

(2014) 10 KL CK 0077
In the High Court Of Kerala
Case No : WP (C). No. 11718 of 2014 (L)

Roy Varghese

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 14, 20, 31(i)

Citation : (2014) 10 KL CK 0077

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Varghese C. Kuriakose, Advocate for the Appellant; Shyson P. Manguzha, Senior Government Pleader and P.C. Chacko, SC, Advocate for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioners have approached this Court with the following prayers:

"i. Call for the records leading to Ext. P12 order examine the same and quash the same holding the same as illegal and declare that the proceedings under the SARFAESI Act cannot be initiated against the properties of the petitioners as the same is exempt under Section 31(i) of the SARFAESI Act. If necessary by issuing writs in the nature of other appropriate writ.

ii. Issue writ, order or direction in the nature of Mandamus or prohibition or other appropriate writ restraining the respondents 2 and 3 from proceeding against the properties of the petitioners which are agricultural properties and borne out by Ext. P1 to P4 which are exempt under Section 31(i) of the SARFAESI Act.

iii. Declare that the entire proceedings culminating in Ext. P12 order is illegal for want of notice to the petitioners and also for want of authority of the signatory to Ext. P5 and P11 to function as authorised officer in view of the mandate under Section 2(a) of the Security Interest Enforcement Rules.

iv. Declare that no security interest as contemplated under SARFAESI Act is available to the respondents 2 and 3 as the security agreement has not been registered with the Central Registry as contemplated under Section 20 onwards of the SARFAESI Act."

2. The learned counsel for the petitioners submits that the petitioners have approached this Court mainly challenging Ext. P12 order passed by the concerned Chief Judicial Magistrate in a proceeding filed under Section 14 of the SARFAESI Act. It is stated that the Bank is not justified in effecting SARFAESI proceedings in so far as the property concerned is an "agricultural land", which is clearly exempted by virtue of the mandate under Section 31(i) of the SARFAESI Act.

3. The learned counsel for the respondent Bank submits that the writ petition itself is not maintainable by virtue of the law declared by the Apex Court at different points of time, including in *United Bank of India Vs. Satyawati Tondon and Others*, and *Devi Ispat Limited and Another Vs. State Bank of India and Others*, .

4. When the matter came up for consideration before this Court on 29.04.2014, the writ petition was admitted, also granting an interim order. The said order was being extended from time to time and lastly on 10.10.2014, on condition that, the petitioners satisfied a sum of 10 lakhs within two weeks. Admittedly, the condition stands not satisfied by the petitioners. An I.A. has been filed seeking to recall/review the condition imposed by this Court.

5. Heard both the sides in detail.

6. After considering the nature of pleadings set forth and the submissions made across the Bar, it is seen that the main dispute is with regard to the nature of the property concerned. The learned counsel for the petitioner submits that by virtue of the pleadings set up by the respondent Bank it has to be inferred that, the property is admittedly an "agricultural land", which is sought to be rebutted by the learned counsel for the respondent Bank. Since there is disputed question of fact, the matter requires to be considered by the competent forum, with reference to the pleadings and the evidence to be let in; which exercise can't be done by this Court under Article 226 of the Constitution of India.

Accordingly, interference is declined and the writ petition is dismissed, without prejudice to the rights and liberties of the petitioners to approach other appropriate forum, if so advised.