

BANKING LAWS

EXCLUSION OF AGRICULTURAL LAND UNDER SARFAESI ACT

B. GOPALAKRISHNAN*

This write-up throws some light upon exclusion of 'agricultural land' under the SARFAESI Act. For the purpose, an Apex Court ruling has been referred to.

Introduction

1. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was enacted to give a weapon or a fast track mechanism to banks to enforce the securities in case of defaults without intervention of the Courts. As per the provisions of the SARFAESI Act, agricultural land is exempted from the provisions of the Act.

Agricultural Land - Meaning of

2. The term 'agricultural land' is not defined anywhere in the SARFAESI Act. Initially, the Courts were inclined to go by the normal meaning of the word 'agriculture' as follows:

'Agriculture means the science and the art of cultivating the soil including gathering in of the crops, and the rearing of live-stock; farming (in the widest sense).'

However, the Constitution Bench of the Supreme Court overruled the lower Court judgment in *CWT v. Court of Wards* and observed as under:

"We think that it is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an expression. The correct rule is that we have to endeavour to find out the exact sense in which the words have been used in a particular context. We are entitled to look at the statute as a whole and give an interpretation in consonance with the purpose of the statute and what logically follows from the terms used. We are to avoid absurd results. If we were to give the widest possible connotation to the words 'agricultural land' as the Full Bench of the Andhra Pradesh High Court seemed inclined to give to the term agricultural land, we would reach the conclusion that practically all land, even that covered by buildings, is 'agricultural land' inasmuch as its potential or possible use could be agricultural. The object of the Wealth-tax Act is to tax surplus wealth. It is clear that all land is not excluded from the definition of assets. It is only 'agricultural land' which could be exempted. Therefore, it is imperative to give reasonable limits to the scope of the 'agricultural land' or in other words,

*The author is a President (Law) of Axis Bank.

this exemption had to be necessarily given a more restricted meaning than the very wide ambit given to it by the Andhra Pradesh Full Bench."

From the above judgment, it is pertinent to note that the Courts have been inclined to give conservative meaning to the term 'agricultural land' so that the purpose of enactment of statute is not defeated.

Further, in *D. Ravichandran v. Manager, Indian Overseas Bank, Idigarai Branch* and the Authorised Officer, Indian Overseas Bank, the Idigarai Branch Court observed that on a perusal of the statement of object and reasons for enacting the SARFAESI Act, it is evident that the said Act was enacted to enable the banks and other financial institutions to realise the long-term assets, manage problems of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The object of the Act is to improve the recovery process by vesting the powers with the banks and financial institutions to take possession of secured assets and sell them in case the borrowers commit default in repayment of the loan. Hence, the term 'agricultural land' cannot be given such a liberal and wide construction. However, even though the Court held so, it left the question whether a land is agriculture or not to be decided on fact and not on law.

Therefore, if one is to go by the definition of 'agricultural land' and the exclusion as contained in section 31 of the SARFAESI Act, it could be noticed that all types of lands can be classified as agricultural land including plantations of rubber, tea, cardamom, coffee, etc., which are also outside the purview of the Act. This is a paradox as most of these plantations are owned by corporates and/or individual partnerships. Besides the way in which the Act defines, the agricultural land goes against the spirit of the Supreme Court decision stated *supra* and it will lead to delay in enforcement.

Besides, if the words 'agricultural land' as intended to be exempted under the Act are not defined and the defaulting borrowers move to DRT to contest whether the land which is held as security is 'agricultural' or not, this will further increase the litigation. Recently, we have observed such tendency growing amongst borrowers.

Besides, the loans availed by these owners by mortgaging the plantations are not *per se* agricultural loans as is understood in the banking parlance, but are term loans, working capital and such other commercial loans. If the section is allowed to continue in its form as it exists, it will be detrimental to the interest of banks, as these corporates and large scale farmers will get away from the provisions of the Act by quoting that agricultural lands are exempt from the provisions of the Act.

This appears to be a drafting error as the object of the Act to exempt the agricultural land was to benefit the small and medium farmers and not large land owners or corporates, while we do admit that in India corporate farming is not in force.

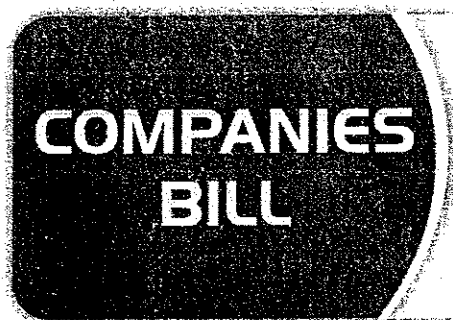
Conclusion

3. Therefore, it will be in the interest of all concerned to amend the Act to clarify this issue. The amendment should be based on following points:

- (i) The type of loan availed;
- (ii) the ownership of the plantation by corporates, partnerships, etc.; should not be exempted;
- (iii) in case of loan availed by non-corporates, *i.e.*, individuals who own plantation it should be based on the area of holding.

It has to be noted that this provision needs amendment, to bring in more clarity on this issue.

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