ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO 376/2020

A K PROPERTIES PT LTD. AND ANR.
Versus
STATE BANK OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 27th November, 2020.

Appearance:
Mr. Joy Saha, Sr. Adv.
Mr. Debasish Karmakar, Adv.
Mr. Subhojit Saha, Adv.
Mr. Arya Nandi, Adv.
Mr. Ishan Saha, Adv.
...for the petitioner.

Mr. Pankaj Kumar Mukherjee, Adv.
Ms. S. Mishra, Adv.
... for the respondent.

The Court : The grievance of the petitioner is that, despite the security on given by the petitioner on mortgage being comprised agricultural land, substantially comprised of water bodies as well, the respondent-bank has assessed the same for the purpose of valuation on the premise of certain conversion certificates obtained in the meantime. Learned Senior Counsel for the petitioner argues categorically that, despite the existence of such conversion certificates, even till date the land-in-question retained its character as an agricultural land. As such, the basis of the valuation ought to be the present user of the land and its character, and not the proposed user of the same.

Learned Senior Counsel for the petitioner cites a judgment reported at 2018 (1) D.R.T.C 873 (SC) (ITC Limited Vs. Blue Coast Hotels Ltd.) for the proposition that the character of the land and the purpose for which it is set apart has to be factored in while assessing its valuation. Revenue entries, in the absence of other evidence, cannot be the only yardsticks for assessing such character of the property.

Learned Senior Counsel next cites a judgment reported at 2018(2) D.R.T.C 374 (S.C) Indian Bank and Another vs. K. Pappireddiyar & Another. By placing reliance on the ratio laid down in paragraph nos. 9 and 10 of the said judgment, it is submitted on behalf of the petitioners that, whether a parcel of land is agricultural in nature, must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart. The nature and character of the land are relevant circumstances in that regard, along with the use to which it is put and the purpose and intent of the parties on the date on which the security interest is created, as held in the cited judgment.

Learned Senior Counsel, by placing further reliance on certain extracts from the revenue records, as annexed to the affidavit-in-reply filed by the petitioners, argues that, even as of today, the land-in-question appears to be comprised of agricultural lands and water bodies, as such negating the bank's conclusion that it is intended to be used for commercial purpose and, thus, had to be valued accordingly.

By placing reliance on a chart given by the petitioners in their affidavit-in-reply, learned Senior Counsel for the petitioners argues that, at least some of the plots owned by the petitioners do not fall within the purview of the conversion certificates annexed in the affidavit-in-opposition and, as such, ought to be treated as agricultural lands. No such break-up was considered by the bank while evaluating the petitioners' assets.

Learned Senior Counsel also places reliance on a document annexed to the writ petition which shows that one of the bank employees himself gave a report which clearly indicated that, despite the conversion certificates, the land was being used for agricultural and pisciculture purposes, which is also corroborated by a report filed in connection with a previous proceeding. However, learned Senior Counsel for the petitioners is candid enough to submit that the said proceeding ultimately met with summary failure on technical grounds.

Learned Counsel appearing for the bank highlights a communication issued by the bank to the petitioners (annexure P1 at page 27 of the writ petition), which specifies the mortgage properties. It is argued that such properties do not include any of the plots, regarding which no conversion certificate was issued, which can be corroborated from the plot numbers given in the affidavit-in-reply of the petitioners.

It is further argued that the conversion certificates and the re-verification of the nature of the property by the respondent bank are sufficient basis for calculating the valuation of the assets and, as such, no further report ought to be sought within the purview of the present writ petition, which would convert this Court to a fact-finding forum.

Upon hearing both sides, it is evident that conversion certificates were issued for a substantial number of plots, if not all, under mortgage. Such certificates, as annexed to the affidavit-in-opposition filed by the bank, clarified the position that the plots-in-question were sought to be used for the purpose of 'Bastu' (commercial). As such, even if the physical nature of such plots have not been changed in the meantime by the petitioners, that, *ipso facto*, does not give a handle to the petitioner to claim that the nature of the plots still remain agricultural. Both the decisions cited by the petitioners make it clear that the purpose of use of the land have to be considered while taking into account the nature of the property in question. In the present case, not only the conversion certificates but also the admission of one Shri Bhuniya in the report filed by the bank employee, which was relied on by the petitioners themselves, shows that the undertaking of a commercial project has been planned on the plots-in-question. As such, the 'user' and purpose of use of the plots cannot be confined to the present physical nature of the plots, which the petitioners could have left unaltered by design to avoid a different valuation. Since the physical act of conversion is only a matter of time, which is in the hands of the petitioners, as evident from the conversion certificates and other materials on record, the present character of the land, in its physical sense, cannot be taken into account while assessing the valuation. As such, there is no necessity of interference in the present writ petition. The bank acted well within its authority to assess the mortgage properties as it did.

Accordingly, WPO No. 376 of 2020 is dismissed on contest, without any order as to costs.

Let urgent website copies of this order be made available to the parties.

(SABYASACHI BHATTACHARYYA, J.)

SK/mg