D/L. 6.
January 16, 2024.
MNS.

WPA No. 20723 of 2022

Cholamandalam Investment and Finance Co. Ltd.
Vs.
The State of West Bengal and another

Ms. Soni Ojha,
Ms. Sonia Nandy

… for the petitioner.

1. Learned counsel for the Financial Institution/petitioner argues that the District Magistrate acted beyond his jurisdiction in rejecting an application filed by the petitioner under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on the premise that the property concerned was a "*Sali*" land which belongs to the category of agricultural land and falls beyond the purview of the SARFAESI Act).
2. Learned counsel places reliance on the schedule of property as given in the notice issued by the petitioner under Section 13(2) of the SARFAESI Act which clearly indicates that the property concerned is a land on which a

structure is standing, which establishes the fact that the property is not used for agricultural purpose.

3. It is argued that mere nomenclature of a property as *Sali* land in the land records does not necessarily mean that the said land is actually an agricultural land being used for agricultural purpose.
4. In any event, it is pointed out that since the borrower did not take such an objection at any point of time and both the petitioner and the borrower proceeded on the premise at the time of grant of mortgage that the property was amenable to the jurisdiction of the SARFAESI Act, such a third case cannot be made out by the Magistrate at this juncture.
5. Learned counsel places reliance on *ITC Limited Vs. Blue Coast Hotels Limited and Others* reported at *(2018) 15 Supreme Court Cases 99* in support of her proposition.
6. Despite service, none appears for the respondents, nor is any affidavit-in-opposition filed till date.
7. The Supreme Court, in the report handed over by learned counsel for the petitioner, held that Section 31(i) of the SARFAESI Act, which

precludes applicability of the 2002 Act in respect of agricultural lands, is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of this Act. Security interest when created in respect of agricultural land which was meant to be a part of a five-star hotel in the said case and the debtor had applied for conversion of the lands to non-agricultural lands, which are pending due to policy decision, it was held that the parties (creditor/debtor) themselves understood that the lands-in-question were not agricultural lands and *prima facie* it also appeared that having regard to the use to which they were put and the purpose of such land, it was not agricultural land.

8. In the present case as well, at no point of time did the borrower take any objection that the property was an agricultural land not amenable to the operation of the SARFAESI Act.

9. The schedule of property as mentioned in the notice under Section 13(2) of the SARFAESI Act also clearly mentioned the property to contain structures standing on land. Thus,

apparently both the mortgagor and mortgagee proceeded on the premise that the land was not an agricultural land.

10. Hence, the rigour of Section 31(i) of the SARFAESI Act cannot be set up as a defence at this point of time, that too by the District Magistrate while implementing the award without any objection from the parties.

11. On a wider premise, it is beyond the scope of enquiry of the Magistrate while disposing of an application under Section 14 of the SARFAESI Act to delve into the merits of the case by going behind the award/SARFAESI action. Since the petitioner/financial institution is already armed in law to obtain possession under the SARFAESI Act, the Magistrate cannot reopen the issues involved by recording that the property lies beyond the pale of the SARFAESI Act.

12. Hence, the exercise of jurisdiction of the Magistrate in rejecting the application under Section 14 of the SARFAESI Act vide order dated August 26, 2022, being in excess of his/her jurisdiction, is liable to be set aside.

13. Accordingly, WPA No. 20723 of 2022 is allowed, thereby setting aside the order dated

August 26, 2022 passed by the District Magistrate, North 24 Parganas vide Memo No. 1012/JM/BST and directing the District Magistrate to ensure that the application filed by the petitioner under Section 14 of the SARFAESI Act is disposed of at the earliest, positively within three weeks from the date of communication of this order to the said Magistrate.

14. However, it is made clear that nothing in this order shall regularize or justify any act done in contravention of the West Bengal Land Reforms Act or any other law governing the field of conversion of the properties. It will be open to the appropriate authorities, if so deemed necessary, to undertake appropriate steps in the event there is any illegality in not converting the land for the purpose sought to be utilized by the petitioner.

15. There will be no order as to costs.

16. 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.)