions contained in Section 165(6-a) of the Code, the petitioner herein preferred a revision before the Board of Revenue under Section 50 of the Code. By the impugned order, the learned Chairman of the Board of Revenue allowed the revision and held that by virtue of Section 35 of the SARFAESI Act, the provisions of the SARFAESI Act would have overriding effect over the provisions contained in Section 165(6-a) of the Code and in light of that, set aside the order passed by the Additional Collector declaring the transaction as void being violative of Section 165(6-a) of the Code.

3. Now, the petitioner takes exception to the order of the Board of Revenue setting aside the order of the Additional Collector contending inter alia that by virtue of Section 165(6-a) of the Code, the land being in Scheduled Area, the owner of the land cannot sell the land with complying with the provisions contained in Section 165(6-a) of the Code and the learned Board of Revenue went wrong in holding that by virtue of Section 35 of the SARFAESI Act, the provisions of the SARFAESI Act would prevail over Section 165(6-A) of the Code.
4. Mr. Prateek Sharma, learned counsel for the petitioner, would submit that the Board of Revenue is absolutely unjustified in setting aside the well-reasoned and well-merited order passed by the learned Additional Collector holding the transfer to be in teeth of the provisions contained in Section 165(6-a) of the Code and holding that the provisions of the SARFAESI Act would prevail over Section 165(6-a) of the Code by virtue of Section 35 of the SARFAESI Act,

as the provisions of the SARFAESI Act and Section 165(6-a) of the Code, both would operate in different fields and there is no question of the SARFAESI Act having overriding effect over the provisions contained in the Code, therefore, the impugned order deserves to be set aside.

5. I have heard Mr. Prateek Sharma, learned counsel appearing for the petitioner, on the question of admission of the writ petition and considered his submissions made herein-above and also went through the record with utmost circumspection.
6. It is not in dispute that the subject land situate at Scheduled Area notified under the Code is a diverted area and is a secured asset within the meaning of Section 2(zc) of the SARFAESI Act and is a property on which security interest is created, and it was sold by Indian Overseas Bank – respondent No.4 herein in exercise of the powers conferred under Section 13(12) of the SARFAESI Act read with Rules 8 and 9 of the Rules of 2002 in consideration of payment of Rs.41 lakhs in favour of respondent No.3 and sale certificate has duly been issued in his favour on 21-11-2011. On the basis of the sale certificate issued, respondent No.3 made an application for mutation which was granted in his favour turning down the objections taken on behalf of the petitioner, but on appeal being preferred and on being referred by the Sub-Divisional Officer (Revenue) – the appellate authority to the Collector, the Additional Collector has found favour with and held that the sale certificate has been executed by the secured creditor – Indian Overseas Bank in favour of respondent No.3 in violation of Section 165(6-a) of the

Code and therefore the sale certificate could not have been issued by virtue of the provisions contained in Section 165(10) of the Code which has been set aside by the Board of Revenue in revision in view of the provisions contained in Section 35 of the SARFAESI Act.

7. The question for consideration would be, whether the Board of Revenue is justified in holding that the provisions of the SARFAESI Act by virtue of Section 35, would prevail over the provision contained in Section 165(6-a) of the Code which bars that right of a Bhumiswami other than a Bhumiswami belonging to aboriginal tribe excluding the agricultural land shall not be transferred to a person not belonging to Scheduled Tribe without the permission of the Collector?

8. Section 165(6-a) of the Code provides as under: -

“(6-a) Notwithstanding anything contained in sub-section (1), the right of a Bhumiswami other than a Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land shall not be transferred or be transferred either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing :

Provided that every such transfer effected after the 9th day of June, 1980 but before the 20th April, 1981 which is not in accordance with the provisions herein contained shall, unless such transfer is ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.”

9. Thus, the restrictions by way of Section 165(6-a) of the Code are applicable to the Scheduled Areas of the State of Madhya Pradesh,

now the State of Chhattisgarh. Sub-section (6-a) of Section 165 of the Code prohibits transfer of non-agricultural land by a Bhumiswami not belonging to an aboriginal tribe, which is so declared by the State Government, to a person not belonging to an aboriginal tribe, without the permission of the Collector. The proviso declares all such transfers made after 9th June, 1980 but before 20th April, 1981, without the permission of the Collector, void if the same is not ratified under sub-section (6-b).

10. At this stage, it would also be appropriate to notice Section 35 of the SARFAESI Act which states as under: -

“35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

11. The above-stated provision declares that the provisions contained in the SARFAESI Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. The purpose of the SARFAESI Act is to provide a speedy remedy to the Bank and the secured creditor to recover the loan amount.

12. The Supreme Court in the matter of Mardia Chemicals Ltd. v. Union of India¹ while upholding the constitutional validity of the SARFAESI Act has made certain pertinent observations which state as under: -

“36. ... One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of

¹ (2004) 4 SCC 311

assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the report of the Narasimham Committee, yet another Committee was constituted headed by Mr. Andhyarujina for bringing about the needed steps within the legal framework. We are therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy.”

13. In a recent pronouncement of the Supreme Court in the matter of UCO Bank and another v. Dipak Debbarma and others², the UCO Bank sold the property belonging to the Scheduled Tribes of the State of Tripura by sale notification dated 26-6-2012 under the provisions of the SARFAESI Act which was interfered with by the High Court in view of Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960 which contains legislative bar on sale of mortgaged property by bank to any person who is not member of Scheduled Tribe. Their Lordships of the Supreme Court considered the question, “whether the 2002 Act insofar as it provides for sale of immovable properties offered as security for a loan advanced, without any restriction as to the class or category of buyers, would prevail notwithstanding the restrictive provision in this regard under

² (2017) 2 SCC 585

Section 187 of the Tripura Act, 1960” and came to a specific conclusion that the SARFAESI Act will prevail over the provisions contained in Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960. Their Lordships observed pertinently as under:-

“15. In the present case the conflict between the Central and the State Act is on account of an apparent overstepping by the provisions of the State Act dealing with land reform into an area of banking covered by the Central Act. The test, therefore, would be to find out as to which is the dominant legislation having regard the area of encroachment.

16. The provisions of the 2002 Act enable the bank to take possession of any property where a security interest has been created in its favour. Specifically, Section 13 of the 2002 Act enables the bank to take possession of and sell such property to any person to realise its dues. The purchaser of such property acquires a clear title to the property sold, subject to compliance with the requirements prescribed.

17. Section 187 of the Tripura Act, 1960, on the other hand, prohibits the bank from transferring the property which has been mortgaged by a member of a Scheduled Tribe to any person other than a member of a Scheduled Tribe. This is a clear restriction on what is permitted by the 2002 Act for the realisation of amounts due to the bank.

18. The 2002 Act is relatable to the entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. The object of the State Act, as already noted, is an attempt to consolidate the land revenue law in the State and also to provide measures of agrarian reforms. The field of encroachment made by the State legislature is in the area of banking. So long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the 2002 Act, must give way. The dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act, 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the

2002 Act, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act, 1960.”

14. Reverting to the facts of the present case in light of the principle of law laid down by their Lordships of the Supreme Court in UCO Bank (supra), it is quite vivid that in the instant case, the State Revenue Law namely, the Chhattisgarh Land Revenue Code, 1959 in shape of Section 165(6-a) clearly prohibits transfer of non-agricultural land by Bhumiswami not belonging to Scheduled Tribe in a Scheduled Area to a person not belonging to aboriginal tribe without the permission of the Collector, but in view of the provision contained in Section 35 of the SARFAESI Act which gives overriding effect to the provisions contained in any other law for the time being in force i.e. including Section 165(6-a) of the Code by virtue of which under Section 13(12) of the SARFAESI Act read with Rules 8 and 9 of the Rules of 2002, the secured asset has been subject matter of sale in favour of respondent No.3 herein, that can be competently and validly sold by the bank in favour of respondent No.3 and thus, the provisions of the SARFAESI Act by virtue of Section 35 will prevail over the provisions contained in Section 165(6-a) of the Code.
15. Therefore, the learned Chairman of the Board of Revenue is absolutely justified in holding that the provisions of the SARFAESI Act by virtue of Section 35 would prevail over Section 165(6-a) of the Code and no permission from the Collector under Section 165(6-a) of the Code was required for alienating the secured asset

of the respondent Bank in favour of respondent No.3. The order passed by the learned Board of Revenue is strictly in accordance with law and no exception can be taken by the petitioner on the basis of the provisions contained in Section 165 (6-a) of the Code, as the SARFAESI Act would prevail under Section 35 in light of the principles of law laid down by their Lordships of the Supreme Court in UCO Bank (supra).

16. I do not see and find any illegality or perversity requiring interdiction of the order passed by the learned Chairman of the Board of Revenue. The petition deserves to be and is accordingly dismissed summarily at the admission stage itself leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

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Versus

Chhattisgarh State Revenue Board and others

Head Note

Section 35 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will prevail over Section 165(6-a) of the Chhattisgarh Land Revenue Code, 1959.

प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 की धारा 35, छत्तीसगढ़ भू-राजस्व संहिता, 1959 की धारा 165(6-क) पर अभिभावी होगी।