

D/L.35.  
May 1, 2024.  
MNS.

WPA No. 11505 of 2024

Kotak Mahindra Bank Ltd.  
Vs.  
The State of West Bengal and others

Ms. Soni Ojha,  
Ms. Sambrita B. Chatterjee,  
Ms. Sonia Nandy

... for the petitioner.

Mr. Indranil Roy,  
Mr. Rabindranath Basak

...for the State.

Mr. Sudhwasatv Banerjee,  
Mr. Vikash Baisya,  
Mr. Sourajit Dasgupta,  
Ms. Ranjan Seal

...for the respondent nos. 3 to 5.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner contends that despite a previous specific direction of a co-ordinate Bench of this Court, the District Magistrate has repeated her previous approach by rejecting the petitioner's application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (2002 Act), again without taking into consideration the limited authority vested in the District Magistrate under the said Section.

3. Although the District Magistrate, it is argued, paid lip-service to the judgment of the Supreme Court in *ITC Limited Vs. Blue Coast Hotels Ltd. and others*, the District Magistrate did not appreciate the purport of the said judgment to the effect that user of a property determines its character for the purpose of deciding whether the same comes within the purview of the 2002 Act, and not the mere classification in the records of rights, by holding that a portion of the secured asset is agricultural land and thus beyond the purview of the 2002 Act.
4. Learned counsel appearing for the State as well as representing the respondent no. 2, that is, the District Magistrate, is candid and submits that there might have been some misunderstanding on the part of the District Magistrate in appreciating the purport of the previous order of the co-ordinate Bench.
5. As such, upon hearing learned counsel, it is evident that the meaning of the previous direction of the co-ordinate Bench was lost on the District Magistrate. It is not for the District Magistrate to assess on law as to whether the secured asset can be the subject-matter of the 2002 Act within the limited confines of Section 14 of the 2002 Act.

6. Moreover, it is well-settled that if the property is used in a certain manner, which is not agricultural, the mere recording in the records of rights cannot be a determinant for coming to the conclusion that the property is an agricultural land. Thus, the premise of the impugned order being bad in law, the same is vitiated and has to be set aside.
7. Accordingly, WPA No. 11505 of 2024 is allowed, thereby setting aside the impugned order dated March 30, 2024 passed by the District Magistrate, Howrah whereby the petitioner's application filed under Section 14 of the 2002 Act was rejected.
8. The District Magistrate shall now dispose of the application under Section 14 of the 2002 Act in accordance with law in the light of the above observations of this court as well as those in *ITC Limited Vs. Blue Coast Hotels Ltd. and others* within four weeks from date.
9. While so deciding, two aspects are to be kept in mind by the District Magistrate.
10. First, that the District Magistrate, within the limited confines of Section 14 of the 2002 Act, cannot enter into the merits of the matter and/or as to whether the subject property can come within the purview of 2002 Act.

11. Secondly, in the present case, although a portion of the property might have been shown in the records of rights as agricultural land, in view of the other documents, including the sanction letter, the purpose of user of the said property is clearly indicated to be something else than agricultural land.

12. Hence, there cannot be any impediment in the District Magistrate implementing the legal right of the petitioner by ensuring that possession is handed over to the authorized officer of the petitioner.

13. It is expected that the District Magistrate, this time, shall adhere to the above guidelines and dispose of the application filed by the petitioner under Section 14 of the 2002 Act within the time as stipulated above.

14. There will be no order as to costs.

15. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)