

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3118 OF 2019

M/s. National Ferro Alloys Industries

Through its authorised partner

Mr. Kalhans H. Jhaveri

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Mr. Rajesh Khobragade, Advocate for the Petitioner.

Mr. R. J. Mane, AGP for Respondent No.1 – State.

Mr. Anant Shinde, AGP for Respondent No.2.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 25th NOVEMBER, 2019

P.C.

1] Heard learned counsel for the parties.

2] Though the impugned order dated 12.06.2019 passed by the learned DRAT is liable to be set aside on the account of it being a mechanical order, we do not do so for the facts which note hereinafter.

3] The Petitioner is the owner of 1,06,000 sq.mtrs. land comprised in Survey Nos.328, 329, 330/A, 330/B, 331/B, 332, 333, 334 & 335 situated at Village Dhamdachi, Taluka and District Valsad, Gujrat. Out of said land, on 23.04.2012 the Petitioner demised, for a period of 50 years, 10,000 sq.mtrs. of land comprised in Survey

Nos.328 and 329 in favour of M/s. Gujrat Ferro Alloys Pvt. Ltd. The Indenture of Lease was duly registered.

4] Mortgaging its leasehold rights to Bank of Baroda, M/s. Gujrat Ferro Alloys Pvt. Ltd. availed a credit and being default Bank of Baroda proceeded under SARFAESI Act, 2002. The mortgaged asset was put to sale and was purchased by M/s. Mitesh Industries. The issue of demarcation arose on account of the fact that the Indenture of Lease dated 23.04.2012 executed by the Petitioner in favour of M/s. Gujrat Ferro Alloys Pvt. Ltd. did not delineate the leased land. It referred to the same in the context of survey numbers. On 13.08.2018 DRT appointed a Commissioner to demarcate the 10,000 sq.mtrs. land comprised in Survey Nos.328 and 329 so that the auction purchaser could be conveyed leasehold right for the remainder period of the lease by identifying the parcel. The direction issued to the Court Commissioner was to ensure that access to the leased land was availed.

5] This order was challenged before the learned DRAT which has dismissed the Appeal on the ground that the amount required to be deposited as contemplated by Section 18 the SARFAESI Act, 2002 was not deposited.

6] Learned DRAT has acted mechanically and it has overlooked the point that there was no issue of any kind warranting deposit to be made by the Petitioner which arose before the DRAT.

7] Be that as it may, we have repeatedly asked the learned counsel for the Petitioner as to what is the grievance of the Petitioner against the order dated 13.08.2018 passed by DRT.

8] Indeed, in view of the Indenture of Lease, the demised parcel of land needs to be physically identified at the spot because the Indenture of Lease refers to the survey numbers comprising 1,06,000 sq.mtrs. land owned by the Petitioner with lease being only of 10,000 sq.mtrs. land comprised in Survey Nos.328 and 329. Further total land comprised in said survey numbers is 15,126 sq.mtrs. Meaning thereby, from out of the land in the name of the Petitioner firstly land comprised in the two survey numbers has to be identified and thereafter within the land comprised in the said two survey numbers, 10,000 sq.mtrs. has to be further identified.

9] Learned counsel for the Petitioner is unable to make any contention which warrants any kind of interference with the order dated 13.08.2018 passed by the learned DRT. The Appeal filed before the DRAT as also the Writ Petition filed in this Court is bereft of any orientation.

10] The Writ Petition is accordingly dismissed directing that the order dated 13.08.2018 passed by learned DRT be complied with.

**Balaji G.
Panchal**

Digitally signed
by Balaji G.
Panchal
Date: 2019.11.26
11:10:16 +0530

SMT. BHARATI DANGRE, J

CHIEF JUSTICE