HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE THIRTEENTH DAY OF MARCH

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE RAKESH KUMAR

THE HONOURABLE SRI JUSTICE D RAMESH

WRIT PETITION NO: 2855 OF 2019

Between:

1. A SRIINIVASA RAO S/o. Late Alla Sanyasi Rao, aged 42 yrs, Occ. Business, R/o. 7-48, Main Road Gopalpatnam, Visakhapatnam.
2. Alla Sathish S/o. Late A.Sanyasi Rao, aged 38 yrs, Occ. Business, R/o. 7-48, Main Road Gopalpatnam, Visakhapatnam.

...PETITIONER(S)

AND:

1. THE STATE OF AP Ministry of Revenue, Stamps and Registration Department, Secretariat, Velagapudi, Amaravti, Rep. by its Secretary
3. The Joint Sub-Registrar Gajuwaka, Vishakapatnam, District, Andhra Pradesh.
4. The Bank of India Star House, C-5, G Block, Bandrakurla Complex, Bandra (East), Mumbai-400051, Rep. by its Chairman and Managing Director.
5. The Authorized officer The Bank of India, SME. Fonta Plaza, 2nd floor, Dabagardens, Saraswathi park, Visakhapatnam,.
6. Adari Anand Kumar S/o.Tulasi Rao, aged 40 yrs, Occ.Business, R/o.Seedowl Appt. Opp.Grand Bay Hotel, Visakhapatanam.

...RESPONDENTS

Counsel for the Petitioner(s): N VIJAY

Counsel for the Respondents: GP FOR REVENUE (AP)

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE RAKESH KUMAR
AND
THE HON'BLE SRI JUSTICE D.RAMESH

W.P.No.43526 of 2017 and W.P.No.2855 of 2019

COMMON ORDER: (per the Hon'ble Sri Justice D.Ramesh)

1. The brief facts in W.P.No.43526 of 2017 are as follows:

The petitioners were partners among others of M/s. Lavanya Yamaha and they are dealers of Yamaha motorcycles besides running service centers at Ramnagar and Gopalapatnam. They obtained loan of rupees one crore and twenty five lakhs as working capital on 11.9.2003 from the Bank of India/first respondent and when they failed to repay the dues to the bank the loan amount declared as NPA on 30.4.2009 by following due procedure under SARFAESI Act 2002, following the notice issued by the bank on 26.11.2009. The petitioners were regularly paying loan amount to the respondent bank, however due to family problems and the business of the firm was not continued, subsequently notice under Section 13(2) was issued by the respondent bank and thereafter possession notices were also issued.

It is stated that the agricultural lands of the petitioners were given as security. The 2nd respondent issued auction notice on 26.2.2015, where under the properties of the petitioners given as security for the loan, were sought to be auctioned. That the mortgaged lands are contiguous and are treated to be agricultural lands in the revenue records. The very fact that lands are described in acreage basis by itself would indicate that the same is being treated as agricultural lands. Hence the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is not applicable as mentioned in section 31 (i). It is further emphasized that these lands which are agricultural

lands being the lands proposed to be auctioned are vacant as mentioned in the impugned sale notice, still the character of the land remains to be agricultural land. As the land given as security to the land is an agricultural land, the provisions of SARFAESI Act has no application and the impugned sale notice is without jurisdiction.

2. Alternatively, it is stated that the Government of Andhra Pradesh through Municipal Administration and Urban Development (H2) Department issued G.O.Ms.No.345 dt.30.6.2006 under Section 12(2) of the A.P.Urban Areas (Development) Act, 1975 modifying the Zonal Regulations and land use plans where under the lands proposed to be auctioned were ear marked for residential use. It is submitted that the market value guidelines issued by the Stamps and Registration Department w.e.f. 01.4.2013, the basic unit rate per square yard for the land in Narava village was fixed at Rs.2,500/- per square yard and the basic unit rate of Rs.2,500/- per square yard is grossly low and it does not reflect the true market value of the land as neighboring lands which are at a distance of less than one kilometer on either side from the lands of the petitioners, the basic unit per square yard is fixed at Rs.8,000/- per square yard. Hence the reserve price in the impugned auction notice i.e. Rs.5,02,80,000/- for all the four properties is very low.

3. The reserve price fixed in the auction notice for all four properties i.e. item no.1(Ac.3.04cents), item no.2(Ac.2.00cents), item no.3(Ac.2.09cents) and item no.4(Ac.1.25cents) even though the properties are independent to each other, the reserve price fixed

for the entire land as a whole is impermissible under Rule 8(5) of SARFAESI Act and the Rules 2002.

4. Auction was conducted on 31.3.2015 and the respondent no.4 in whose favour the sale was confirmed, did not pay the sale amount due to the bank within the time prescribed under the Rule 9(3) and 9(4) of SARFAESI Rules 2002. As per the unamended Rules, the sale amount has to be paid within time prescribed under Rule 9(3) and 9(4) of the Act. In the event of failure by the bidders, the bank does not have jurisdiction to extend the statutory time fixed under the Rules. Further no consent was taken from the petitioners for extension of time for payment of balance sale consideration.

5. The respondent no.4 did not pay the sale amount due to the bank within the time prescribed, the sale certificate issued infavour of 4th respondent is invalid and liable to be set aside. Hence he prayed to declare the auction notice dt.25.2.2015 issued by the 2nd respondent and the consequential sale certificates dt.10.8.2015 issued infavour of respondent no.4 as illegal and arbitrary violative of Article 14, 21 and 300-A of Constitution of India r/w SARFAESI Act 2002.

6. The brief facts of the petition in W.P.No.2855 of 2019 are as follows:

With the identical contentions the petitioner filed W.P.2855 of 2019 questioning the sale certificates issued on 05.10.2018 infavour of the respondent no.5 in this writ petition. He also stated that pursuant to the auction notice dt.25.2.2015 and the sale certificates were issued on 10.8.2015 infavour of 4th respondent in W.P.No.43526 of 2017, they filed Writ Petition before this Hon'ble

Court questioning the said sale certificates. Despite the pendency of the said writ petition, the authorized officer i.e. 4th respondent has issued another sale certificate on 05.10.2018 infavour of respondent no.5 though there is no provision under the Securitisation Act 2002 and Rules there under to issue second sale certificate and the second sale certificate issued on 05.10.2018 is verbatim same and only the date of the sale certificate is altered. The sale certificate dated 05.10.2018 was registered on 05.10.2018 itself by the 2nd respondent. The stamp duty of Rs.1,45,00,200/- was paid and Rs.22,30,800/- was paid towards registration fee, on the market value of the entire property, that is Rs.22,30,80,000/- as against the sale valuation of Rs.5,04,80,000/-.

7. Also stated that having issued the sale certificate on 10.8.2015, the respondent no.4 had no authority to issue another sale certificate under the provisions of the SARFAESI Act and the present certificate of sale was issued only to overcome the mandatory time frame fixed under section 23 of the Registration Act. Hence it is clear case of abuse of powers by the respondent no.2 and 4 to achieve in the malafide act of registration. Once law prohibits registration of documents beyond 4 months from the date of registration, the same could not be done indirectly by changing the date of sale certificate. Hence to declare the registration of sale certificate dated 05.10.2018 vide document number 4894 of 2018 dt.05.10.2018 by respondent no.2 as illegal and arbitrary, consequently direct to set aside the same.

8. Before analysis of the SARFAESI Act 2002 and The Security Interest (Enforcement) Rules 2002 which are relevant for the present case the relevant Sections & Rules are extracted hereunder.

Section 13 (2) of SARFAESI Act

13 (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Section 13 (4) of SARFAESI Act

13 (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; 2[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset: 2[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:" Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Rule 8(5) in The Security Interest (Enforcement) Rules, 2002

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell

the whole or any part of such immovable secured asset by any of the following methods:—

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

Rule 8(6) in The Security Interest (Enforcement) Rules, 2002

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5): Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,—

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

Rule 9 in The Security Interest (Enforcement) Rules, 2002

9. Time of sale, issues of sale certificate and delivery of possession, etc.—

(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor: Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9: Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent. of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

9. The respondents 1 and 2 in writ petition no.43526 of 2017 filed their counters denying all the allegations which are mentioned in said writ petition. However they have denied that the petitioners were regularly paying loan amounts to the respondent bank. Admittedly the petitioners received the demand notice and possession notice under section 13(2) and 13(4) of SARFAESI Act 2002 inrespect of the secured assets dated 26.02.2015 informing the amount due in the said notice as Rs.4,45,63,000/- and there is no variance in the outstanding amount in the statement of account furnished to the petitioners.

10. It is denied that the lands as mentioned in para no.4 in the writ petition, are contiguous, and agricultural lands in the revenue records, the petitioners are not entitled to invoke the protection of 31(i) of the SARFAESI Act 2002. It is further stated that the lands in question are not agricultural lands, without having any records or evidence to say that the lands are used for agricultural purpose like ploughing, seeding, harvesting, irrigating and cutting of crops is taking place. There is no proof or evidence on record that the lands are used for agricultural purpose and in the absence of any records proving the income or any receipts for purchase of agricultural items, products, chemicals, seeds etc. It is further stated that mere showing the property as agricultural lands in the documents or revenue records or sale deeds do not constitute, the

secured lands are agricultural lands. The State Urban Development Authority issued G.O. dated 30.6.2006, hence the presumptions are rebutted and the burden lies on the petitioners to prove that the land is an agricultural land. Without assailing the G.O, the petitioners cannot claim the lands which are included in the urban areas as agricultural lands. They also stated in the counter that one side the petitioners are claiming the lands as agricultural lands and on the other side they are claiming that the lands are urban properties, in the residential area and the cost of the land was fixed by the bank is very low. Therefore it is not proper on the part of the petitioners to take contrary strands. Infact admittedly at the time of execution of the loan documents the lands were mentioned as vacant lands and no point of time after execution of the documents, the petitioners have not placed any material, that they have produced agricultural crops.

11. They have also stated that the Rule 8(5) does not mandate the reserve price fixed for the entire land as a whole, is impermissible, as mentioned by the petitioners that each secured asset has to be valued independently. They have also denied that, no valuation reports were obtained by respondent no.1 and 2, before fixing the reserve price. Infact the bank has obtained valuation report from the approved valuer.

12. It is further stated that G.O.Ms.No.345 of Andhra Pradesh through Municipal Administration and Urban Development Authority was issued on 30.6.2006 and as per the said G.O the lands in survey no.370 part, 372 & 373 part of Sathivanipalem, Narava village are declared as residential zone. Therefore it is manifestly clear that the petitioners have availed the loan facilities

on 07.7.2006, 10.7.2006, 24.7.2006 and 13.9.2006 i.e. immediately after the lands were declared as residential zone and on the date of execution of loan documents, the lands are open and vacant lands only. Even though the lands are purchased by the petitioners in the year 2005 are the agricultural lands, but subsequently in the year 2006, the lands are declared as residential and there is no system available to change status of the lands in the title deeds, documents executed in the year 2005. Hence the patta pass books and title deeds which were issued on 18.7.2005 by the authorities infavour of the borrowers were much prior to the issuance of G.O.No.345 dt.30.6.2006. Hence the petitioners prayer for declaration of lands as agricultural lands is to be rejected.

13. Further stated that when the bank or financial institutions initiates action under the SARFAESI Act, a person aggrieved by any measure under section 13(4) of the SARFAESI Act have to approach Debts Recovery Tribunal. At any point of time the petitioners approached the Debts Recovery Tribunal, Visakhapatnam when effective alternative remedy is provided by the Act. Hence the writ petition is not maintainable as declared by the Hon'ble Apex Court in the case of **United Bank of India vs. Satyawati Tondon**[1] to dismiss the writ petition.

14. The respondents 3 and 4 filed their counters in W.P.No.2855 of 2019 wherein they have specifically taken preliminary objection with regard to maintainability of the writ petition filed by the petitioners. Under SARFAESI Act 2002 if any person (including borrower), aggrieved by any of the measures averred to in sub-section 4 of section 13 taken by the secured creditor or his

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[1]) AIR 2010 SC 311

authorized officer, has to approach the Debt Recovery Tribunal which is having jurisdiction and file an application under section 17 of the SARFAESI Act within 45 days. The petitioners herein without availing the said remedy available under the SARFAESI Act 2002, directly approached the Hon'ble High Court. Apart from that before filing the present writ petition no.2855 of 2019, the petitioners herein filed various writ petitions, to delay and stall the auction proceedings and prevent the respondent bank from realization of the payment dues.

15. They have specifically stated that the writ petitioners have filed first writ petition no.27382 of 2013 challenging the e-auction notice dt.16.8.2013 issued by the 4th respondent and obtained interim directions in W.P.M.P.No.33916 of 2013 on 20.9.2013 stating, the further proceedings pursuant to the said e-auction sale notice, on the ground that the subject land brought to sale is an agricultural land. Inview of the stay granted by the Hon'ble High Court, the auction proposed on 23.9.2013 was stayed. The writ petitioner has withdrawn the said writ petition without getting adjudication of the said contention on merits. While withdrawing the above said writ petition no permission was granted to file a fresh writ petition. Thereafter he filed second writ petition no.1435 of 2015 challenging the auction notice dated 26.12.2014 proposing to sell the lands by inviting sealed tenders, on very same grounds. While granting the interim directions on 29.01.2015 the Hon'ble High court has permitted the respondent bank to proceed with the public auction and not to finalize the sale for a period of four weeks, the said interim order was extended by further period of three weeks on 19.02.2015. Even as per the directions of the

Hon'ble High Court the bank tried to conduct the auction but for want of bidders the said auction was not held. The said W.P was dismissed by the Hon'ble High Court by its order dated 01.4.2015 stating as infructuous.

16. The bank has issued another auction notice dated 25.2.2015. As per the said auction notice, the auction is proposed to conduct on 31.3.2015 and accordingly auction was conducted on 31.3.2015 as scheduled and the auction property was sold for an amount of Rs.5,04,80,000/-. Aggrieved by the said e-auction notice the petitioners herein along with their father filed a third writ petition i.e. W.P.No.9484 of 2015 against the bank and authorized officer and also against Tahsildar, Pendurthi Mandal. As the auction was already conducted on 31.3.2015 the same was brought to the notice of the Hon'ble High Court and the Hon'ble High Court vide its order dt.30.4.2015 has observed that:

> *"While we see no reason to restrain the respondent from issuing a sale certificate and from executing a conveyance deed, any such action taken by the respondent bank shall be subject to further orders in the W.P.M.P".*

17. Thereafter the petitioners sought leave to amend the prayer in the writ petition as auction held on 31.3.2015 but it was declined and the W.P.No.9484 of 2015 was dismissed by the Hon'ble High court vide its order dt.15.11.2017, by observing it is more appropriate to avail fresh remedy in accordance with law.

18. They further stated that inview of the above observations of the Hon'ble High Court instead of approaching the Debts Recovery Tribunal, the petitioner filed fourth W.P.No.43526 of 2017 on 19.12.2017 before this Hon'ble Court to declare the auction notice

dt.25.2.2015 and consequential sale certificates dated 10.8.2015 on the very same grounds.

19. Consequent to the disposal of the above said writ petition on 15.11.2017, on completion of other formalities, the sale certificates with modifications was registered at the office of the Sub-Registrar office, Gajuwaka as document no.4894 of 2018 on 05.10.2018 as per the provisions of Registration Act.

20. The petitioners have filed this 5th writ petition questioning the said registrations, the petitioners have filed the present writ petition before this Hon'ble court, as 5th writ petition. So it clearly shows the intention of the petitioners right from the beginning i.e. writ petition no.27382 of 2013 onwards till the present writ petition they have never approached the Debt Recovery Tribunal as stipulated in the SARFAESI Act.

21. When the petitioners herein failed to repay the due amounts, the said loan account became NPA on 30.4.2009 by following the procedure contemplated under SARFAESI Act 2002. Thereafter the possession of the mortgaged property was taken on 20.01.2010 and notices were served on the petitioners and the bank also got issued a lawyer's notice on 11.12.2010 to the petitioners and guarantors demanding to clear the outstanding due amount with interest. The petitioners have not come forward to clear the outstanding amounts. To recover the said amounts, the respondent bank has filed O.A.302 of 2012 on 29.11.2012 before the Hon'ble Debt Recovery Tribunal (DRT) Visakhapatnam for recovery of Rs.2,47,69,661/- and subsequently monthly interest from the said firm and partners and also O.A.300/2012, O.A.301/2012,

O.A.303/2012 filed against other borrowers and their family members.

22. It is further stated in their counter that the petitioners are due for an amount of Rs.446.85 lakhs as on 26.2.2015 along with further interest and costs as mentioned in auction notice published on 26.2.2015 and there is no variance in the amount mentioned in the auction notice as well as in the statement of accounts furnished to the petitioners herein. As per RBI guidelines when a loan account is classified as NPA further interest cannot be debited to that NPA account and separate interest has to be calculated.

23. After adjusting the sale proceeds to the outstanding of the said firm loan account, the same was closed and a full satisfaction memo dated 27.10.2017 filed before the Debts Recovery Tribunal, Visakhapatnam and after recording the same, the Debts Recovery Tribunal has accordingly disposed off the said O.S.

24. Further it is stated that the title deeds of the property have to be delivered to the auction purchaser at the time of registration, the original title deeds were filed before the Debts Recovery Tribunal and steps were taken to get the document from Debts Recovery Tribunal. After getting the said documents, the bank delivered them to the auction purchaser only on 18.6.2018 and the auction purchaser requested the bank to incorporate the delivery of possession of the property and title deeds related thereof in the said sale certificates dated 10.8.2015, by incorporating all the important facts and subsequent developments and without making any reference with regard to writ petition no.9484 of 2015. Accordingly corrections were made and subsequent events were incorporated in the sale certificate and modified sale certificates were issued on

05.10.2018. Thus it is evident that the modifications made are material, and if not, incorporated, it adversely affects the interest of auction purchaser and passing of title over the property to him. Under these circumstances, the respondent bank has executed and registered the corrected sale certificates on 05.10.2018 as document no.4894 of 2018 before the Joint Sub-Registrar, Gajuwaka, Visakhapatnam on 05.10.2018. And further stated that the said corrected sale certificate has been registered immediately i.e. within four (4) months as per the Registration Act. Therefore the contention of the petitioners that the sale certificates dated 05.10.2015 is verbatim same is not correct.

25. They have further stated that the delay in presenting the certificate of sale for registration is due to unavoidable circumstances and not willful or wanton but due to the reasons mentioned above. The allegations of the petitioners that the sale certificate ought to be registered within four months from the date of its issuing, as per Section 23 of Registration Act 1908 is mandatory in nature and strict adherence of time frame for registration to be followed and Sections 24, 25 and 26 of Registration Act are not applicable in the instant case. The respondent has authority to issue another sale certificate under the provisions of the Securitisation Act and Rules and the present certificate was issued with a view to overcome mandatory time frame fixed under section 23 of Registration Act are baseless, untenable and incorrect.

26. Inview of the above reasons mentioned in the counter and also having an effective alternative remedy under the SARFAESI Act in terms of section 17 of the Act, instead of approaching the

concerned Debts Recovery Tribunal, only filing writ petitions under 226 of Constitution of India is bad. Hence requested to dismiss the writ petition.

27. After notice in writ petition no.2855 of 2019, the 5th respondent has filed his counter denying the allegations of the writ petition. Consequent to default of the borrower, notice under section 13(2) was issued on 26.10.2009 and possession of the secured assets mentioned there under was taken on 20.01.2010 and the bank decided to sell the secured assets and invited bids from intending purchasers to participate in e-auction scheduled on 31.3.2015. The reserve price was fixed as 502.80lakhs and earnest money deposit is at 10% i.e. 50.28lakhs. The last date to receive the bids was 30.3.2015 by 4.00 P.M. Accordingly he paid the E.M.D of Rs.50.28lakhs on 30.3.2015 and participated in the tender and stood as successful bidder having quoted an amount of Rs.5,04,80,000/-. He further stated that he paid an amount of Rs.76,00,000/- on 31.3.2015. Hence the total amount of 25% bid amount has paid within time. Pursuant to the payment, the bank has intimated the confirmation of sale vide its letter dt.07.4.2015. After that he completed the payment of balance consideration of 75% i.e. Rs.3,78,52,000/- by 20.4.2015. Consequently, the bank has issued sale certificates on 10.8.2015 and delivered the possession of property to him. Thus the sale has become final and the title and possession over the subject property has been transferred to him. While issuing the sale certificate on 10.8.2015 the recitals say that "*sale is subject to out come of the writ petition no.9484 of 2015 of High Court of Andhra Pradesh".* The bank has informed that the borrower has filed a writ petition no.9484 of 2015

and there was an interim order to the effect that the sale is subject to out come of the writ petition. Inview of the prevailing circumstances and contingency, the bank has postponed the registration till the disposal of the writ petition. Subsequently the bank has informed that on 15.11.2017, about the disposal of the W.P. But surprisingly the borrower has filed one more writ petition i.e. W.P.No.43527 of 2017. As the writ petition no.9484 of 2015 was disposed off, he requested the bank to delete the recital with regard to W.P.No.9484 of 2015 in the sale certificate and mention the delivery of possession also. Inview of the request made by him, the bank has issued another modified sale certificate on 10.8.2015. He paid Rs.1,45,00,200/- towards stamp duty and Rs.22,30,800/- as registration fee for registering the said sale certificate.

28. Therefore the allegations of the writ petition that the sale is vitiated as the respondent has not taken steps for registration of sale certificate within four months as per section 37 of the Registration Act is incorrect. Infact non-registration of sale certificate does not vitiate the sale or sale certificate because of the reason that section 17(ii) of the Registration Act, the sale certificate executed in pursuance of the public auction is exempted from registration. Moreover by virtue of the settled legal possession once the sale certificate is executed, the title to the property would be vested to the purchaser notwithstanding the registration. Apart from the above stated reasons, he also stated that the writ petition is not maintainable on the ground that when there is an alternate remedy is available before Debts Recovery Tribunal under section 17 of the SARFAESI Act. Hence requested to dismiss the writ petition.

29. Basing on the above pleadings, Mr. N.Vijay, the learned counsel appearing for the petitioners mainly canvassed on the following issues:

Firstly he has stressed that the secured lands are agricultural lands. The revenue records clearly show that the secured lands are agricultural lands. He mainly relied on the sale certificates issued by the 4th respondent, wherein the schedule described the property as vacant zeroity dry land, situated at Narava village, Sattivanipalem panchayat, Pendurthi mandal, Gajuwaka. He submitted that with regard to four properties, the description contains same and the sale notification was issued on acre basis by itself would indicate that the same is being treated as an agricultural land. Also as per the sale deeds it clearly establishes that these lands are zeroity lands. Hence the SARFAESI Act is not applicable to these lands and according to section 31(i) of the said Act, the agricultural lands are exempted from the purview of the Act.

30. Secondly, he canvassed, that according to sale notice, one reserve price is fixed for all the properties, clubbing all the properties, is contrary to Rule 8(6) of the Securities Interest (Enforcement) Rules 2002. As per the said Rules, description of the immovable property to be sold, including the details of the incumbent known to the secured creditor, the secured debt for recovery of which the property is to be sold, the reserve price, below which the property may not be sold. So it includes that the auction notice should be notified the reserve price for each of the property. But in the impugned notice notified the clubbing of all the properties and fixed one reserve price is contrary to Rule 8(6).

31. Thirdly while fixing the reserve price the bank has not followed the Rule 8(5), and the authorized officer has not obtained the valuation of the property from the approved valuer in consultation with the secured creditor. And he also submitted that the reserve price fixed is grossly low and does not reflect even the basic value as fixed by revenue authorities comes to about Rs.900/- per square yard. Hence methodology adopted by respondent no.2 in fixing the reserve price is arbitrary and without application of mind and it is apparent that no valuation reports were obtained by respondent no.2 before fixing the reserve price.

32. Fourthly, the contention of the counsel for the petitioners is that the auction purchaser has not deposited as per the time frame prescribed by Rule 9(3)(4)(5)(6). According to Rule 9 he submitted that the purchaser shall immediately on the same day has to deposit 25% of the amount of the sale price and the balance amount of purchase payable shall be paid by the purchaser to the authorized officer on or before 15 days of sale of the immovable property. On confirmation of sale by the secured creditor and the terms of the payment has been complied by the auction purchaser, then only the authorized officer has to issue sale certificates of the immovable property in favour of the auction purchaser. But he specifically contended that the payment of sale amount due to the bank has not deposited within the time prescribed under Rules. Hence the sale certificate is invalid and liable to be set aside.

33. Finally he emphasized that the second sale certificate cannot be issued by the authorized officer and there are no provisions contemplated in the Act or Rules of 2002. In pursuance to the auction notice dated 25.2.2015, the authorized officer conducted

auction and confirmed the sale infavour of the auction purchaser for a total consideration of Rs.5,04,80,000/- and the sale certificates were issued on 10.8.2015. Once the sale certificates are issued, the authorized officer cannot issue another sale certificate/second sale certificate, hence the second sale certificate issued on 05.10.2018 and the same were registered on 05.10.2018 by the R2 is contrary to the Act and Rules there under. Further submitted that according to section 23 of the Registration Act, 1908, the time is prescribed to present the document from the date of its execution and proviso to section 23 is applicable to all court orders and for all other documents. So the same has to be registered within four months. To over come the mandatory time frame fixed under section 23 of the Registration Act, authorized officer has issued the second sale certificate on 05.10.2018 and the same were registered on 05.10.2018 and once the law prohibits the registration of document after four months, the same cannot be done indirectly by changing the date of the sale certificate. It is further contended that except change of the date, there is no alteration in the second sale certificate issued by the authorized officer. Inview of the above stated reasons, the second sale certificate issued on 05.10.2018 and registration vide document no.4894/18 dated 05.10.2018 is illegal and contrary to the provisions of SARFAESI Act as well as the Registration Act 1908.

To support his contention he relied on the following judgments.

(1) In **General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs Ikbal and others**[2] the Hon'ble Apex Court recited that:

[2]) 2013 (10) SCC 83

"*A reading of sub-rule (1) of Rule 9 makes it manifest that the provision is mandatory. The plain language of Rule 9(1) suggests this. Similarly, Rule 9(3) which provides that the purchaser shall pay a deposit of 25% of the amount of the sale price on the sale of immovable property also indicates that the said provision is mandatory in nature. As regards balance amount of purchase price, sub-rule (4) provides that the said amount shall be paid by the purchaser on or before the fifteenth day of confirmation of sale of immovable property or such extended period as may be agreed upon in writing between the parties. The period of fifteen days in Rule 9(4) is not that sacrosanct and it is extendable if there is a written agreement between the parties for such extension. What is the meaning of the expression 'written agreement between the parties' in Rule 9(4)? 2002 Rules do not prescribe any particular form for such agreement except that it must be in writing. The use of term 'written agreement' means a mutual understanding or an arrangement about relative rights and duties by the parties. For the purposes of Rule 9(4), the expression "written agreement" means nothing more than a manifestation of mutual assent in writing. The word 'parties' for the purposes of Rule 9(4) we think must mean the secured creditor, borrower and auction purchaser*

(2) In **G.Krishna Reddy and another v. Government of Andhra Pradesh and others**[3] the High Court of Andhra Pradesh recited that:

In the opinion of this Court, Section 23 imposes a restriction on the registering authority not to accept the document for registration if the document is not presented beyond the period of four months from the date of its execution. The exceptions are in cases where a suit is pending before the Court and the documents are executed abroad. Either under Section 23 or by way of a combined reading of Sections 23 and 34 of the Act, the period for acceptance of a document for registration is eight months from the date of execution. In the opinion of this Court, from the language employed by the legislature, the procedure and the time limit covered by Sections 23 and 34 are mandatory in nature. In the case on hand, admittedly the registration by 4th was completed on 23.02.2008. Having regard to the finding recorded above, the registration by 4th respondents on 23.02.2008 is illegal and without jurisdiction. Consequently, the registration of document dated 28.02.2007 is liable to be declared as such.

[3]) 2015(2) ALD 474

(3) In **Dr. R.Thiagarajan vs. The Inspector General of Registration, Santhome, Chennai and others**[4] the High Court of Tamilnadu recited that:

> *"In the unreported judgment of this Court dated 21.08.2017 _____ http://www.judis.nic.in W.P.(MD) No.3989 of 2017 made in W.A.(MD) No.3 of 2017 [cited supra], the Division Bench of this Court held that the Authorised Officer appointed by the bank in the proceedings initiated under SARFAESI Act, is not a Civil or Revenue Court, Collector or Revenue Officer and he is an officer of the bank, which lend money to the borrowers, acts as an Authorized Officer, only for the purpose of bringing the property for sale. In other words, such officers merely replace the secured creditors. The Division Bench further observed that at best the Authorized Officer can not be termed as Civil or Revenue Court, Collector or Revenue Officer. Observing so, the Division Bench held that notice issued under Section 47-A of the Indian Stamp Act, claiming stamp duty on the market value of the property is proper.*
>
> *22. The Sale Certificate issued by the Authorised Officer of the bank cannot be agnated with the Sale Certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C Schedule 1 of the Stamp Act. Therefore, the Sale Certificate _____ http://www.judis.nic.in W.P.(MD) No.3989 of 2017 issued by one who is neither Civil or Revenue Officer would not fall under Section 17(2)(xii) of the Registration Act and the Sale Certificate issued by the Authorized Officer is liable for stamp duty on the market value as per Article 18-C read with Article 23 of Schedule 1 of the Stamp Act.*
>
> *23. If proper stamp duty is not paid for the said Sale Certificate and registered as required under law, then it is only a still born child and does not confer any right to the petitioner whatsoever. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the petitioner based on the same. As per Section 47-A of the Stamp Act, if the Registering Authority has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set-forth in the instrument, he may, after registering such instrument, refer the same to*

[4]) 2008(2) ALD 663

the Collector for determination of the market value of the said property and the proper duty payable thereon.

34. Counter to the above submissions, Sri Harinarayan, the learned counsel appearing onbehalf of the bank has mainly contended on the maintainability of the writ petition itself. He submitted that the writ petitioners have filed series of writ petitions to prevent the respondent bank for realizing legitimate dues to the bank. Initially first sale notice was issued on 16.8.2013, questioning the said sale notice, the writ petitioner has filed writ petition 27382 of 2013. At the admission stage on 12.9.2013 the following orders are passed.

"Having regard to the specific plea of the petitioners that the land brought to sale invoking the provisions of SARFAESI Act, 2002 is an agricultural land, there shall be interim stay as prayed for".

35. On 23.12.2014 the said writ petition was dismissed as withdrawn. Then the second sale notice was issued on 26.12.2014. Again the petitioner filed writ petition 1435 of 2015. Initially interim orders were granted and the said writ petition was disposed on 01.4.2015, the order reads as follows:

While Sri N.Vijay, learned counsel for the petitioners, states that, an amendment petition would be filed, the subsequent auction notice can only be subjected to challenge by way of independent writ proceedings, and the cause in this writ petition does not survive.

The writ petition is accordingly dismissed as infructuous.

36. The bank has invited sealed tenders to the subject land by auction notice dated 25.02.2015, assailed under third writ petition no.9484 of 2015 at the admission stage on 13.4.2015 the Hon'ble High Court has passed an order which reads as follows:

"While we see no reason to restrain the respondent from issuing a sale certificate and from executing a conveyance deed, any such action taken by the respondent bank shall be subject to further orders in the W.P.M.P".

The said petition was disposed of by the Hon'ble High Court in its order dated 15.11.2017. The relevant portion of the order is extracted below:

> "*Though Sri N.Vijay, learned counsel for the petitioners, would seek leave to amend the prayer in the writ petition basing on these developments, we are of the opinion that it was instituted long before the aforestated developments, it would be more appropriate for the petitioners to avail a fresh remedy in accordance with law, be it before the jurisdictional Debts Recovery Tribunal or this another. This liberty is granted keeping in mind the order dated 30.4.2015 passed by this Hon'ble Court making all actions by the respondent bank subject to further orders to be passed in this Writ petition. The time consumed by the petitioners in pursuing this writ petition shall be taken into account by the jurisdictional Debt Recovery Tribunal in the event the petitioners approached it while computing the limitation aspect. All the issues are left open.*
>
> *The writ petition is accordingly closed with a liberty aforestated".*

37. After seeing all the writ petitions and orders it is clearly notable that the writ petitions are being filed on the ground of secured lands are agricultural lands, are exempted as per section 31(i) of SARFAESI Act and instead of getting the issue raised in the above writ petitions adjudicated more or less all the writ petitions are dismissed as withdrawn, or infructuous. While dismissing the first two writ petitions, even the petitioner has not sought for liberty. Hence the issue raised in the present writ petitions are the issues involved in the earlier writ petitions are one and the same. Inview of not granting liberty in the earlier two writ petitions, now the present writ petition is liable to be dismissed on the ground of res-judicata.

38. Further he contended that even the writ petition no.9484 of 2015 is closed with a liberty to the petitioners to avail a fresh remedy in accordance with law before the Jurisdictional Recovery

Tribunal or this Court. But in the subsequent sentences the Court intention is very clear that the time consumed by the petitioners pursuing this petition shall be taken into account by the Jurisdictional Debt Recovery Tribunal in the event of petitioners approached it. So if we read the entire paragraph of the writ petition, the observation of the court is very clear that the liberty is only for approaching the Debt Recovery Tribunal.

39. Inview of the same it is clear that the approach of the writ petitioners always approaching the Hon'ble High Court by filing writ petitions one after one and he never intend to approach the debt recovery tribunal at any point of time as stipulated under the SARFAESI Act is against the ratio decided by Apex Court in **Union Bank of India vs. Satyawati Tondon and others.**

40. He further contended that filing of repeated writ petitions is nothing but abuse of process of Court and Law. To support his contentions he relied on the decision **Udyami Evam Khadi Gramodyog ... vs State Of U.P. And Others**[5] wherein the Hon'ble Supreme Court recited that:

> *Although the prayers made in the four writ applications are apparently different, having gone through the writ applications, it became evident that the core issue in each of the matter centers round recovery of the amount advanced to the appellants by the bank. Evidently, orders passed in different stages of the proceedings as also new proceedings based upon fresh calculation on interest on the principal sum had been in question from time to time.*
>
> *A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law.*
>
> *In Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries and Another, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.*

[5] (2008) 1 SCC 560

41. Reply to the issue no.1 raised by the petitioner, the counsel for the respondent submitted that the land in question is not an agricultural land. The petitioner has not submitted any record or evidence to show that the land is used for agricultural purpose or agricultural operations like ploughing, seeding, harvesting, irrigating, cutting of crops has taken place in the said lands and no proof or evidence are placed and the particulars of income from the agriculture of the said lands. Apart from that the document submitted as security clearly stated that mortgage of open vacant land and there is no whisper about agricultural land, in the said document, which is placed at page no.106 to 112 along with the writ petition. So while taking the loan, the petitioner has executed mortgaged document stating as open vacant land now he is not entitled to take stand that the secured land is an agricultural land, that too without placing any material with regard to agricultural operations and merely basing on the entries made in the revenue records or the description mentioned in the sale certificate, the land cannot be treated as an agricultural land. To support his contention he relied on the judgment reported in **Gajula Exim (P) Ltd. Vs. Authorized Officer, Andhra Bank**[6] wherein it is recited that:

> *The agricultural land is not defined under the present Act. It is an undisputed fact that there were buildings, plants and machinery in the land. The petitioner is said to have paid land revenue to the concerned authorities, but it does not mean that by mere paying land revenue the land shall be treated as an agricultural land. No evidence was adduced by the petitioner as to what is the extent of land on which the buildings are situated, the extent on which the machinery and the plants of the industry were erected and established. There is also no material placed by the petitioner to show that any agricultural operations are being conducted in any part of the land. In the absence of such material and in view of the petitioner undertaking business in seafood, the business may be treated as an industry ancillary to*

[6]) 2008(4) ALD 385

pessy culture, but it cannot be treated that the land is being used for agriculture.

The High Court had discussed the various meanings of the term "agriculture" and pointed out how it had acquired a wide sweep. It also discussed a number of cases, including Sarojini Devi v. Srikrishna which had not been followed by a Division Bench of the Andhra Pradesh High Court in Smt.Manyam Meenakshamma v. Commr. of Wealth Tax. A.P. on the ground that the Madras view, that it was enough that the land was capable of being used for agricultural purposes, was no longer good law in view of the pronouncement of this Court in Benoy Kumar Sahas Roy's case . The Andhra Pradesh Division Bench had said, in Smt.Manyam Meenakshamma's case (supra) at p.544 of ITR) : at p.192 of AIR

And order of the Apex Court in ***Indian Bank & Anr vs. K Pappireddiyar & Anr*** *reported in* ***Civil Appeal No.6641 of 2018***

The statutory dictionary in Section 2 does not contain a definition of the expression "agricultural land". Whether a particular piece of land is agricultural in nature is a question of fact. In the decision of this Court in Blue Coast Hotels Limited (supra), a security interest was created in respect of several parcels of land which were meant to be a part of a single unit, for establishing a hotel in Goa. Some of the parcels were purchased by the debtor from agriculturists and were entered as agricultural lands in the revenue records. The debtor had applied to the revenue authority for the conversion of the land to non-agricultural use, but the applications were pending.

42. The learned counsel appearing for the bank has argued that the petitioner has taken contrary relief's in one writ petition. As a first ground he questioned the sale certificate on the ground that the lands are agricultural lands, contra as per G.O.Ms.No.345 dated 30.6.2006 issued by the Government of Andhra Pradesh, taking that into consideration the reserve price fixed by the bank is lower in side. He further submitted that the petitioners are entitled to take alternative pleas in a writ petition but the petitioners are not entitled to take contrary pleas in one writ petition. One side he argued that the lands are agriculture lands, contra he questioned the sale certificates on the ground of fixing the reserve price is low. On this count alone the writ petition is to be dismissed.

43. He further submitted that the valuation of the properties are fixed as per the basic unit rate fixed by the urban authorities by

taking acres into consideration and there is no bar to fix one reserve price for all the properties. Infact he himself has admitted in para 5 of the writ petition affidavit that the lands are contiguous lands.

44. Answer to the 4th issue raised by the petitioners that auction was conducted on 31.3.2015 and whose favour the auction was confirmed did not pay amount due to the bank as per the time frame prescribed by the Rules 9(3) and 9(4) of SARFAESI Act 2002. Answer to the said point the counsel has submitted that the authorized officer even though auction has conducted on 31.3.2015, the authorized officer has confirmed the sale by his letter dated 07.4.2015. Wherein the auction purchaser was informed that he is the successful bidder for the e-auction for Rs.5,04,80,000/- and accordingly requested for payment. Hence he has deposited the amounts within 15 days from 07.4.2015. So there is no violation to Rule 9(3)(4) and (6). Hence the sale certificates are in accordance with rules. To support these submissions he has relied on judgment in between **Rakesh Birani (dead) through legal representatives vs. Prem Narain Sehgal and another**[7] wherein the Hon'ble Supreme Court recited that:

> *"The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.*
>
> *On such deposit of money for discharge of the encumbrances, the authorized officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.*
>
> *The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule 7 above.*

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[7]) (2018) 5 SCC 543

The certificate of sale issued under sub-rule 6 shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not".

45. Finally he has answered the point raised in writ petition no.2855 of 2019 that the authorized officer cannot issue the second sale certificate that too except altering the date, the same certificates were issued again. To answer this he has specifically stated that the sale certificates which were issued on 10.8.2015, are with a condition that sale is subject to out come of the writ petition no.9484 of 2015 of High Court of Telangana at Hyderabad. The sale certificate issued on 05.10.2018, the same was removed. Infact the title deeds of the property has to be delivered to the auction purchaser at the time of registration and the original title deeds were filed before Debts Recovery Tribunal and steps were taken to get the documents from Debts Recovery Tribunal. After getting the documents, the documents were delivered to the auction purchaser and the bank has agreed to made corrections and incorporated the subsequent events in the sale certificate and issued modified sale certificate on 05.10.2018 and he has filed a statement showing the difference between two sale certificates along with his counter and he demonstrated that the two sale certificates are different and there are modifications made as per the requirements of the auction purchaser. As per the judgment of the Hon'ble High Court of Kerala there is no bar to issue second sale certificate, the bank can issue second sale certificate which is reported in **State Bank of India and another vs. Satheesh babu and others**[8] wherein it is recited that:

…Therefore, in the case on hand, issuance of sale certificate by itself will not amount to vesting of all the rights on the transferee.

[8]) W.A.No.2488 of 2015 in W.P.(C) 5365of 2015

In such a situation, when a request is made by the holder of the sale certificate, nothing prevents the Bank in issuing a fresh sale certificate in favour of the petitioner.

46. He further distinguished the judgment reported in **2008 2 ALD 662** wherein subject document was already presented before the registration. Basing on the query raised by the registrar, the delay has occurred. But in the present case they never presented document before the registrar. Hence the ratio decided in the writ petition is not applicable to this case.

47. Finally he stated that the second sale certificate was issued in accordance with Rules and the registration was also completed within time prescribed under section 23 and 25 of the Registration Act and there is no violation of any rules by the banks and they have followed all the rules and procedure prescribed under the act. Hence they requested to dismiss the writ petition with exemplary costs.

48. Learned counsel appearing for the 5th respondent/auction purchaser has submitted that the stand taken by the petitioners that the property is an agricultural land is unsustainable. The secured properties were mortgaged to the bank subsequent to the G.O issued by the Urban Development Authority, G.O.Ms.No.345 dt.30.6.2006. According to the mortgage deed executed by the petitioners on 05.07.2006 which clearly establishes that the petitioners have mortgaged the property subsequent to the issuance of the G.O. Hence he cannot claim the said lands as agricultural lands. Apart from that the very same document he categorically stated that the secured lands are open lands and initially he mentioned that the lands are agricultural lands. In reply to the contention of the petitioners that in the schedule to the

sale certificate, the lands are described as vacant zeroity dry lands. Hence the land should be treated as agricultural lands cannot be accepted inview of the judgment reported in between **Ramji Ram v. Banshi Raut**[9] wherein it is recited that:

> *The word zerait has been defined in the said Glossary as "the proprietor's private lands".*

Hence just because mentioning of the word zeroity in the sale certificates without having any material they are cultivating the said lands, cannot be treated as agricultural lands and they are not entitled for examination under section 31(i) of SARFAESI Act.

49. Further he contended that without assailing the basic orders like notice under sec.13(2) or under 13(4) he cannot assail the consequential proceedings/orders of sale certificates and registrations. Hence barred to question the consequential proceedings without questioning the basic orders. Hence the writ petition itself is not maintainable as per the judgment reported in between **Government of Maharashtra and others vs. Deokar's Distillery**[10]**.**

50. Consequent to the e-auction sale notice he participated by paying 50.28lakhs as EMD on 30.3.2015 and stood as successful bidder having quoted an amount of Rs.5,04,80,000/- and he paid an amount of Rs.76,00,000/- on 31.3.2015 and hence total amount he paid by the date of auction comprise of 25% of the bid amount and the bank has intimated confirmation of sale letter dated 07.4.2015 and he has completed the balance sale consideration of 75% i.e. Rs.3,78,52,000/- by 20.4.2015. Hence the payment which was made by him is within the prescribed time limit of the Rules under SARFAESI Act.

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[9]) 1922 (1) ILR
[10]) (2003) 5 SCC 669

51. Subsequent to the payment made by him, the sale certificates were executed by the bank on 10.8.2015 and delivered the possession of property to him and hence the sale became final, title and possession over the subject property has been transferred to him. He also stated that in the said sale certificates, the recitals shown that the sale is subject to out come of the writ petition no.9484 of 2015 of High Court of Andhra Pradesh. Inview of the pendency of the writ petition 9484 of 2015 the bank has postponed the registration till the disposal of the above said writ petition and subsequent to disposal of the writ petition i.e. on 15.11.2017 basing on the request made by him, the bank has deleted the recitals mentioning the sale is subject to out come of the writ petition and delivery of possession was specifically mentioned. Inview of the said circumstances, the bank has issued another sale certificate with the modification on 05.10.2018. Hence the sale certificate issued on 05.10.2018 with necessary corrections is legal and valid and he has no right to challenge the sale certificate issued on 05.10.2018.

52. Finally by spending huge amount i.e. Rs.1,45,00,200/- towards stamp duty and Rs.22,30,800/- towards registration fee, the sale certificates were registered on the same date. Hence requested the court to dismiss both the writ petitions with exemplary costs.

53. Basing on the material available on record and the submissions made by both the parties, it is clear that all the contentions raised by the petitioners were already answered by the Apex Court, as well as the other High Courts. More particularly, the common issue raised by the petitioner right from 2013, in

W.P.No.27382 till the present petition that the secured lands are agricultural lands and hence, the SARFAESI Act is not applicable to these lands. Hence, they are exempted under section 31(i) of SARFAESI Act was answered by the Hon'ble Apex Court in **Indian Bank Vs. K.Papi Reddyiar**[11], wherein held that "the High Court misdirected itself in holding that the land was an agricultural land merely because it stood as such in the revenue entries, even though the application made for such conversion, lies pending till date". Further held that the classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply.

54. Following the said judgment, the Division Bench of Composite High Court held that, "whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of security interest and the purpose for which it was set apart".

55. In view of the above decisions, it is clear that without having any record, showing that the petitioner is engaged in agricultural activities in the said land, having mortgaged the said lands as security, taking loan without indicating the agricultural lands, are not entitled for exemption under section 13(i) of SARFAESI Act.

56. Learned counsel for the petitioner has taken through Rules 9 (4), 9 (5) of the Act, 2002 has to contend that in default of the payment, within the period mentioned in Sub Rule 4, the deposit made shall be forfeited. Hence, the issuance of sale certificate is contrary to Rule 9(4) and 9(5) of the Act, 2002.

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[11]) Civil Appeal No.6641 of 2018

57. Reply to the said contentions the learned counsel appearing for the Bank has emphasized that Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 specifically provides that amount has to be deposited only after confirmation. Therefore, the failure is only to follow consequence of non-deposit of 75% of the amount, after confirmation of the same. The learned Counsel also relied upon the provisions of the Rule 9(6) to submit that after confirmation of sale in case, terms of the sale had been complied with only, when the sale certificate is issued. In this case, the sale certificate has been issued by confirmation of sale by the authrozied officer in its letter dated 07.04.2015. Accordingly, the remaining 75% of the sale consideration i.e. Rs.3,78,52,000/- has been paid by the auction purchaser on 20.04.2015 in time.

58. In order to commensurate the rival submissions under rule 9(2) of 2002 Rules, the sale is required to be confirmed in favour of the purchaser, who has offered higher sale price to the authorized officer and subject to confirmation by the secured creditor. The proviso makes it clear that the sale under said rule would be confirmed, if amount offered, and the whole price is not less than the reserved price, as specified in rule 9(5) and rule 9(3) makes it clear that on every sale of immovable property, the purchaser on the same day, is not vendor on the next working day as to make a deposit of 25% of the amount of the sale price, which is inclusive of earnest money deposited if any.

Rule 9(4) makes it clear that the balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the 15th day of confirmation of the sale of immovable property or such extended period as may be agreed

upon in writing between the purchaser and the security. Thus Rule 9(2) makes it clear that after confirmation by the secured creditor the amount has to be deposited.

59. Rule 9(3) also makes it clear that the period of 15 days has to be completed from the date of confirmation. Hence, in the instant case, the auction purchaser has deposited the amount within 15 days as prescribed by the Rules.

60. Be that as may it is very clear that the petitioners took no steps whatsoever to pay the outstanding dues to the respondent Bank either by way of valid tender or move any application before this Court, even during pendency of the writ petitions, to permit them to deposit requisite amount, either in the concerned loan account or in the Court.

61. Suffice it to observe that the petitioners for the reasons best known to them have not chosen to deposit the amounts in the loan account or attempted to seek permission from the Courts to deposit the loan amount.

62. Considering the peculiar facts of the present case, we do not deem it necessary to discuss further on the arguments that registration of the Sale Certificate in relation to the auction conducted under the SARFAESI Act, 2002 is essential.

63. Similarly it is not necessary to examine other grounds raised by the petitioners in the light of our conclusion that the appellants have failed to make payment of the outstanding dues to the Bank or attempted to seek permission from this Court to deposit amounts before issuance of either notice under 13 (2) or 13(4) of the Act, or before issuance of sale certificates.

64. Besides the observation of the Honorable High Court in writ petition No.W.P.No.9484 of 2015, dated 15.11.2017 the petitioner was having efficacious alternative remedy, for the reasons best known to him, he choose to invoke jurisdiction of this High Court under Article 226 of the Constitution of India, which as per the settled law decided by the Hon'ble Supreme Court in **Union Bank of India, Vs. Satyavati Tandon and others** as liberally dealt with this issue, and deprecate interference of this Court, in SARFAESI Act.

65. Thus we find that the Bank has fully complied all the provisions of the SARFAESI Act and the Rules there under, hence, the Sale Certificates was rightly issued in favour of the auction purchaser and the registration was also done on the same day. Thus the auction would not have been set aside and the sale certificates, which were issued on 10.8.2015 and registration made on 10.8.2015 cannot be interfered.

66. Accordingly, both the writ petitions are dismissed. There shall be no order as to costs.

67. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE RAKESH KUMAR

JUSTICE D.RAMESH

Date: 13.3.2020

Rd/pnr

2020:APHC:32592

THE HON'BLE SRI JUSTICE RAKESH KUMAR

AND

THE HON'BLE SRI JUSTICE D.RAMESH

W.P.No.43526 of 2017 and W.P.No.2855 of 2019

Dated 13.3.2020

Rd/Pnr