THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

WP.No.s 3261 and 10560 of 2019

COMMON ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

The questions, which arise for consideration in these two writ petitions between the same parties, are *(i)* whether the property given as security by the petitioner to the 1st respondent-Bank is agricultural land, *(ii)* whether it falls within the exemption contained in Section 31(i) of the SARFAESI Act, 2002 (for short 'the Act')', and *(iii)* what is the affect of the auction purchaser not depositing 25% of the sale price on the date of the auction or on the next day and also paying the balance sale consideration more than three years after the auction sale was held.

2. Admittedly, the petitioner represented by its Proprietor approached the 1st respondent-Bank for renovation of its unit and as well as for working capital, and the 1st respondent sanctioned a term loan of Rs.15,00,000/- and cash credit facility of Rs.5,00,000/-.

3. The main activity of the unit of the petitioner was production of chicken for commercial purposes and it was a poultry form.

4. Petitioner had located the said poultry form in an extent of Acs.2.00 guntas of agricultural land in Panthini Village, Wardhanapet Mandal, of Warangal District and the extent

occupied by the poultry form was about 20 guntas (4215.3 sq.fts. + 2877.99 sq.fts + 356.04 sq.ft + 628.11 sq.ft).

5. The said Acs.2.00 guntas land was purchased by the petitioner under a registered document dt.25.08.1999 and the said original sale deed was deposited through a Memorandum of Deposit of Title Deeds dt.27.11.2014 executed by the petitioner in favour of the 1st respondent-bank.

6. After the loan was sanctioned, the amount was released, but there was a default in payment of loan installments by the petitioner.

7. The 1st respondent-bank issued a notice under Section 13(ii) of the Act on 08.08.2015 demanding a sum of Rs.15,20,800/- from the petitioner and also classified the loan account as a 'Non-performing asset' on 05.08.2015.

8. Though the petitioner took a plea that Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules') framed under the Act was not followed when the *e*-auction notice dt.20.11.2015 was issued, this is disputed by the respondents.

9. The *e*-auction was conducted on 31.12.2015 pursuant to an *e*-auction Sale Notice dt.20.11.2015 and 2nd respondent was declared as successful bidder having quoted a sum of Rs.59,84,000/-, which was the highest bid.

10. As per sub-Rule(3) of Rule 9 the 2^{nd} respondent was supposed to pay 25% of the bid price on the same day or on the next day.

11. Admittedly, the 2^{nd} respondent paid EMD of Rs.4,18,000/- on 29.12.2015 before the date of the sale, and paid Rs.6,25,000/- and Rs.5,95,000/- on 02.01.2016 and a further amount of Rs.1,58,000/- on 04.01.2016, and thus 25% deposit of the sale price was not paid in compliance of sub-Rule(3) of Rule 9 of the Rules.

12. The 2^{nd} respondent was supposed to pay the balance sale consideration under sub-Rule(4) of Rule 9 within 15 days of Confirmation of Sale or such extended period as may be agreed upon in writing between the parties, but he did not pay the balance amount within the 15 days stipulated period and no consent of the petitioner was obtained for making payment of the balance amount, which was admittedly paid in 2019, just prior to the issuance of the Sale Certificate on 14.02.2019 in his favour. Thus there is also patent violation of sub-Rule (4) of Rule 9.

13. Petitioner filed SA.No.555 of 2015 before the Debt Recovery Tribunal-I, Hyderabad invoking Section 15 of the Act challenging the possession notice dt.02.11.2015 and sale notice dt.20.11.2015 fixing the date of sale as 31.12.2015. He contended that due to escalation of the price in bird feed and due to the Bird Flu virus, most of the poultry farms all over the State were forced to kill the birds and due to that reason, the business

of the petitioner ran into temporary liquidity crunch and there was therefore a delay in paying the loan installments. He contended that the land, which was mortgaged to the 1st respondent-bank by him, was an agricultural land and under Section 31(i) of the Act, it could not be put to sale under the provisions of the Act as he was cultivating the same every season. He asserted that he did not convert the entire land into non-agricultural land in any of the land records. He also contended that even assuming that 1st respondent could sell the property under the provisions of the Act, it was not necessary to sell the entire Acs.2.00 guntas of land mortgaged by him to the Bank and selling a portion of the property would have been sufficient to recover the loan dues of the bank.

14. Counter affidavit was filed by the 1st respondent-Bank opposing these pleas and it was asserted that the secured asset is not an agricultural land but was a poultry form and that the Bank was entitled to proceed under the provisions of the Act.

15. The auction purchaser/2nd respondent also got himself impleaded and supported the action of the 1st respondent-Bank.

16. It is not in dispute that the Debt Recovery Tribunal appointed an Advocate-Commissioner by order dt.27.09.2016 to verify, what extent of land is in use for poultry shed and what is the use of the remaining extent of the property, which was mortgaged by the petitioner to the 1st respondent-Bank.

17. The Advocate-Commissioner visited the mortgaged property on 17.11.2017 accompanied by the petitioner and an Officer of the Bank and verified the physical features. He found that 20 guntas of land amounting to 2420 sq. ft., was being used for poultry shed and the remaining land of Ac.1.20 guntas was under cultivation and the land was also ploughed. He also took photographs of the property and filed it before the Tribunal.

18. But the Tribunal passed an order dt.24.11.2019 in SA.No.555 of 2015 rejecting the plea of the petitioner that the subject land is agricultural land and could not have been sold under the provisions of the Act. It quoted Section 31(i) of the Act and referred to the judgments of the Supreme Court in ***ITC Limited v. Blue Coast Hotels Ltd.***[1] and ***Indian Bank v. K.Papireddiyar & Others***[2], and without adverting to the contents of the Advocate-Commissioner's Report or to the document of sale, which was deposited by the petitioner with the 1st respondent-Bank, which indicated that the mortgaged property was agricultural land, simply concluded that the lands are not agricultural lands. It then took the view that the auction proceedings were not challenged within 45 days and that the 1st respondent-Bank proved that it had meticulously followed the provisions of the Act while issuing possession notice and auction notice, and its initiation of measures under the Security Interest(Enforcement) Rules 2002 against the subject property was valid.

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[1] (2018) 15 SCC 99
[2] in CA.No.6671 of 2018

19. This was questioned by the petitioner in **Writ Petition No.3261 of 2019**.

20. The 1st respondent-Bank also filed Crl.MP.No.72 of 2019 before the Chief Judicial Magistrate at Warangal and obtained an order under Section 14 of the Act for taking possession of the subject property, on the basis of which the Advocate Commissioner appointed by the Chief Judicial Magistrate, Warangal gave a Notice to the petitioner on 17.05.2019 that he would take physical possession of the subject property on 24.05.2019.

21. This was questioned by the petitioner in **Writ Petition No.10560 of 2019**.

22. Heard counsel for the petitioner, Smt Kalpana Ekbote, Counsel for 1st respondent-Bank and Sri D.V.Chalapathi Rao, Counsel for 2nd respondent, in both the Writ Petitions.

23. The property which was mortgaged to the Bank had been obtained by the petitioner under a registered sale deed dt.25.08.1999 and it clearly recorded that the subject property was agricultural property.

24. Though in the document i.e., Memorandum of Title Deeds dt.27.11.2014, it was mentioned that "poultry farm and open place with a municipal number" were located in the property, the Advocate Commissioner appointed by the Debt Recovery Tribunal had clearly found that only 20 guntas was covered by the poultry

shed and balance Ac.1.20 guntas was under cultivation and there was evidence of ploughing in the land.

25. In the decision of the Supreme Court in ***Indian Bank***'s case (2 supra), the Supreme Court specifically held that whether a particular piece of land is agricultural land in nature, is a question of fact.

26. When the petitioner's title deed mentioned the mortgaged property as a agricultural land and when the Advocate-Commissioner in his Report submitted to the Debt Recovery Tribunal stated categorically that substantial portion of the subject property is agricultural land and even the Valuation Certificate dt.07.11.2015 of the Chartered Engineer Approved Valuer appointed by the Bank in his Report to the Bank at serial No.12 stated that the property was being used as *'poultry farm & as agricultural land'*, it was incumbent on the part of the 1st respondent to adduce evidence before the Tribunal or before this Court to establish that the mortgaged property was not agricultural land, since the burden of proof thus shifted to them to rebut the claim of the petitioner. But no such evidence has been adduced by the respondents.

27. Therefore, adverse inference has to be drawn against the respondents and the contention of the petitioner that the subject land is agricultural land is to be accepted.

28. It is shocking that the Debt Recovery Tribunal-I, Hyderabad in its interim order dt.24.01.2019 in SA.No.555 of 2015 did not choose to deal with the aspect, whether the mortgaged land is agricultural land or not, and simply quoted two Supreme Court Judgments referred to above to arrive at the finding that mortgaged property was not agricultural land.

29. This is a clear dereliction of duty on the part of the Presiding Officer of the Debt Recovery Tribunal-I, Hyderabad as it was his duty to decide the said issue, when it was specifically raised by the petitioner and disputed by the 1st respondent. It was also his duty to discuss the Advocate-Commissioner's Report which was filed pursuant to the order passed by the Tribunal as to the nature of the land.

30. This Court has been coming across several orders passed by the said Presiding Officer, who is not keeping in mind the parameters of jurisdiction under the provisions of the Act and seems to be turning a blind eye to the gross violations of the provisions of the Act and the Rules by the financial institutions/Bank. The instant case is one such classic case.

31. Since admittedly the 2nd respondent did not pay 25% of the auction purchase price either on the date of sale i.e. on 31.12.2015 or by 02.01.2016 and also did not pay the balance sale consideration within the 15 days period prescribed under sub-Rule(4) of Rule 9 of the Rules, the 1st respondent-Bank ought to have forfeited the 25% deposit made by the 2nd respondent

under sub-Rule(5) of Rule 9. But shockingly, it accepted the amount paid three years after the auction and even issued a Sale Certificate to the auction purchaser.

32. Unfortunately, the Presiding Officer of the Debt Recovery Tribunal-I does not seem to be well-versed with the provisions of the Act and the Rules made there under, as he is repeatedly turning blind eye to infractions of this nature being committed by the financial institutions/banks. He seems to have an inherent bias in favour of the financial institutions/banks and prejudice against borrowers, and he is seeking to sustain every action of the financial institutions/banks, however bad the infraction of the law being committed by the financial institutions/banks.

33. Therefore, Writ Petition No.s 3261 of 2019 and 10560 of 2019 are both allowed with costs of Rs.10,000/- to be paid by the 1st respondent to the petitioner and the order dt.24.01.2019 in SA.No.555 of 2015 of Debt Recovery Tribunal-I, Hyderabad is set aside. It is declared that the provisions of the Act are not attracted to the subject land in view of Section 31(i) of the Act since the property mortgaged is agricultural land substantially, and that all proceedings initiated by the 1st respondent under the provisions of the Act are declared to be illegal, null and void and of no affect. Also the order passed under Section 14 of the Act by the Chief Judicial Magistrate, Warangal in Crl.MP.No.72 of 2019 directing the Advocate-Commissioner to take possession of the subject property from the 1st petitioner is set aside. However, this

shall not preclude the 1st respondent from initiating steps for recovery of the loan dues of the petitioner in accordance with law in an appropriate forum. The 1st respondent-Bank shall also refund the amount deposited by the 2nd respondent with it without any interest within three (03) weeks from the date of receipt of a copy of this order.

34. Copy of this order be marked to the Secretary, Ministry of Finance, Government of India, New Delhi, North Block, to take note of the observations of this Court against the Presiding Officer of the Debt Recovery Tribunal-I, Hyderabad and consider taking appropriate action against him.

35. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

06th November, 2019.
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