

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.25264 of 2019

Export Import Bank of India
Ramanashree Arcade
Floor 4, 18, M.G. Road
Bangalore - 560 001.

.. Petitioner

Vs

1 The District Magistrate cum Collector
Thiruvallur District
Thiruvallur.

2 Shan Solar Private Limited
No.2005, Anand Bhavan
2nd Floor, 100 Feet Road
Indira Nagar, HAL 2nd Stage
Bangalore - 560 038.

3 Suryaprakash Singapur
Promoter Chairman and Guarantor
M/s. Shan Solar Pvt. Ltd
No.2005, Anand Bhavan
2nd Floor, 100 Feet Road
Indira Nagar, HAL 2nd Stage
Bangalore - 560 038.

4 Radhika Suryaprakash
Guarantor, M/s. Shan Solar Pvt. Ltd.
Villa# 166 Ph-1, Adarsh Palm Meadows
Whitefield Road, Ramagondanhalli
Bangalore - 560 066.

5 Susil Mohan

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the proceedings of the impugned order

dated 10.07.2019 in R.Dis.347/2018/ M2 and quash the said impugned order, being in derogation of the statutory provisions and decisions of the Honble Supreme Court of India and consequently direct the respondent to pass appropriate order in the petitioners application dated 05.01.2018 under Section 14 of SARFAESI Act rendering necessary assistance to the petitioner to take vacant physical possession of all secured assets as set out therein.

For Petitioner : Mr.Balamurali
for M/s.Shivakumar and
Suresh

For Respondents : Mr.V.Jayaprakash Narayanan
Government Pleader
for 1st respondent

No appearance
for respondents 2 to 5

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The present writ petition has been filed by the petitioner - Export-Import Bank of India, Bangalore-560 001, aggrieved by the order dated 10.07.2019 passed by the first respondent/District Magistrate-cum-District Collector, Thiruvallur District, rejecting the application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act"). The reasons assigned by the first respondent/District Magistrate-cum-District Collector, Tiruvallur District, in the impugned order, are quoted below for ready reference:

"The Borrower in his statement has primarily stated that she is contesting a case of recovery of application filed which is pending before the DRT Bengaluru. On perusal and scrutiny of the case it is ascertained that the petitioner simultaneously approached another forum and preferred original application No.825/2018, U/s.22 (h) of the DRT Act 1993 at DRT Bengaluru on 25.4.2018.

In the reference third cited the Tahsildar, Tiruvallur has stated in his report that the

properties in the description is an agricultural land containing 57 mango trees, two jak fruit trees, 27 teak wood trees, 23 palm trees, 153 coconut trees, four flower trees, two mandarai trees, two bore well, four structures, one banyan tree and 171 other trees in an extent of 6.33 acres in the said property.

On perusal of the affidavits and documents filed by the petitioner and scrutiny of report of the Tahsildar, Tiruvallur in the reference third cited, the land is an agricultural land. Hence, the prayer of the petitioner cannot be entertained as the case will not attract section 14 of the act since the case falls under section 31(i) of the act.

District Magistrate/
District Collector,
Tiruvallur District,
Tiruvallur."

2. The learned counsel for the petitioner, Mr. Balamurali, submitted that the borrower had given declaration to the Bank that the land in question was not used for agricultural purposes and was to be utilised for commercial/industrial activities and, therefore, the said land in question could not fall within the ambit of agricultural land and be treated as exempt from the provisions of the SARFAESI Act. He relied upon the decision of the Hon'ble Supreme Court in ITC Limited v. Blue Coast Hotels Limited and others, reported in (2018) 15 SCC 99 and the decision of this Court rendered on 13.09.2019 in W.P.Nos.4087 and 26721 of 2019 (K.P.Moutheeswaran and another v. The District Collector, Erode). The relevant portion of the judgment passed by this Court is quoted below:

"12. We find considerable force in the contention raised by the learned counsel for the Bank that the District Collector could not have solely proceeded on the basis of the revenue entries in the revenue records and some coconut trees found on the land, where an industry also existed and held it to be agricultural land so as to be exempted under the provisions of SARFAESI Act without holding proper and comprehensive enquiry in the matter as to whether the security interest of the lender Bank was covered the said land also, being an industry set up on such land. These facts of industry existing there do not appear

to have been taken note of by the learned District Collector, who proceeded to hold the land in question to be agricultural land merely on the basis of the claim of parties about the revenue entries in the revenue records. The said order of the District Collector, therefore, appears to be not falling within the four corners of Section 14 of the Act read in the scheme of the SARFAESI Act. Though the learned District Collector may be said to have power to determine the character of land being agricultural or not but without holding proper enquiry in the matter after looking into all the relevant facts and loan documents etc., he cannot take a one sided view and reject the application under Section 14 of the Act.

13. Section 14 of the SARFAESI Act empowers and at the same time obligates the Chief Judicial Magistrate or the District Magistrate to assist the secured creditor in taking possession of the secured asset in the process of recovery under the provisions of SARFAESI Act because the lending Financial Institutions may find themselves ill-equipped to take the possession of the assets or security interest from the borrowers or persons in whose possession such assets may be and, therefore, the District Collector or the Chief Judicial Magistrate has been empowered to pass suitable orders in this regard on the application filed by the Banks. This provision is apparently to assist the secured creditor in the process under special law in the form of SARFAESI Act.

14. From the order impugned before us, it appears that the learned District Collector did not hold a comprehensive and proper enquiry into the matter and without looking into the facts, as they existed at site in question, where the security interest in the form of industry was established by the borrower which implied that parties themselves did not treat the land in question as an agricultural land, he has proceeded to hold it to be agricultural land merely on the basis of the assumption of the revenue entries which might have continued to show the land to be agricultural land in the

revenue records even after sanction of the loan for the industry and default and recovery proceedings having been initiated by the lender Bank under the provisions of SARFAESI Act. Therefore, apparently, that cannot be the sole criteria for granting such an exemption under Section 31(i) of the Act in respect of the said land which in fact was utilised for setting up of industry or other assets thereon which might fall within the four corners of "security interest" of the lending financial institution. In the absence of any such proper enquiry held by the learned District Collector, particularly, in the light of the observations made by the Hon'ble Supreme Court in the aforesaid judgment, we feel that the matter deserves to go back to the learned District Collector for deciding the application of the lender Bank filed under Section 14 of the Act afresh in accordance with law."

3. The learned Government Pleader, Mr. Jayaprakash Narayanan, however, supported the impugned order of the first respondent/District Collector on the basis of the photographs, which show that there were coconut trees etc. in the said property.

4. Having heard the learned counsel for parties, we are of the opinion that the order passed by the first respondent/District Collector, Tiruvallur, suffers from legal infirmity, which cannot be sustained and merely because some trees are in existence, on the basis of the report of the Tahsildar, Tiruvallur, it cannot be said that the land in question is agricultural land and, therefore, outside the ambit and scope of the provisions of SARFAESI Act, without holding a proper and comprehensive enquiry in the matter. There were some civil structures in the said land, which indicate that the land in question was not exclusively used for agricultural purposes.

5. The Hon'ble Supreme Court, in the case of ITC Limited v. Blue Coast Hotels Limited and others (supra), held that merely because a portion of the land was used for growing vegetables, fruits, shrubs and trees for captive consumption of the hotel, it cannot be held to be agricultural land so as to fall outside the scope of SARFAESI Act by virtue of Section 31 (i) of the Act.

6. Therefore, we allow this writ petition and set aside the order dated 10.7.2019 passed by the first respondent/District Magistrate-cum-District Collector, Thiruvallur and direct the said respondent to pass fresh orders in accordance with law after holding proper enquiry. The parties, without any notice from the side of the first respondent/District Magistrate-cum-District Collector, Thiruvallur, may appear before said authority in the first instance on 19.11.2019. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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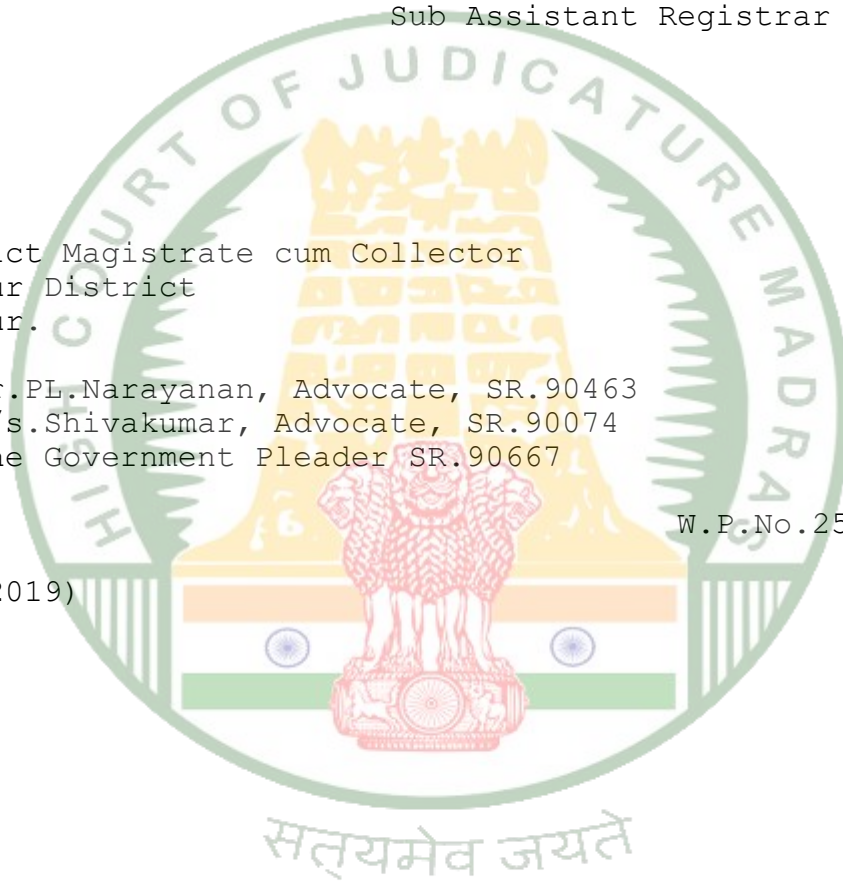
To:

The District Magistrate cum Collector
Thiruvallur District
Thiruvallur.

+1cc to Mr.PL.Narayanan, Advocate, SR.90463
+1cc to M/s.Shivakumar, Advocate, SR.90074
+1cc to the Government Pleader SR.90667

W.P.No.25264 of 2019

VBA(CO)
CB(13/11/2019)



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