

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Delivered on: 10-06-2019

Coram :

**The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. KESHA VA RAO**

Writ Petition Nos.8237 and 8234 of 2019

Between:

M/s. Sehgal Motors Private Limited,
Uppal, Hyderabad, rep.bty its Managing
Director Shri Karan Vir Sehgal.

.. Petitioner

Vs.

UCO Bank, Mid Corporate Branch,
Banjara Hills, Hyderabad, rep.by its
Authorized Officer & 2 others.

.. Respondents

For Petitioner

: Mr. A. Sudarshan Reddy,
Senior Counsel

For Respondent No.1

:

For Respondent No.2

: Mr. S. Niranjana Reddy,
Senior Counsel

For Respondent No.3

:

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHA RAO
WRIT PETITION Nos.8237 AND 8234 OF 2019

COMMON ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

The borrower company and one of its Directors, have come up with the above writ petitions (i) challenging an order of the Debts Recovery Tribunal (DRT) dismissing their appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002') and (ii) also seeking a declaration that the action initiated by the Authorised Officer of the bank under Section 13 (4) is contrary to law.

2. Heard Mr. A. Sudarshan Reddy, learned Senior Counsel appearing for the petitioners and Mr. S. Niranjan Reddy, learned Senior Counsel appearing for the Asset Reconstruction Company.

3. The brief facts sufficient for the disposal of the writ petitions are as follows:

- a) The Private Limited Company, which is the petitioner in one writ petition, availed credit facilities from the UCO Bank (1st respondent) way back in the year 2003.
- b) The account became a Non-Performing Asset in the year 2010 and the bank issued a demand notice, dated 29.01.2011, under Section 13 (2) of the Act, 2002.
- c) It was followed by a possession notice, dated 28.11.2011, under Section 13 (4) of the Act, 2002.

- d) An auction notice was issued on 04.02.2012 fixing the date of auction as 12.03.2012.
- e) Challenging the auction notice, the Company alone filed an appeal in S.A. No.134 of 2012. In the meantime, the debt was assigned by the first respondent Bank in favour of an Asset Reconstruction Company, which is the 2nd respondent herein.
- f) The main ground of challenge in S.A. No.134 of 2012 to the measures taken under Section 13 (4) of the Act, 2002 was that the property brought to sale was an agricultural land and that therefore there was a bar under Section 31 (i) of the Act, 2002.
- g) By a final order, dated 12.07.2013, the DRT allowed the appeal on the short ground that the lands in question are agricultural lands exempt under Section 31 (i) of the Act, 2002.
- h) The bank/Asset Reconstruction Company filed an appeal in Appeal No.282 of 2013 before the Debts Recovery Appellate Tribunal (DRAT), Kolkata, as against the order of DRT. By an order, dated 07.07.2014, the DRAT allowed the appeal and remanded the matter back to the DRT on the short ground that there was no shred of evidence produced by the borrower company to prove that the land was an agricultural land and that therefore the DRT should have a fresh look at the issue.
- i) After remand, the Asset Reconstruction Company filed a Certificate from the Village Revenue Officer (VRO) to the effect that no agricultural operations are carried on in the lands for the past several years. Based upon the said certificate, the DRT

dismissed S.A. No.134 of 2012, by an order, dated 16.04.2018, holding that the lands are not agricultural lands.

- j) Immediately thereafter, the Asset Reconstruction Company secured an order from the Chief Judicial Magistrate on 26.04.2018 under Section 14 of the Act, 2002.
- k) Challenging the order of the DRT, dated 16.04.2018 and the order of the Chief Judicial Magistrate, dated 26.04.2018, the Company filed two writ petitions and one of the Directors of the company who is the owner of the land filed one writ petition. All these three writ petitions, W.P. Nos.16494, 18108 and 28301 of 2018, were disposed of by a Bench of this Court by a final order, dated 04.09.2018. The effect of this order was to set aside the order of the DRT, dated 16.04.2018 and to remit the matter back to the DRT with liberty to the parties to file documents. However, the order of the Chief Judicial Magistrate was not interfered with by this Court by the order, dated 04.09.2018.
- l) The DRT again took up S.A. No.134 of 2012 for hearing and the parties filed certain documents. Thereafter, the Tribunal passed a final order, dated 15.03.2019, dismissing S.A. No.134 of 2012, holding that the lands are not agricultural lands and that therefore the protection under Section 31 (i) of the Act, 2002 was not available.
- m) It is against the said order of the DRT, dated 15.03.2019, that the borrower company has come up with one writ petition and the owner of the land who is also a Director of the borrower company

and a guarantor of the loan, has come up with the other writ petition.

4. It is seen from the judgment of the Tribunal that the Tribunal framed two issues for consideration, namely, (1) whether the property in question is an agricultural land exempt under Section 31 (i) of the Act, 2002 and (2) to what relief the petitioners were entitled.

5. After considering (i) the sale deed documents by which the property in question was purchased, (ii) the Pattadar Passbooks, (iii) the Pahanies, (iv) the legal opinion obtained by the Bank in the year 2003 with respect to the nature of the property, (v) the investment support given by the Government of Telangana to the owners of the property for cultivating crops, (vi) the contract dated 08.12.2009 for seed development, (vii) the income tax returns for the assessment year 2018-19 and (8) the certificate issued by the Village Revenue Officer, the Tribunal came to the conclusion on issue No.(1) that the land in question is not an agricultural land. Therefore, the Tribunal held that the protection under Section 31 (i) of the Act, 2002, was not available. Accordingly, the Tribunal dismissed the appeal. Before doing so, the Tribunal also took note of two relevant decisions of the Supreme Court, namely, **ITC Limited v. Blue Coast Hotels Limited**¹ and (2) **Indian Bank v. K. Papireddiyar**.²

6. Assailing the judgment of the Debts Recovery Tribunal, it is contended by Mr. A Sudershan Reddy, learned Senior Counsel appearing for the petitioners that all the documents submitted by the

¹ 2018 (15) SCC 19

² 2018 (5) ALD 128

petitioners at the time of creating a security interest over the property in the year 2003, clearly recorded the fact that the lands were agricultural lands; that the amounts paid by the Government for raising crops, established that the lands continue to be agricultural lands even as on date; that the income tax returns established that the land owners derived agricultural income which was exempt from income tax; that what is essential to find out for the application of Section 31(i) of the Act, 2002, is just to see whether agricultural operations are being carried on; and that merely on the strength of a certificate issued by the Village Revenue Officer in the year 2017, the Tribunal ought not to have come to a conclusion that the lands are not agricultural lands and that therefore, the impugned order of the Tribunal is liable to be set aside,

7. Per contra, it was contended by Mr. S. Niranjan Reddy, learned Senior Counsel appearing for the Asset Reconstruction Company that the petitioners ought to have challenged the impugned order before the Debts Recovery Appellate Tribunal before coming to this Court; that once the Tribunal has recorded a factual finding, after analyzing the evidence on record, it is not open to this Court to sit on appeal over such findings, especially in a writ petition under Article 226 of the Constitution of India; that as a matter of fact, the appeal in SA No.134 of 2012 was filed (in the first instance) not by the land owner but by the borrower Company and hence, their assertion that the land is an agricultural land, cannot be taken for its face value; that the petitioners have successfully stalled the auction sale for the past seven years, disabling the bank from recovering anything for the past more

than seven years; that the total dues have now gone up to nearly Rs.70.00 crores, leaving the bank at crossroads and that the object behind Section 31 (i) of the Act, 2002, is to protect the agricultural lands belonging to agriculturists from being proceeded against, under a law which is considered to be drastic and that therefore, the benefit of the same should not be extended to borrowers like the petitioner company which is in the automobile industry.

8. We have carefully considered the above submissions.

9. It may be true that all the documents of title that the petitioners deposited with the Bank at the time of creation of the mortgage described the land in question as agricultural land. But it is now well settled that the same is not conclusive of the issue whether protection is available under Section 31 (i) of the Act, 2002, or not. As pointed out by Mr. S. Niranjan Reddy, learned Senior Counsel for the Asset Reconstruction Company, the purpose of enacting Section 31 (i) of the Act, 2002, was indicated by the Supreme Court in *Blue Coast Hotels Limited*, in paragraph-36. Section 31 (i) of the Act, 2002, according to the Supreme Court, is intended to protect agricultural lands held for agricultural purposes by agriculturalists. Therefore, the mere fact that at the time of creation of security interest, the land was an agricultural land may not be sufficient to sustain the protection under Section 31 (i) of the Act, 2002.

10. Essentially the question as to whether the property constituting the security interest is an agricultural land or not, is one of fact. Therefore, this question of fact should invariably be adjudicated by

the special forum, namely, the Debts Recovery Tribunal constituted under the Act, 2002. Once the special forum constituted under a special enactment has recorded a finding on this question of fact, the power of this Court to interfere under Article 226 of the Constitution of India with such a finding, is extremely circumscribed. It is true that **our jurisdiction under Article 226 of the Constitution of India may be available, if the finding recorded by a Tribunal on a question of fact is completely perverse and the perversity is of such a nature that no forum could have ever come to such a conclusion.** This precaution has to be kept in mind especially in cases where the special enactment also provides for an Appellate Tribunal.

11. In this case, the Debts Recovery Tribunal has taken into account (1) the relevant case law on the point, namely, the decisions rendered by the Supreme Court in **Blue Coast Hotels and Papireddiyar** and (2) the relevant documents produced on both sides such as the original title deeds, pahanies, pattadar passbooks, income tax returns, the certificate of the Village Revenue Officer, the seed development agreement and the cheques issued by the State Government. After taking note of all the documents and the case law relevant for the purpose, the Tribunal has come to a particular conclusion on facts. This conclusion in our considered opinion is not so perverse that no Tribunal could have ever come to such a conclusion.

12. It may true that on the basis of the very same documents, another Tribunal or even this Court may record an exactly opposite finding of fact. But, the beauty of the jurisdiction under Article 226 of

the Constitution of India is to refrain from coming to independent findings of fact, but just to see whether the Tribunal took into account relevant consideration and exercised its jurisdiction in a manner prescribed by law or not. In this case, the Tribunal has arrived at a particular finding of fact after taking note of all the documents and the relevant case law. We are unable to see any perversity in the finding of the Tribunal, warranting our interference.

13. Section 18 of the Act, 2002 provides for a remedy of appeal against the order of the Debts Recovery Tribunal. The scope of jurisdiction of the Debts Recovery Appellate Tribunal is much larger than the scope of jurisdiction of this Court under Article 226 of the Constitution of India. Section 18 (2) of the Act, 2002, confers the same jurisdiction upon the Appellate Tribunal, as is available under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Rules framed thereunder. Therefore, the Appellate Tribunal has the power, even to reappraise the evidence and come to a diametrically opposite conclusion, on the basis of the very same documents. But we cannot do it.

14. Therefore, on the short ground (1) that there is no perversity of finding on the part of the Tribunal warranting our interference under Article 226 of the Constitution of India and (2) that as a corollary, the petitioners should first go before the Debts Recovery Appellate Tribunal as against the impugned order, the writ petitions are liable to be dismissed.

15. Accordingly, the Writ Petitions are dismissed. It is made clear that we have not pronounced any opinion on the merits of the case and hence, it will be open to the petitioners to approach the Appellate Tribunal as against the impugned order. The impugned order is dated 15.03.2019. The above writ petitions were filed on 10.04.2019 and 16.04.2019. Notice was taken by the learned counsel for the Asset Reconstruction Company in both the writ petitions on 18.04.2019 and the writ petitions have been pending in this Court for nearly two months. Therefore, the Debts Recovery Appellate Tribunal is directed to give the benefit of excluding the period from the date of filing of the writ petitions till the date of receipt of a copy of this order for computing the period of limitation for filing an appeal. Since the auction is scheduled to be held on 11.06.2019 viz., tomorrow, the Asset Reconstruction Company shall not confirm the auction for a period of fifteen (15) days to enable the petitioners to move the appellate Tribunal and seek stay.

However, in the circumstances, there shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions, if any pending, shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

June 10, 2019
Mgr/KTL