

D.B: Hon'ble Justice S.C. Sharma & Hon'ble Justice Shailendra Shukla

W.P. No.19665/2019

Narendra

Vs.

State of Madyha Pradesh and another

Mr. Aniket Naik, learned counsel for the appellant.

Mr. Abhishek Tugnawat learned Government Advocate
for the respondents/State.

JUDGMENT

(Passed on this 29th Day of May, 2020)

Undisputedly, in the present case, proceedings have been initiated in respect of agriculture holding.

02. The aforesaid fact has not been disputed by the respondent No.2-Jila Sahkari Kendriya Bank Maryadit, Khargone. In the reply filed by the respondent No.2, it has been narrated that the matter relates to agriculture holding only.

03. This Court in the case of **Anil Karma and another Vs. State of M.P. and another (W.P. No.1463/2019)** decided on 11.09.2019 has held as under:-

“Heard learned counsel for the parties at length and perused the record.

In the present case, the undisputed facts reveal that the petitioners are borrowers and guarantors in respect of the loan advanced by respondent no.2-Jila Sahkari Kendriya Bank Maryadit Khargone. The undisputed facts also reveal that the mortgaged property is agricultural land owned by the petitioners situated at Khasra Nos.142,146,147 of Gram Lakhangaon Tehsil Thikri, District Badwani admeasuring 5.350 hectare. The aforesaid fact that the land in question is agricultural land is not in dispute. The relevant provisions as contained under the SARFAESI Act, 2002 for deciding the controversy involved in the petition reads as under:-

“14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset (1)

Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing

compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

17. Right to appeal

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

[PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower]

[Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub- section (1) of Section 17].

(2) The Debts Recovery Tribunal

shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to anyone or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his

secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.]

31. Provisions of this Act not to apply in certain cases.- The

provisions of this Act shall not apply to--

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872; or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent of the principal amount and

interest thereon.”

It is true that there is a remedy available to the petitioners to approach the Debt Recovery Tribunal but the order passed by the District Magistrate is *void abnatio* in the light of Section 31(i) of SARFAESI Act, 2002 which categorically provides that the provisions of Act of 2002 are not applicable in respect of any security interest created in agricultural land and therefore, once the Act of 2002 was not applicable in respect of the agricultural land, the order passed by the District Magistrate is a nullity and there appears to be no justification in forcing the petitioners to file an appeal.

The Hon'ble Supreme Court in the case of **ITC Limited Vs. Blue Coast Hotels Limited** reported in **2018 SCC OnLine SC 237** in paragraphs 44 to 52 has held as under:-

Inclusion of Agricultural Land as Security Interest in the Notice of Recovery

44. One of the contentions raised on behalf of the debtor questioned the correctness of the finding of the High Court on the ground that the inclusion of agricultural land as security interest could not have been validly included in the notice for recovery of the secured loan. The correctness of the finding of the High Court depends on the effect of [Section 31](#) (i) of the Act, which reads as follows:-

“31. Provisions of this Act not to apply in certain cases-The provision of this Act shall

not apply to-

(a)....

(b)....

(c)....

(e)....

(f)....

(g)....

(h)....

(i) any security interest created in agricultural land;

(j)....”

45. The purpose of enacting [Section 31\(i\)](#) and the meaning of the term “agricultural land” assume significance. This provision, like many others is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of this Act, which provides for enforcement of security interest without intervention of the Court. The plain intention of the provision is to exempt agricultural land from the provisions of the Act. In other words, the creditor cannot enforce any security interest created in his favour without intervention of the Court or Tribunal, if such security interest is in respect of agricultural land. The exemption thus protects agriculturists from losing their source of livelihood and income i.e. the agricultural land, under the drastic provision of the Act. It is also intended to deter the creation of security interest over

agricultural land as defined in [Section 2](#) (zf) 36. Thus, security interest cannot be created in respect of property specified in [Section 31](#).

46. In the present case, security interest was created in respect of several parcels of land, which were meant to be a part of single unit i.e. the five star hotel in Goa. Some parcels of land now claimed as agricultural land were apparently purchased by the debtor from agriculturists and are entered as agricultural lands in the revenue records. The debtor applied to the revenue authorities for the conversion of these lands to non-agricultural lands which is pending till date due to policy decision.

47. It is undisputed that these lands were mortgaged in favour of the creditor under a deed dated 26.02.2010. Obviously, since no security interest can be created in respect of agricultural lands and yet it was so created, goes to show that the parties did not treat the land as agricultural land and that the debtor offered the land as security on this basis. The undisputed position is that the total land on which the Goa Hotel was located admeasures 182225 sq. mtrs. Of these, 2335 sq. mtrs. are used for growing vegetables, fruits, shrubs and trees for captive consumption of the hotel. There is no substantial evidence about the growing of vegetables but what seems to be on the land are some trees bearing curry leaves and coconut. This amounts to about 12.8 % of the total area.

48. The Corporate Loan Agreement 37 that deals with the mortgage in question in the relevant clause38 reads as follows:-

“The Borrower shall create mortgage

on Exclusive basis on the ‘Park Hyatt Goa Resort and Spa’ Hotel Property admeasuring 1, 82, 225 Sq Mtrs with a built up area of 25182 Sq. Mtrs situated at 263 C, Arossim, Canasaulim Goa.”

49. The mortgage is thus intended to cover the entire property of the Goa Hotel. Prima facie, apart from the fact that the parties themselves understood that the lands in question are not agricultural, it also appears that having regard to the use to which they are put and the purpose of such use, they are indeed not agricultural.

50. At the outset, it was argued on behalf of the debtor that [Section 31\(i\)](#) is beyond the legislative competence of the Parliament since it is only the State Legislature which is competent to legislate on land under Entry 18 of List II. This contention appears to be completely untenable. Though [Section 31\(i\)](#) exempts agricultural land from the operation of the Act it is not possible to construe such a provision as a legislation on agricultural land. In fact, it is quite the contrary. Moreover, [Section 31 \(i\)](#) is one of the provisions in the Act which has been held by this Court as referable to Entry 45 of List I, in [Union of India and Another v. Delhi High Court Bar Association and Ors.](#) 39. The Court held that:-

“14..... Entry 45 of List I relates to “banking”. Banking operations would inter alia, include accepting of loans and deposits, granting of loans and recovery of the debts due to the bank. There can be little doubt that under Entry 45 of List I, it is Parliament alone which

can enact a law with regard to the conduct of business by the banks. Recovery of dues is an essential function of any banking institution. In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which (2002) 4 SCC 275 monies due to the banks and financial institutions can be recovered.”

51. In State Bank of India v. Santosh Gupta and Ors. 40 this Court concluded that the Act is referable to Entries 45 and 95 of List I. It observed that:-

“43..... the entire Act, including Sections 17-A and 18-B, would in pith and substance be referable to Entries 45 and 95 of List I,....”

52. The validity of Section 31(i) which in any case deals with security interest created over agricultural land and not agricultural land itself, is an integral part of the Act and cannot be questioned on the ground of legislative competence.”

The Apex Court has dealt with Section 31(i) of the SARFAESI Act, 2002 and in the light of the aforesaid judgment this Court is of the opinion that the impugned order passed by the learned District Magistrate deserves to be set aside and is accordingly set aside. However, it is made clear that the respondent no.2-Bank shall be free to take recourse to other remedies available under the law for realization of debts.

With the aforesaid, the writ petition stands allowed.”

04. In light of the aforesaid judgment, the impugned order dated 30.07.2019 is hereby quashed. However, the

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

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respondent No.2 / Bank shall be free to take recourse to other remedies available under the law for realisation of debts.

With the aforesaid, writ petition stands allowed.

(S.C. Sharma)
Judge

(Shailendra Shukla)
Judge

N.R.