

(2010) 03 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No. 21759 of 2009 and M.P. No. 1 of 2009

Kalpesh P.C. Surana

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(3A), 13(4), 17, 17A, 31
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 8, 8(1), 9
Tamil Nadu Settlement Tahsildar, Chinglepet Act, 1963 — Section 12
Wealth Tax Act, 1957 — Section 2

Citation : (2010) 3 BC 262

Hon'ble Judges : T.S. Sivagnanam, J;C. Nagappan, J

Bench : Division Bench

Advocate : S. Raghavan, for the Appellant; Joyesh B. Dolia, for Aiyar and Dolia, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has sought for issuance of a writ of mandamus directing the respondent Bank to forbear from bringing the agricultural land

described in the schedule, to sale on 27.10.2009 or any other date by invoking the provisions of the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002.

2. The case of the petitioner is that he is the owner of the agricultural land bearing Survey No. 131/8 part and Patta No. 1015 issued in his name

on 30.7.2007 of an extent of 1 acre and 62 cents in Vaikkadu village and he purchased the same under a registered sale deed dated 20.3.1990

and the land is described as agricultural land in the sale deed and Patta No. 237

was given to his vendor pursuant to the order dated 5.2.1972 made by the Settlement Tahsildar, Chinglepet u/s 12 of the Tamil Nadu Act No. 26 of 1963 and kist has been paid by his vendor as well as by himself and it has been used for agricultural purpose and was given on lease from 19.9.2001 to one Motilal by the petitioner. It is further stated by the petitioner that the respondent Bank granted loan to one S. Sakthivel upto a limit of Rs. 1,00,00,000/- and on 21.8.2007, the petitioner executed a Guarantee Agreement along with Mrs. S. Vijayakumari, wife of Sakthivel for due repayment of the loan and the respondent Bank obtained from him on 24.8.2007 a Memorandum of deposit of Title Deeds by which it purported to obtain an equitable mortgage by deposit of documents of agricultural land of the petitioner as security for repayment of loan advanced to Sakthivel. According to the petitioner, the list of documents annexed to the said Memorandum shows that the land is agricultural land and the Documents 1 to 12 in the Memorandum are xerox copies and not originals and there was no valid deposit of title deeds of the agricultural land and as such there is no valid and enforceable equitable mortgage created in favour of the respondent Bank. The petitioner has further stated that for the first time he received a demand notice dated 6.6.2009 purported to have been issued u/s 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 from the Authorised Officer and Chief Manager of the respondent Bank addressed to the borrower as well as the guarantors calling upon them to pay a sum of Rs. 95,29,983.70 with interest and in the event of failure, to initiate appropriate legal proceedings for recovery and another legal notice dated 6.6.2009 classifying the loan account as Non Performing Asset and calling upon them to pay the amount, failing which, to exercise the right u/s 13(4) of the Act against the secured asset viz. agricultural land belonging to the petitioner. According to the petitioner, he sent a detailed reply dated 3.8.2009 which was received by the respondent Bank and it did not consider his representation/objection and did not communicate any reply within the stipulated period under the Act and the petitioner received the notice of intended sale on 29.9.2009 and aggrieved by the same, he has filed the present writ petition.

3. The main ground raised by the petitioner is that the land of the petitioner is

agricultural land and it is evident on the face of the documents mentioned in the registered Memorandum of Deposit of Title Deeds and since the land is classified as agricultural land by the Revenue Authority, the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are not applicable as stipulated u/s 31(1) of the Act and the proceedings initiated by the Authorised Officer are null and void. In support of the submission, the petitioner relies on the decision of the Supreme Court in N. Srinivasa Rao Vs. Spl. Court under A.P. Land Grabbing (Prohibition) Act and Others, . In addition, the petitioner has also raised the ground that the respondent Bank has failed to consider the representation/objection of the petitioner dated 3.8.2009 and has not communicated the reasons for non-acceptance of it and in view of the failure to comply with Section 13(3-A) of the Act, the proceedings are vitiated and in support of the submission, the petitioner relies on the decision of the Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., .

4. The next contention of the petitioner is that the proposed notice of intended sale is contrary to Rules 8 and 9 of the Security Interest

(Enforcement) Rules, 2002 and no possession notice has been delivered by the Authorised Officer to the petitioner for having taken possession of

the land as contemplated under Rule 8(1) and there is non-compliance of the provision of Rule 8.

5. The respondent Bank in its counter affidavit has stated that the property of the petitioner was offered by way of equitable mortgage by deposit

of title deeds as security for the loan obtained by Sakthivel and the said equitable mortgage was duly registered as Document No. 9702/2007 in

the office of the Sub-Registrar, Tiruvottiyur and the petitioner had given his sworn affidavit in the form of declaration, dated 24.8.2007, wherein he

confirmed that he has submitted all the original documents pertaining to the property with the respondent Bank for the purpose of mortgage by way

of collateral security and in addition, the petitioner along with Mrs. S. Vijayakumari, wife of Sakthivel, stood as guarantors jointly and severally for

the due repayment of the loan and as on 14.12.2009, a sum of Rs. 97,23,646.70 was due and repayable in the loan account. According to the

respondent, the land which was offered as security is not agricultural land and it

is in the midst of joint industrial houses and it has never been put to any agricultural activities and the petitioner has produced a certificate dated 22.8.2007 to the respondent Bank issued by the Village Administrative Officer, Manali Town Panchayat certifying that the land is an industrial land. It is further stated by the respondent Bank that it is in custody and possession of the original title deeds and documents including the sale deed in favour of the petitioner and the allegation that no valid equitable mortgage was created is false and the property is not agricultural land and Section 31(i) of the SRFAESI Act is not attracted. The respondent has further stated that after considering the representation of the petitioner, the respondent sent its reply on 5.8.2009 by registered post with acknowledgement due, which was returned after several attempts by the postal department with an endorsement ""door locked always"" and the possession notice has been sent to the petitioner and affixed in the respective premises of the petitioner as well as the borrower and was also published in the newspapers as per the Rules and clear 30 days notice before auction of the property was given to the parties on the first occasion and there is no requirement to issue notice for every intended sale, and the issuance of possession notice would show that the reply given by the petitioner was not satisfactory and that the property of the petitioner was brought to sale but there was no bidder and the sale did not take place. It is further stated by the respondent that the petitioner, without filing application u/s 17 of the SRFAESI Act, has filed the writ petition and it is not maintainable and further, the disputed questions of fact cannot be agitated in a writ petition filed under Article 226 of the Constitution of India. In support of the submission, the respondent relies on the following decisions:

- (1) Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, .
- (2) Sarif Abibi Mohmed Ibrahim v. CIT 1993 Supp (4) SCC 707.
- (3) Commissioner of Income Tax, Madras Vs. M/s. Gemini Pictures Circuit Private Limited, .
- (4) Punjab National Bank Vs. O.C. Krishnan and Others, .
- (5) Manyam Meenakshamma Rajajmundry Vs. Commissioner of Wealth-tax, Andhra Pradesh, Hyderabad, .
- (6) D. Ravichandran Vs. The Manager, Indian Overseas Bank, Idigarai Branch and

The Authorised Officer, Indian Overseas Bank, Idigarai

Branch, .

6. The petitioner filed reply affidavit, in which, he has stated that he has not passed the letter dated 24.8.2007 to the respondent Bank and he did

not produce the certificate dated 22.8.2007 from Village Administrative Officer, Manali Town Panchayat as alleged by the respondent Bank and

the alleged service of reply dated 5.8.2009, by registered post with acknowledgement due to the petitioner cannot be taken as valid service on the petitioner.

7. The main contention of the learned Counsel for the petitioner is that the secured asset is agricultural land belonging to the petitioner and as per

Section 31(i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the provisions of the

SRFAESI Act do not apply to any security interest created in agricultural land and the proceedings are vitiated and to highlight the submission, the

learned Counsel for the petitioner pointed out the recitals in the sale deed, dated 29.3.1990, Lease Agreement dated 19.9.2001, Patta dated

30.7.2007 and Extracts of Chitta and Adangal, issued by the Village Administrative Officer, Manali Town Panchayat and Land Tax receipts,

which are found mentioned in the Memorandum of Deposit of Title Deeds, dated 24.8.2007.

8. According to the learned Counsel for the petitioner, the classification is agricultural land and it continues to be so and it is evident on the face of

the documents found mentioned in the Memorandum and no other evidence is required to prove the same and the provisions of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are not applicable and the existence of an alternative

remedy under the Act may not be considered an absolute bar in the present case.

9. Per contra, the learned Counsel for the respondent Bank, submits that the determination of the character of land, according to the purpose for

which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each case and whether or not the land is an

agricultural land is essentially a question of fact, which has to be decided on the basis of evidence adduced and the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 does not define the term "agricultural land" and the object of the Act has to be borne in mind and the term "agricultural land" cannot be given liberal and wide interpretation and the question as to whether secured asset is an agricultural land or not, cannot be gone into and decided by the Court in a petition under Article 226 of the Constitution of India.

10. It is the further contention of the learned Counsel for the respondent that though the land is described as agricultural land in the sale deed, the petitioner, in the Memorandum and in the affidavit of Declaration executed by him, has not described it as "agricultural land" and the land is situated in-between the premises of two Companies carrying on manufacturing activities in the urban area and there is no agricultural use of the land and the Village Administrative Officer of the concerned place has also given the certificate stating that the land of the petitioner has been classified as "industrial land" and hence the contention of the petitioner is liable to be rejected.

11. We are conscious of the fact that the documents mentioned in the Letter and Memorandum of Deposit of Title Deeds include Patta, Extract of Chitta and Adangal and land tax receipts. Though the petitioner has purchased the land in the year 1990, he has obtained Patta in his name only on 30.7.2007, which is evident from the copy of the Patta found in the typed set of the petitioner. We also find from the typed set filed by the respondent that the Village Administrative Officer of the place in which the property is situated viz., Manali Town Panchayat, has issued certificate dated 22.8.2007 stating that the classification of the land in which security interest created is "industrial land".

12. The Supreme Court in the decision in W.T. Commr., A.P., case referred supra, considered whether the land in question was "agricultural lands" within the meaning of Section 2(e)(i) of the Wealth Tax Act. In the said case, the appeal was against a decision of Full Bench of the Andhra Pradesh High Court, wherein the Full Bench observed that the land in question had been assessed to land revenue as agriculture land, it had two wells and possesses all characteristics of agricultural land and these factors strongly indicate that the land in question is agricultural land. The Supreme Court while rejecting such finding held thus:

15. We think that it is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an

expression. The correct rule is that we have to endeavour to find out the exact sense in which the words have been used in a particular context.

We are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows

from the terms used. We are to avoid absurd results. If we were to give the widest possible connotation to the words "agricultural land", as the Full

Bench of the Andhra Pradesh High Court seemed inclined to give to the term "agricultural land", we would reach the conclusion that practically all

land, even that covered by buildings, is "agricultural land" inasmuch as its potential or possible use could be agricultural. The object of the Wealth

Tax Act is to tax surplus wealth. It is clear that all land is not excluded from the definition of assets. It is only "agricultural land" which could be

exempted. Therefore, it is imperative to give reasonable limits to the scope of the "agricultural land", or, in other words, this exemption had to be

necessarily given a more restricted meaning than the very wide ambit given to it by the Andhra Pradesh Full Bench.

24. ...We agree that the determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a

matter which ought to be determined on the facts of each particular case. What is really required to be shown is the connection with an agricultural

purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the

mere potentiality, which will only affect its valuation as part of "assets", but its actual condition and intended user which has to be seen for purposes

of exemption from wealth tax....

...We do not think that all these considerations were kept in view by the taxing authorities in deciding the question of fact which was really for the

assessing authorities to determine having regard to all the relevant evidence and the law laid down by this Court. The High Court should have sent

back the case to the assessing authorities for deciding the question of fact after stating the law correctly.

25. We think that this is a fit case in which we should set aside the judgment of the Full Bench of the High Court and hold that the Tribunal should

determine afresh, from a correct angle, the question of fact whether any of the lands under consideration were "agricultural" or not for the purposes of the Act before it....

Though the observation has been made in the decision arising under a Taxation statute, yet the observation as to the test to determine as to whether the land is an agricultural land or not, is clearly found mentioned.

13. It is seen that the decision of the Supreme Court referred above was followed by this Court in the decision in D. Ravichandran v. Manager,

I.O.B., case referred supra, and it was held that the question whether the secured asset is an agricultural land or not, whether any agricultural operations are being carried on etc, are undoubtedly questions of fact, which cannot be gone into and decided in the petition under Article 226 of

the Constitution. The Supreme Court in the decision in Sarif Abibi Mohmed Ibrahim's case, referred above held:

12. Whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of this Court and

the High Courts, but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and

circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a

consideration of all of them "a process of evaluation". The inference has to be drawn on a cumulative consideration of all the relevant facts.

Thus, in view of the law declared by the Apex Court, the question of fact whether the secured asset is an agricultural land or otherwise cannot be gone into in a writ petition.

14. Admittedly, the secured asset is in urban area. The land is situated in Manali, which is an industrial area and it is said to be surrounded by

industrial buildings and there are no agricultural operations being carried on nearby. In such circumstances, whether the nature and character of the

land is agricultural, has to be proved by evidence. It is also relevant that the Constitution Bench of the Apex Court in the decision in Commissioner

of Income Tax case, (supra) has laid down that merely because the term used in a statute is not defined, it is not correct to give a wide meaning,

and interpretation in consonance with the purpose of the statute and what logically follows from the terms used has to be made to avoid absurd

results. Therefore, it is imperative to give a reasonable limit to the scope of the "agricultural land" found mentioned in Clause (i) of Section 31 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

15. Though the petitioner has stated that he purchased the land in the year 1990, he has obtained Patta in the year 2007 just before executing the

Memorandum and as such, the use in which the land is put into, has to be proved by the petitioner by adducing evidence. The documents relied on

by the petitioner and found mentioned in the Memorandum, themselves cannot be conclusive proof that the secured asset is an agricultural land and

the claim has to be established by adducing evidence.

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 u/s 17 of the SRFAESI Act, the petitioner has straightaway filed the writ petition. In the facts and

circumstances of the case in which the decision in K. Raamaselvam, R.M. Meenal Ramaselvam Proprietrix, Shuttle Weaves International and

R.M. Meenal Ramaselvam Proprietrix, Meenakshi Fabrics International Vs. Indian Overseas Bank and M. Thanigachalam, , 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. The learned Counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of N. Srinivasa Rao's, referred supra,

to support his argument that the classification of the land as contained in the revenue records is final and conclusive. The Supreme Court in the said

case was considering the scope of proceedings under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and the effect of Andhra

Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 on such proceedings. One of the contentions raised before the Supreme

Court was that the subject land was included within the limits of the Hyderabad Municipality, and though the land was classified as agricultural

lands, it has lost its agricultural character. Considering the facts of the said case

the Supreme Court held that except for the fact that the said lands were included within an urban area, there is nothing to show that the user of the same had been altered with the passage of time. In the said case, there was adjudication of the rival claims before a Special Judge as to whether there was land grabbing within the scope of the Andhra Pradesh Law Grabbing Act. In the said context the Supreme Court rendered such a finding. In the case on hand, there has been no such prior adjudication into disputed question of facts and the petitioner has chosen to straightaway 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.

18. The next contention of the learned Counsel for the petitioner is that the respondent Bank has not considered the objection of the petitioner and has not communicated the reasons for non-acceptance as stipulated u/s 13(3-A) of the SRFAESI Act and possession of the land was not taken by the respondent as contemplated under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 and there was non-compliance of the said Rule and hence the proceedings are vitiated. It is the submission of the respondent Bank that it considered the representation of the petitioner and sent reply by registered post with acknowledgement due and that was returned after several attempts by the postal department with an endorsement ""door locked always"" and hence there is compliance of the provision of Section 13(3-A) of the SRFAESI Act and the possession notice has been sent to the petitioner and affixed in the site as well as in the respective premises of the borrower and guarantors as per the Rule 8(1) of Security Interest (Enforcement) Rules, 2002 and clear 30 days notice before auctioning the property for the first time has been given and there is no requirement to issue 30 days notice for every intended sale and the provisions under Rules 8 and 9 were complied with.

19. In fact a similar contention was considered by the Division Bench of this

Court in Industrial Development Bank of India Limited by Deputy

General Manager and The Authorised Officer Vs. Kamaldeep Synthetics Limited, , and Chief Justice A.P. Shah, as he then was, delivering the

judgment held:

9. The proviso to Sub-section (3-A) of Section 13 of the SRFAESI Act makes it abundantly clear that the reasons so communicated or the likely

action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the

DRT u/s 17 or the Court of District Judge u/s 17-A of the Act. Thus, the basic object of Sub-section (3-A) of Section 13 of the SRFAESI Act is

to ensure the element of transparency and fair play in the implementation of the provisions of the SRFAESI Act. Learned Counsel for the

respondent is unable to demonstrate prejudice or loss that is likely to be caused to the respondent by reason of the possession notice given to it,

earlier to the communication of the reasons for non-acceptance of the objections raised by the borrower. In our opinion, at the most, it would

amount to a mere irregularity and having regard to the facts and circumstances of the case, we are satisfied that the appellant-Bank has

substantially complied with the provisions of Section 13(3-A) of the SRFAESI Act.

Thus, in view of the above decision, the contention raised by the learned Counsel for the petitioner does not merit acceptance.

20. The issues whether the provisions of the Act are applicable, whether there is any procedural error are all matters to be adjudicated in an

application (appeal) u/s 17 of the Act and not in a writ petition. In this regard, we are guided by the decision of the Supreme Court in Punjab

National Bank Vs. O.C. Krishnan and Others, , which dealt with a decision of the Calcutta High Court, which exercised jurisdiction under Article

227 of the Constitution and interfered with an order of a Debts Recovery Tribunal ordering sale of mortgaged property under the provisions of

Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Supreme Court held thus:

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the Banks and the financial institutions. There

is a hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast-track procedure cannot be allowed to be derailed either

by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

21. In view of the above, the petitioner is not entitled for the prayer sought for in the writ petition.

22. The writ petition is dismissed. Liberty is given to the petitioner to avail the remedy provided u/s 17 of the SRFAESI Act on any of the measures taken by the respondent-Bank u/s 13(4) of the Act. No costs. Connected M.P. No. 1 of 2009 is closed.

Writ Petition dismissed.