

(2014) 08 MAD CK 0065

In the Madras High Court

Case No : Writ Petition No. 9577 of 2014

Silicon Valley Auto Components Private Limited

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 2(1)

Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 17

Wealth Tax Act, 1957 — Section 2(e)(i)

Citation : (2015) 1 BC 347 : (2014) 5 CTC 764 : (2014) 4 LW 198

Hon'ble Judges : S. Vaidyanathan, J;S. Rajendran, J

Bench : Division Bench

Judgement

S. Vaidyanathan, J.—Challenging the recovery proceedings, dated 20.2.2014 initiated by the second respondent by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), the petitioner has come forward with the present writ petition. The brief facts, necessary for disposal of the writ petition, are stated hereunder.

1a. The petitioners have availed a term loan on 20.01.2009 from the first respondent bank and for collateral purpose, the petitioners gave the property situated at No. 10 Casurina Drive, Neelankarai, Chennai. Since the petitioners had not paid the outstanding amount, i.e. Rs. 26,00,49,218.11 despite offering one-time settlement, the respondent bank initiated proceedings under Section 13(2) of the Act. The notice under Section 13(2) of the Act was issued on 18.2.2011. Thereafter, the petitioner made some part payments and requested the bank to restructure the loan. According to the petitioners, the loan was not restructured by the Bank. Again, the respondent bank issued 13(2) notices to the petitioners. Finally, on 20.02.2014, the first respondent issued notice under Section 13(4) of the Act, for taking possession of the property. Challenging the

same, the petitioner has come forward with the present writ petition.

2. Questioning the impugned proceedings issued under the provisions of the SARFAESI Act, Mr. V. Raghavachari, learned counsel appearing for the petitioners would contend that the property owned by the petitioner and given as collateral security to the respondents, is agricultural land and therefore, Section 31(1) of the Act excludes the provisions of SARFAESI Act with respect to agricultural land. He would contend that since the secured assets are agricultural lands, no recovery could be made from the said lands and hence, the respondents bank has no authority to initiate proceedings under the SARFAESI Act and there is no justification on the part of the bank in issuing notices under Sections 13(2) and 13(4) of the SARFAESI Act and it is open to the bank to recover the amount due in any other manner known to law. In order to prove that the secured assets are agricultural lands, the learned counsel relied upon the Income Tax returns, wherein, the tax was paid towards income derived from agricultural lands, i.e. secured asset and also the Certificate issued by the Village Administrative Officer, certifying that the secured assets are the agricultural lands. He also referred to the adangal extracts in respect of the secured lands, which shows that there is cultivation in the said lands. In support of his contentions, the learned counsel relied upon the following decisions, viz.,

- i) Signal Apparels Pvt. Ltd. and Signal Export Vs. Canara Bank and Reserve Bank of India,
- ii) G. Selvamani and Others Vs. The District Revenue Officers-cum-Revisional Authority, (Record of Tenancy Rights under the Tamil Nadu Act 10 of 1969) and Others,
- iii) Eshwar Purushothaman Gardens Vs. Indian Bank,
- iv) Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah,
- v) Kalpana Poongothai rep. by Mother and guardian, Mrs. Amsaveni Vs. L. Kalianan
- vi) Commissioner of Income- tax Vs. K.E. Sundara Mudaliar and Others,
- vii) Union of India (UOI) and Others Vs. Mangal Textile Mills (I) P. Ltd. and Others, and
- viii) Canara Tile Works and Others Vs. Canara Bank, Morgan's Gate Branch and Another,

3. The primary contention of the learned counsel for the petitioners is that the respondents Bank has not followed the RBI guidelines in declaring the account of the petitioners as Non-performing Asset as despite the payment of amounts during the month of February, 2011, the respondents bank had chosen to classify the account as a stressed asset as on 31.01.2011. In this regard, the learned counsel relied upon "Signal Apparels Pvt. Ltd. versus Canara Bank and

others" (cited supra), wherein, it was held that for invocation of provision of Section 13(2) of the Act, the declaration of an asset or account to be a Non-Performing Asset is a condition precedent and in the event such declaration is not in accordance with the R.B.I. guidelines and the account of a borrower is a performing account, Section 13(2) may not be pressed into service, as such account cannot be brought under Section 2(o) of the Act.

4. The next contention of the petitioner is that the secured assets are agricultural lands and the bank has no authority to initiate proceedings under the SARFAESI Act. He referred to the adangal extracts filed in additional typed set of papers and photos, which establish that the secured assets are agricultural lands and in this regard, he relied upon a decision reported in "G. Selvamani and others versus The District Revenue Officer" (cited supra), wherein, this Court has held that the best evidence to establish the cultivation is the adangal extract. The learned counsel also contended that in the secured lands, agricultural operations were being carried out and cultivation of Casurina was done and to establish the same, the learned counsel referred to sale proceeds and statements of the Casurina filed in typed set of papers. In "Eshwar Purushothaman Gardens versus Authorised Officer, Indian Bank Zonal Office" (cited supra), a Division Bench of this Court, has held as under in para. 28 and 29:

"28. The question regarding alternative remedy would lose its significance in the present case in view of the voluminous documents produced by the petitioner to show that security was created in their agricultural land. Mere denial in the counter affidavit accompanied by documents to prove such defence, would not result in raising a disputed question, so as to direct the parties to approach the Debts Recovery Tribunal.?"

"29. Therefore, on a careful consideration of the entire factual matrix, we are of the considered view that security interest was created by the Bank in an agricultural land and as such, the Bank has no authority to initiate proceedings under the SARFAESI Act. It is open to the Bank to recover the amount due in any other manner known to law. The invocation of the SARFAESI Act alone is held to be barred in view of section 31[i] of the SARFAESI Act. Accordingly, the notice issued by the Bank under section 13[4] of the SARFAESI Act is quashed. Relying on the above, the learned counsel for the petitioners would contend that when the basic documents produced by the petitioner would clearly establish that the security was agricultural property, the question of alternative remedy does not arise and that the invocation of the SARFAESI Act cannot be made."

5. In "Commissioner of Wealth Tax, Andhra Pradesh versus Officer-in-Charge (Court of Wards) Paigah)" (cited supra), the Hon"ble Supreme Court was of the view that the determination of the character of land, according to the purpose for which it is meant or set apart and can be used and what really to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of the land, by some possible future owner or possessor, for an agricultural purpose. It is also held that the entries in revenue records are good prima facie

evidence and the authorities shall keep in mind all the considerations in deciding the question of fact to determine the nature of the land having regard to all the relevant evidence and the law laid down by the Courts. In "Kalpana Poongothai versus L. Kalianan" (cited supra), this Court has held that it is necessary to note down the physical features and also to note down whether the land is suitable for cultivation and if the land is used for cultivation and such cultivation is entered in the adangal extract, it should be considered that the land is an agricultural land. Relying on these citations, the learned counsel for the petitioners would contend that the petitioners have produced adangal extract, wherein, it is mentioned that the secured asset is an agricultural land and cultivation of "Casurina" is being carried out and the said facts are relevant for determination of the character of the land. The learned counsel also relied upon a decision reported in "Commissioner of Income Tax, Madras versus K.E. Sundara Mudaliar and others" (cited supra), wherein, the Division Bench of this Court has considered the issue, whether the income derived from casuarinas, plantations is agricultural income within the meaning of Section 2(1) of Income Tax Act and held that if there is actual tilling of the soil either by a plough or spade and by expending human energy plantation is raised, there is no reason for not considering it as agriculture and that the income derived from the sale of the trees after they are cut is, an "agricultural income".

6. As regards the alternative remedy, the learned counsel would contend that the power of High Court to issue prerogative writs under Article 226 of the Constitution is plenary in nature and cannot be curtailed by other provision of Constitution or statute and that the rule of exclusion of writ jurisdiction on account of availability of an alternative remedy does not operate as an absolute bar to entertaining a writ petition, but is a rule of discretion to be exercised depending on the facts of each case and in support of his contention, he relied upon a decision reported in Union of India versus Mangal Textile Mills (I) (P.) Ltd., (cited supra). The learned counsel also contended that the respondents bank should have verified the revenue records to find out the actual fact situation as regards the subject property before initiation of the impugned proceedings. In this regards, he relied upon a decision reported in "M/s. Canara Tile Work and others versus M/s. Canara Bank and another" (cited supra).

7. In view of the above, the learned counsel for the petitioners would contend that the secured assets are agricultural lands and the decisions cited supra, are squarely applicable to the case on hand and hence, he prayed this Court to quash the impugned proceedings.

8. On the other hand, Mr. F.B. Benjamin George, learned counsel for the respondents bank would contend that only in order to defeat the attempts of the bank in realizing the amount by way of initiating proceedings under the SARFAESI Act, the petitioners have come forward with the plea that the secured assets are agricultural lands, contending that no proceedings under the provisions of SARFAESI Act could be initiated. He pointed out that the

respondents bank would not sanction any credit facilities in respect of the agricultural purposes and the secured assets are not agricultural lands as contended by the petitioners and no agricultural operations much less cultivation is taking place therein. He also pointed out that in fact, the loan was given for commercial purpose, i.e. working capital and construction of building/machinery takeover, and not given for agricultural purpose. Therefore, he contended that the said property given by the petitioners as collateral purpose cannot be exempted under Section 31(1) of the SARFAESI Act. He also contended that mere production of adangal extracts and VAO certificate and photos is not sufficient to hold that the lands are agricultural lands, but there should be basic operations involving expenditure of human skill and labour. The exemption is connected with the usage of land or the purpose, which must be agriculture. He also pointed out that the area wherein the secured property is situated has become a posh residential area in the city and many buildings and flats were constructed and even in the secured property, the petitioners themselves had constructed a big bungalow with swimming-pool and no agricultural operations were being carried out. Therefore, the learned counsel contended that in the absence of satisfactory material to prove that the secured assets are agricultural lands, the secured assets cannot be excluded from the purview of SARFAESI Act. In support of his contentions, the learned counsel relied upon the following decisions, viz.,

- i) Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah,
- ii) D. Ravichandran Vs. The Manager, Indian Overseas Bank, Idigarai Branch and The Authorised Officer, Indian Overseas Bank, Idigarai Branch,
- iii) Smt. Sarifabibi Mohmed Ibrahim and others Vs. Commissioner of Income Tax, Gujarat,
- iv) Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal,
- v) Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, and
- vi) United Bank of India Vs. Satyawati Tondon and Others,

9. Heard the learned counsel for the petitioner and the respondents bank and gone through the materials placed before this Court.

10. From the foregoing narration of facts, it is clear that no agricultural loan was sanctioned by the respondent/bank and it is admitted fact that the loan availed by the petitioner is not for the purpose of agriculture. The primary contention of the learned counsel for the petitioners is that the secured asset is agricultural land and agricultural operations were being conducted. In order to establish the same, the petitioners have produced adangal register and photographs of the lands showing that the cultivation of "Casurina" trees was made and sale proceeds of "Casurina" and income tax returns showing that the income derived

on the sale of Casurina and the deduction of income tax thereof. However, the learned counsel appearing for the respondent bank would vehemently contend that the secured asset is not agricultural land and no agricultural operations were being taken place and in order to defeat the attempt of the respondent bank in securing the asset for recovery of the huge sum of dues, the petitioners have created and set up as if there were agricultural operations being carried on by implanting some "Casurina" plants to impress upon that the secured asset is agricultural land.

11. As regards the contention of the learned counsel for the petitioners that the respondents Bank has violated the norms issued by the R.B.I., while classifying the account as Non-Performing Asset and despite the payments made by the petitioners, the respondents bank resorted to declare the account as NPA and that when such declaration itself is bad in law, the subsequent initiation of proceedings under SARFAESI Act would be non est in law, is concerned, it is to be noted that the petitioners have raised such plea only at this stage. Subsequent to such declaration, the respondents bank had continuously issued the notices under Section 13(2) of the Act right from the year 2011, viz., 22.2.2011, 3.8.3011, 27.09.2011, 1.10.2011, 6.11.2013 and 20.2.2014 the petitioners have not come forward, challenging that the so-called declaration of NPA is bad in law. Therefore, having failed to discharge the debts and allowed the respondents bank to proceed further, now at this stage, it is not proper for the petitioners to agitate the said issue now while challenging the impugned proceedings initiated under the SARFAESI Act.

12. Having heard the learned counsel on either side and on perusal of the entire record, we find considerable force in the contention of the learned counsel for the respondent/bank. It is well settled law that mere description of the land as agricultural land would not suffice, but it must be an agricultural land, which is said to be either actually used or ordinarily used or meant to be used for agricultural purposes and that it must have a connection with an agricultural user or purpose. In Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , the Hon"ble Supreme Court has considered whether the land in question was "agricultural lands" within the meaning of Section 2(e) (i) of the Wealth Tax Act. While dealing with said issue, the Supreme Court has indicated the relevant test to determine the issue as to whether a particular property is agricultural. It was observed that the determination of the character of land according to the purpose for which is meant or set apart and can be used is a matter which ought to be determined on the facts of each particular case. The Supreme Court has opined that, 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. If there is neither anything in its condition, nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with an agricultural purpose, the land could not be "agricultural land" for the purpose of earning an exemption under the Act. The above said decision was followed by

this Court in " D. Ravichandran Vs. The Manager, Indian Overseas Bank, Idigarai Branch and The Authorised Officer, Indian Overseas Bank, Idigarai Branch, and held that the question whether the secured asset is an agricultural land or not, whether any agricultural operations are being carried on, et., are undoubtedly questions of fact, which cannot be gone into and decided in a petition under Article 226 of the Constitution.

13. In Smt. Sarifabibi Mohmed Ibrahim and others Vs. Commissioner of Income Tax, Gujarat, , the Hon"ble Supreme Court dealt with a case where a portion of the plot to an extent of 2067 sq.ft. was converted into non-agricultural purpose after obtaining requisite permission under Section 65 of the Bombay Land Revenue Code and a chawl was built thereon and as regards the remaining portion of the land though the same continued to be registered as agricultural land and in the revenue records and land revenue was also being paid, the Hon"ble Supreme Court has confirmed the view of the Gujarat High Court holding that the said land was not an agricultural land on the ground that the land was not cultivated for a period of four years prior to its sale coupled with its location, the price at which it was should do outweigh the circumstances appearing in favour of the appellant"s case therein. In the present case, the petitioners have not produced any material to show that the secured asset has been made under cultivation for the previous years also since they produced income tax returns and other material pertaining to the year 2010-11 and 2011-12. Further, the agricultural income was shown at Rs. 1.78 lakhs , whereas the revenue collected from the so-called agricultural land was only Rs. 1000/-. So the agricultural income shown in the income tax returns must have been got by the petitioner from other agricultural land and not from the subject lands.

14. Further, it is not in dispute that in the secured asset, the petitioners have constructed a pucca huge building with swimming-pool and a tennis court and for this purpose, it is not brought to the notice of this Court whether the petitioners have applied for conversion of a portion of agricultural land into non-agricultural land. In fact, the Hon"ble Supreme Court has evolved as many as 13 factors/ indicators in order to hold a land as an agricultural land which are extracted as under.

"(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue"

(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

(3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?

(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?

(5) Whether the permission under section 65 of the Bombay Land Revenue Code

was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature?

(7) Whether the land, though entered in the revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?

(8) Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?

(9) Whether the land itself was developed by plotting and providing roads and other facilities?

(10) Whether there were any previous sales of portions of the land for non-agricultural use?

(11) Whether permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user?

(12) Whether the land was sold on yardage or on acreage basis?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"

15. The petitioners have filed number of documents such as adangal extract, income tax returns, photographs and certificate issued by VAO to establish that the secured asset is an agricultural land and therefore claimed that no security interest can be created therein and the same has to be excluded under the provisions of the SARFAESI Act. We are not in agree with the claim of the petitioners inasmuch as the above said documents themselves cannot be held to be conclusive proof (since the said documents are yet to be tested) that the secured property is an agricultural land and the claim of the petitioners will have to be established in a proper trial that too when the respondent/bank has been consistently disputing the nature of the land.

16. In the above said decision, (Sarifa Bibi versus CIT), the Hon"ble Supreme Court has held as under in para. 12.

"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.""

17. 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 Act, the petitioner has straightaway filed the present writ petition. 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 or appeal under Section 17 of the Act and not in a writ petition.

18. In Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, , the Hon"ble Supreme Court has held that when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory dispensation. In para. 19, 20 and 21, the Hon"ble Supreme Court has held as under:

"19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

20. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Company Vs. State of Haryana and Others, this Court has noticed that if an appeal is from "Caesar to Caesar"s wife" the existence of alternative remedy would be a mirage and an exercise in futility.

In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case.

21. In light of the same, we are of the considered opinion that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the re-assessment orders passed and the consequential demand notices issued thereon."

19. In *Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others*, , the Hon"ble Supreme Court has categorically held that as the SARFAESI Act itself contemplates efficacious remedy for borrower or any person affected by action under the provisions of the Act, refusal to entertain writ petition by the High Court, is fully justified. In para. 23, it has been held as under:

"23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Article 226/ 227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person."

20. In *United Bank of India Vs. Satyawati Tondon and Others*, , the Hon"ble Supreme Court has cautioned that though the powers conferred upon the High Court under Article 226 of the Constitution are very wide and there is no express limitation on exercise of that power, but, at the same time, the High Court cannot be oblivious of the rules of self-imposed restraint evolved by the Hon"ble Supreme Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. In para. 45, it has been observed as under:

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

In the above said decision, the Hon"ble Supreme Court has also observed as follows in para. 55.

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the

right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

21. In view of the above, as rightly contended by the learned counsel for the respondent/bank that the question of fact whether the secured asset is an agricultural land or otherwise cannot be gone into a writ petition. SARFAESI Act is a self-contained code and it has been enacted to enable the Banks and financial institutions to recover the outstanding without approaching the Courts and Tribunals. Prior to the Act, the Banks were not empowered to take possession of securities and disposes of the same to realise the debts. It was only under such circumstances, the Parliament enacted the SARFAESI Act so as to enable the Banks and financial institutions to recover the loan without resorting to the time consuming legal proceedings. Section 13(4) permits the Banks and financial institutions to take possession of secured assets if the borrower fails to discharge the debt within the period prescribed (sic) issued under sub Section (2) of Section 13 of the Act. While so, when the respondent Bank had resorted to take possession of the secured asset, the petitioners are making all attempts to frustrate the attempt of the respondent bank in securing the asset in order to realize the debt. The contention of the petitioners is that the secured assets are agricultural lands and therefore, the same has to be exempted from the purview of SARFAESI proceedings. Admittedly, the secured asset is situated No. 10 Casurina Drive, Neelankarai, Chennai, which has become a very posh residential area in Chennai and a number of posh and giant residential projects are taken place in and around the area. In fact, the petitioners themselves have constructed a huge bungalow with swimming-pool and a tennis Court therein. Therefore, when the area has developed in a great extent and became a posh residential area, when the respondents bank resorted to take possession of the same, we do not find any justification on the part of the petitioners still to contend that the secured asset is an agricultural land. However, since it is a disputed question of fact, as already discussed supra, which cannot be decided in the writ proceedings, we left the issue to be decided by the concerned Debt Recovery Tribunal.

For the foregoing discussion, the Writ Petition fails and it is dismissed. No costs. Consequently, connected M.Ps. (if any) are closed. The petitioners are given liberty to avail the remedy provided under Section 17 of the SARFAESI Act before the concerned Debt Recovery Tribunal, within a period of two weeks from the date of receipt of copy of this order, if they are so advised.