DEBTS RECOVERY TRIBUNAL PATNA

Presiding Officer : Shri Kaushalendra Yadav

SA- 90 of 2018

1. **M/s K.K. Enterprises** through its Proprietor Nitin Kumar son of Shri Naresh Kumar Singh, resident of Sipara N.H. 83, Patna Gaya Road, Patna – 800 020.

.........Applicant

Versus

1. **The Authorised Officer-cum-Branch Manager, Indian Overseas Bank,** Kankarbagh Branch, H-23, Doctor Colony, Kankarbagh, Patna – 800020.
2. **Siemens Construction Corporation** through its partner, Rakesh Ranjan, B-9, Abhiyanta Nagar, Patna. (Auction Purchaser).
3. **Smt. Kiriti Kumari,** W/o Nitin Kumar, R/o 149F, S.K. Puri, Boring Road, P.S. – S.K. Puri, Dist. – Patna – 800001. (Guarantor).

--respondents

Present:

For the Applicants	: Sh. Manish Kishore, Advocate
For the Respondent Bank	: Sh. Raj Nandan Prasad, Advocate
For the Auction Purchaser	: Sh. Baua Jha, Advocate
For the Respondent No.3	: Sh. Nand Kishore Singh, Advocate

Dated: 03.07.2026

JUDGMENT

1. Present application u/s 17 of SARFAESI Act has been filed with a prayer to quash entire SARFAESI Action initiated under SARFAESI Act taken against the properties of applicant.
2. The facts of the matter in brief are that the respondent bank granted financial assistance to applicant M/s K.K. Enterprises through its proprietor

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– applicant herein, which was secured by mortgage of immovable property. As the borrower failed to maintain the financial discipline, the account was classified as NPA and a Demand Notice dated 04.01.2017 under section 13(2) of the SARFAESI Act for a sum of Rs.1,62,94,806/- alongwith interest was issued followed by possession notice dated 10.03.2017 under section 13(4) of the SARFAESI Act. Thereafter, the Bank issued a sale notice dated 16.05.2018 to auction the property in question. Being aggrieved, the applicant-borrower challenged the proceedings of the Bank by filing present SA before this Tribunal on 23.05.2018 for quashing entire SARFAESI action initiated by the respondent bank. This SA was disposed of vide order 25.09.2019. Being aggrieved by the order dated 25.09.2019 of this Tribunal, an Appeal No.R-16/2022 filed by respondent bank before Hon'ble DRAT which was decided on 04.07.2023. The Hon'ble DRAT has set aside the order dated 25.09.2019 passed by this Tribunal and remanded back to this Tribunal with the direction to decide it afresh in accordance with law, after affording opportunity of hearing to the parties concerned.

3. During pendency of the SA after remand, the applicant filed IA 227/2026 with the prayer to appoint the Advocate Commissioner to ascertain whether the property under mortgage is agricultural property or not..

4. Ld. Counsel for the applicant submitted that the property in question is agricultural in nature and therefore falls outside the ambit of SARFAESI Act under Section 31(i). In the Land Revenue Records (Khatiyan) the property in question has been classified as "Dhanhar", which is an agricultural classification. The Land Possession Certificate issued by the competent authority confirms the applicant's possession for agricultural purposes. The State Rent Receipt [Malguzari Receipt] of the financial year 2018-2019 also affirms its status as agricultural holding. The Mortgage Deed executed on 05.04.2013 clearly indicates the nature and character of the land, which was mortgaged at the time of creating security was being used for agricultural purpose as it is clearly mentioned as "the right of mortgage to enter the land where the produce raised on the said land are kept and stored and inspect and check the same and on mortgagor default in payment of any money hereby secured, the Bank can

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take possession of cut and remove the crop or produce or sell by public auction or private contract". The recital of registered mortgage deed that the debtor had offered his agricultural land as security which was accepted by the Bank and with full knowledge registered mortgage deed was executed and accepted by the Bank. Apart from this, the valuation report dated 23.04.2018 indicates as "Residential Vacant Land at present used Agricultural" and Photographs also showing that the crops are standing upon the land. Even today crops are being grown upon the land in question and have not been converted for commercial use or other than agricultural activities. The reserved price has been fixed on the basis of the Circle Rate of agricultural land as it is evident from annexure -3, page no. 13 of SA that the value as per government MVR was Rs.1,70,000/- per decimal whereas in 2019 Sale was conducted on the basis of Circle Rate of land approx. Rs.1.70 lacs per decimal although in the year 24.04.2018 the property was valued by the Approved Valuer as Rs.3,80,80,000/- but in 2019 Reserve Price was fixed far below i.e. Rs.2,88,48,500. The land has never been converted for commercial or non-agricultural use by the competent authority. Even in the Master Plan classification of land mentioned in Map with respect to Colour Green it is apparent that it has been indicated as Urban Agricultural.

5. On the contrary, Ld. Counsel of the respondent bank submits that the only question to be decided in the present case is, as to whether the property in question is agricultural land or not. The applicant at the time of availing credit facilities had mortgaged the property in question by way of a registered mortgage bearing Deed No. 12323 dated 05.04.2013 (initially vide mortgage deed no. 17147 of 2008 dated 15.10.2008) as secured asset in favour of the respondent bank. Nowhere in the mortgage deed it has been disclosed that the property is an agricultural land. Furthermore, as per the Land Possession Certificate dated 15.07.2008 issued by concerned Circle Officer states that the property in question is residential in nature. The photograph taken at the time of affixation of Possession Notice also shows that there is a dwelling house near the property in question. The Patna Master Plan 2031 came into effect on 30.10.2017 reveals that the area where the property in question is situated has been

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clearly marked as residential. The Valuation report also reveals that the property is residential vacant land.

It is further submitted that payment of Malguzari receipt is no proof of the nature of land as it is a commonly known fact that Municipal Tax is paid only after construction of house and moreover, while taking tax the land. On 20.04.2013 the borrower submitted an Asset & Liability Statement before the Bank at the time of availing credit facilities which clearly reveals that the type of property in question is mentioned as residential by the borrower himself.

6. Ld. Counsel of the auction purchaser submits that the Auction Purchaser is a bonafide auction purchaser in the present SARFAESI proceeding participated in E-Auction held by the Bank on 25.02.2019 and declared as successful bidder. Thereafter, the auction purchaser deposited 25% of sale price 26.02.2019 and rest 75% of the sale price by way of extension of time had been deposited by 23.05.2019. Accordingly, the respondent bank issued a Sale Confirmation Letter and further Sale Certificate in favour of the auction purchaser. There has been no fraud found in the process of E-Auction and the Bank authority confirms the Auction sale being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders. Hence, the respondent auction purchaser is entitled to get right possession of the property in question.

7. I have heard Ld. Counsel for the parties and gone through the record.

8. On perusal of records it appears that service of Demand Notice, Possession Notice as well as Sale Notice has already been admitted by the applicant as appear from the order dated 25.009.2019 passed in the matter. The affixation of Possession, Sale Notice and its publications have also been affirmed by this Tribunal vide order dated 25.09.2019 and the same is not under challenge.

9. The matter has been remanded by the Hon'ble DRAT, Allahabad vide order dated 04.07.2023 passed in Appeal No. R-16/2022 by setting aside the order dated 25.09.2019 passed by this Tribunal with the direction to decide it afresh in accordance with law without being influenced by the

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observations made in the orders after affording proper opportunity of hearing to the parties concerned.

10. In view of the order passed by the Hon'ble DRAT, the principal issue which falls for consideration is:

"Whether the secured asset in question is agricultural land within the meaning of Section 31(i) of the SARFAESI Act, 2002 and consequently exempt from the provisions of the Act?"

11. Section 31(i) of the SARFAESI Act provides that the provisions of the Act shall not apply to any security interest created in agricultural land. Therefore, if the property mortgaged with the Bank is found to be agricultural land, the measures taken by the secured creditor under Sections 13(2) and 13(4) of the Act would be without jurisdiction.

12. It is well settled that mere description of land in revenue records is not conclusive. The nature, character and actual use of the land on the date when security interest was created and when SARFAESI measures were initiated are relevant considerations. The Tribunal is required to examine the totality of circumstances and not merely a single document.

13. The applicant has relied upon the Khatiyan wherein the land has been classified as "Dhanhar". The applicant has further produced Land Possession Certificate, Rent Receipts (Malguzari Receipts), photographs showing cultivation, valuation report dated 23.04.2018 and the recitals of the registered mortgage deed. Particular emphasis has been laid upon the clause in the mortgage deed conferring upon the mortgage bank the right to enter upon the land, inspect the produce raised thereon and, in case of default, take possession of and remove crops or produce. According to the applicant, such recitals indicate that the Bank themselves treated the property as agricultural land at the time of creation of the mortgage.

14. On the other hand, the respondent Bank has relied upon the Land Possession Certificate dated 15.07.2008, the borrower's Asset and Liability Statement dated 20.04.2013, the valuation report and the Patna Master Plan 2031 to contend that the property is residential in nature. It is further submitted that the existence of a dwelling house in the vicinity and

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the residential zone under the Master Plan negate the plea of agricultural land.

15. Having considered the rival submissions and the materials available on record, this Tribunal finds that the valuation report dated 23.04.2018 is significant. Though the valuer described the property as "Residential Vacant Land", the same report specifically records that the land was "at present used Agricultural". This document does not negate the applicant's contention regarding actual agricultural use of the land immediately prior to the SARFAESI measures.

16. Equally important are the recitals of the registered mortgage deed. The clause empowering the Bank to inspect produce raised on the land and, upon default, to take possession of crops and agricultural produce is a strong indicator that the land was understood and accepted by both parties as agricultural land. Such a clause would ordinarily have no relevance in the case of a purely residential plot.

17. **IN K. SREEDHAR versus M/S RAUS CONSTRUCTIONS PVT. LTD. & ORS. 2022 LiveLaw (SC) 13** it has been laid down that When it was the case on behalf of the borrowers that in view of Section 31(i) of the SARFAESI Act, the properties were agricultural lands, the same were being exempted from the provisions of the SARFAESI Act, the burden was upon the borrower to prove that the secured properties were agricultural lands and actually being used as agricultural lands and/or agricultural activities were going on.

18. In the case of Blue Coast Hotels Limited and Others (Supra), it is also further observed by this Court that 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. After following the decision of this Court in the case of Blue Coast Hotels Limited and Others (Supra), in the case of **K. Pappireddiyar and Anothe**r, it is observed and held in paragraphs 8 and 9 as under:

"8. The expression "security interest", both before and after the amendment, excludes what is specified in Section 31. Clause (i) of Section 31 stipulates that the provisions of the Act will not be applicable to any security interest created in agricultural land. The

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statutory dictionary in Section 2 does not contain a definition of the expression "agricultural land".

7.1 The purpose of enacting Section 31(i) of the SARFAESI Act has been considered by this Court in the case of ***Blue Coast Hotels Ltd.*** *in paragraph 36, which reads as under:*

"36. 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(1)(zf)35 . Thus, security interest cannot be created in respect of property specified in Section 31."

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 Ltd.,*** *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. This Court held that the fact that the debtor had created a security interest was indicative of the position that the parties did not treat the land as agricultural land. The undisputed position was that the hotel was located on 1,82,225 sq m of land of which 2335 sq m were used for growing vegetables and fruits for*

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captive consumption. In this background, the two-Judge Bench of this Court held that:

***"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."*

7.2 Thus, as per the law laid down by this Court in the aforesaid two decisions, only in a case where the secured property is actually put to use as agricultural land and solely on the basis of the revenue records / Pattadar and once the secured property is put as a security by way of mortgage etc. meaning thereby the same was not treated as agricultural land, such properties cannot be said to be exempted from the provisions of the SARFAESI Act under Section 31(i) of the SARFAESI Act. ***Applying the law laid down in the aforesaid two decisions to the facts of the case on hand and when no evidence was led at all on behalf of the borrowers that the secured properties in question were actually put to use as agricultural land and/or any agricultural activity was going on, the High Court has committed an error in applying Section 31(i) of the SARFAESI Act and quashing and setting aside the entire Possession Notice, Auction Notice as well as Sale etc.***

19. In the present case the land was used for agricultural purposes prior to mortgage, the mortgage deed specially protects its nature mentioning the right to collect the crop and auction as such. In the present case apart from the Revenue records the language of the mortgage, photographs filed by the applicants and also the valuation report filed by secured creditor confirms that the property in question is being used for agricultural purposes. So far the declaration of Residential Zone in the **Patna Master plan 2031** regarding the area around & including the land in question, is indicative of the future development plan, as policy of the state. It will hardly affect the present nature of the land when the measures have been initiated. The respondent has not filed any document to show the declaration by the mortgagor to the effect that the property was being used

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for residential use or other than agricultural purpose. It is not the case that there exists any building over the property in question.

20. The report of an empaneled expert and the averment of crop in the mortgage deed are of conclusive nature as compared to the Zonal Master Plan 2031.

21. In view of the above discussion it is proved that the property in question was being used for agricultural purposes. As such the SARFAESI Measures are against the Law.

ORDER

The application SA 90 of 2018 filed by M/s K.K. Enterprises through its Proprietor Nitin Kumar is allowed with costs.

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[KaushalendraYadav]
Presiding Officer
Debts Recovery Tribunal, Patna

Judgment signed, sealed, dated and pronounced in the open court on this 03RD Day of July, 2026.

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[KaushalendraYadav]
Presiding Officer
Debts Recovery Tribunal, Patna