

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.4098 of 2020

V.P.Senapathi

.. Petitioner

-vs-

1. The Authorised Officer
State Bank of India
Stressed Assets Management Branch
1122, Raja Plaza, First Floor
Avinashi Road
Coimbatore 641 037
2. C.Subramaniam
3. M/s Mehala Carona Textiles Pvt.Ltd.,
36, Harvey Road
Tirupur 641 602
represented by its Director
Mr.C.Subramaniam

4. Velumani

.. Respondents

Prayer : Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, forbearing the first respondent from taking any measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 with respect to the property at S.F.No.13/1, Sembianalloor Village, Avinashi Taluk, Coimbatore Registration District measuring at about 2.29 acres, mentioned in item No.5 of Sale Notice issued by the first respondent dated 05.12.2019, with respect to the account of the third respondent.

For Petitioner

:: Mr.Niranjan Rajagopalan
for M/s G.R.Associates

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The writ petitioner is a third party and claims to be the lessee, in respect of the landed property at S.F.No.13/1, Sembianalloor Village, Avinashi Taluk, Coimbatore Registration District, admeasuring to an extent of 2.29 acres.

2. The borrower, namely, the third respondent had availed financial assistance from the State Bank of India and for the due repayment of the loan, created mortgage over some immovable properties.

3. In view of the default committed by the borrower, the first respondent initiated recovery proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") and also issued a sale notice dated 5.12.2019.

4. It appears that the borrower made a challenge to the sale notice by filing an appeal before the Debts Recovery Tribunal at Coimbatore and a conditional interim order, came to be passed.

5. According to the petitioner, he had taken the said land by way of lease agreement dated 20.5.2009, from the second respondent, for agricultural purposes and originally, a single crop farming pattern was followed, which included corn, cotton, etc., and due to scarcity of water, after the petitioner became the lessee, had planted coconut and mango trees to be done through drip irrigation, and in the intervening two years, there was no agricultural activity owing to acute water scarcity. It is the specific case of the petitioner that the land, which was leased to him, is characterised as "agricultural land" and therefore, it is exempted from the recovery proceedings, by virtue of Section 31(i) of the SARFAESI Act. The learned counsel appearing for the petitioner has also invited the attention of this Court to the proceedings of the Record of Tenancy Officer/Revenue Tahsildar, Avinashi dated 25.2.2016, and would submit that in the land owned by Mr.C.Subramaniam in Survey No.13/1, admeasuring to an extent of 2.29 acres, he has been declared as the cultivating tenant, since he became the lessor under him, as the character of the said property continues to be agricultural, and by virtue of the impugned sale notice, the land which was leased to him has been auctioned and however, the sale is yet to be confirmed, by virtue of the interim order obtained by the original borrower in the pending SARFAESI Appeal.

6. The learned counsel appearing for the petitioner has also invited the attention of this Court to the judgment reported in (2018) 15 SCC 99 - ITC Limited v. Blue Coast Hotels Limited & others, and would submit that the question whether the assets are characterised as "agricultural lands" or not is a

question of fact, and in the light of the overwhelming materials placed by the petitioner in the form of typedset of documents, there cannot be an iota of doubt as to the nature and character of the land, and the remedy open to the first respondent-Bank, if any, is to proceed under the other laws, except under the SARFAESI Act, and prays for appropriate orders.

7. This Court has considered the arguments advanced by the learned counsel appearing for the petitioner and also perused the materials placed before it. Admittedly, the lease deed executed by the petitioner is an unregistered one and it also appears that it came into being after the creation of the secured assets. The proceedings of the Record of Tenancy Officer/Revenue Tahsildar, Avinashi dated 25.2.2016, relied upon by the learned counsel appearing for the petitioner, does not throw light as to the character of the said land.

8. In the considered opinion of the Court, the primordial question whether the land in which the petitioner claims to be the lessee, under the original borrower, is an agricultural land or not, is a disputed question of fact and this Court, in exercise of the writ jurisdiction, cannot adjudicate the same and that apart, the petitioner is also having an effective alternative remedy, in the form of appeal, under Section 17 of the SARFAESI Act. Therefore, this Court is not inclined to entertain the writ petition. Useful reference can also be made to the Division Bench judgment of this Court reported in 2010 (3) CTC 287 - Kalpesh P.C. Surana v. Indian Bank, Teynampet Branch, 463, Anna Salai, Chennai 600 018 through its Authorised Officer, wherein it has been held as follows:-

"16. It is settled law that the disputed questions of fact cannot be determined in a Writ Petition under Article 226 of the Constitution of India. Without exhausting the remedy provided under Section 17 of the SARFAESI Act, the petitioner has straightaway filed the Writ Petition. In the facts and circumstances of the case in which the decision in K.Raamaselvam v. Indian overseas Bank, 2009 (5) CTC 385, arose, relied on by the petitioner, it is held that there is no need to countenance such a plea raised by the petitioners in that case, as the question raised in that case was purely on a question of interpretation of the Statutory Rule as mentioned by the Division Bench therein and the ratio of the said decision will not apply to the present case.

17.....In the case on hand, there has been no such prior adjudication into disputed question of facts and the petitioner has chosen to straightway approach this Court under Article 226 of the Constitution and seeks for adjudication of such disputed question of fact, which is impermissible. Therefore, the Judgment of the Supreme Court in the case of N.Srinivasa Rao does not in any manner advance the case of the petitioner and cannot be applied to the present facts. In view of the above, we are unable to accept the contention of the learned counsel for the petitioner that the petitioner has discharged the burden of proof that the land is an agricultural land."

9. As regards condonation of delay in filing the appeal, the decision rendered by a Division Bench of this Court reported in 2020 TN Manu 827 - P.K.Radhakrishnan v. Central Bank of India, Asset Recovery Branch, Montieth Road, Egmore, Chennai and others, may also come to the aid of the petitioner.

10. In the facts and circumstances of the case, this Court is of the considered opinion that the writ petition is not maintainable and accordingly, dismissed, subject to the above observation. However, the petitioner, if so advised, is always at liberty to work out the appellate remedy under the SARFAESI Act before the competent forum. Consequently, W.M.P.No.4852 of 2020 is also dismissed.

Sd/-
Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

The Authorised Officer, State Bank of India
Stressed Assets Management Branch
1122, Raja Plaza, First Floor
Avinashi Road, Coimbatore 641 037

+1cc to M/s.G.R.Associates, Sr.No.14312

AKM/19.03.2020

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W.P.No.4098 of 2020