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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

WRIT APPEAL No.538/2020 (GM-RES)

Connected with

WRIT APPEAL No.545/2020 (GM-RES)

IN W.A.No.538/2020

BETWEEN:

1. SRI U.M. RAMESH RAO
S/O. LATE U.M. KRISHNA RAO
AGED ABOUT 77 YEARS,
CHARTERED ACCOUNTANT, I G ROAD,
CHIKKAMAGALUR – 577 101.
2. M/S. VIJAYADEVAN COFFEE ESTATE
A PARTNERSHIP FIRM HAVING
OFFICE AT I G ROAD,
CHIKKAMAGALUR – 577 101.
REPRESENTED BY ITS PARTNER
SRI U.M. RAMESH RAO.
3. M/S. YELLIKUDIGE ESTATE
A PARTNERSHIP FIRM HAVING
OFFICE AT YELLIKUDIGE VILLAGE
ALDUR HOBLI,
CHIKKAMAGALUR TALUK – 577 111
REPRESENTED BY ITS PARTNER
SRI U.M. RAMESH RAO. ... APPELLANTS

(BY SRI. S.S. NAGANAND, SENIOR ADVOCATE FOR
SRI. SRINIVAS S.V., ADVOCATE)

AND:

UNION BANK OF INDIA
(FORMERLY CORPORATION BANK)
M.G. ROAD,
CHIKKAMAGALUR – 577 101
REPRESENTED BY ITS
AUTHORISED OFFICER.

... RESPONDENT

(BY SRI. DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SMT.DIVYA PURANDAR, ADVOCATE FOR C/R;
SRI. SHASHIKIRAN SHETTY, SENIOR ADVOCATE FOR
SMT. LATHA S. SHETTY, ADVOCATE FOR
IMPLEADING PROPOSED R-2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER DATED 13/11/2020 IN W.P.No.12461/2020 (GM-RES)
PASSED BY THE LEARNED SINGLE JUDGE AND CONSEQUENTLY,
ALLOW THE WRIT PETITION AS PRAYED FOR.

IN W.A.No.545/2020

BETWEEN:

1. M/S. SSJV PROJECTS PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
NO. 25/2, 12TH FLOOR,
SN TOWERS, M.G. ROAD,
BANGALORE – 560 001.
REPRESENTED BY ITS DIRECTOR
SHRI. SOMASHEKAR SALIMATH.

2. MR. MANOHAR SHETTY
DIRECTOR OF M/S. SSJV PROJECTS
PRIVATE LIMITED,
S/O. LATE NARAYANA SHETTY,
AGED ABOUT 59 YEARS,
NO.25/2, 12TH FLOOR,
SN TOWERS, M.G. ROAD,
BANGALORE – 560 001.

... APPELLANTS

(BY SRI. S.S. NAGANAND, SENIOR ADVOCATE FOR
SRI. SHREYAS JAYASIMHA, ADVOCATE)

AND:

M/S. ALLAHABAD BANK
(NOW INDIAN BANK,)
INDUSTRIAL FINANCE BRANCH-N 603,
NO.47, MANIPAL CENTRE,
DICKENSON ROAD,
BANGALORE – 560 042.
REPRESENTED BY ITS
CHIEF MANAGER.

... RESPONDENT

(BY SRI H.R. KATTI, ADVOCATE FOR C/R)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 14/10/2020 PASSED BY THE HON'BLE SINGLE JUDGE IN W.P.No.13932/2015 AND ALLOW THE WRIT PETITION.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED ON 17.12.2020, AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT, TODAY, **NAGARATHNA J.**, PRONOUNCED THE FOLLOWING:

J U D G M E N T

Though these appeals were listed for preliminary hearing, with the consent of learned counsel on both sides, they were heard finally.

2. Writ Appeal No.538 of 2020 arises from Writ Petition No.12461 of 2020 (GM-RES) disposed of on 13.11.2020, while Writ Appeal No.545 of 2020 arises from Writ Petition No.13932 of 2015 (GM-RES) disposed of on

14.10.2020. In both the writ petitions, respective learned Single Judges have declined to entertain the writ petitions on the ground of availability of an alternative remedy of appeal available under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) ('SARFAESI Act' for the sake of convenience). Hence, these appeals.

3. Since common questions of law and facts arise in these appeals, they have been connected together, heard and disposed of by this common judgment.

4. The quintessential question that arises for consideration in these appeals is, whether, coffee plantation is agricultural land within the meaning of Section 31(i) of the SARFAESI Act and therefore, the said Act does not apply to coffee plantation.

Brief facts of the case in Writ Appeal No.538 of 2020:

5. In this case, petitioner No.1 is the partner in petitioner Nos.2 and 3 partnership firms. Petitioner No.1 is the co-owner of Watekhan Estate. The petitioners are owners of 371 acres of coffee plantation / estate in

Hirekolale, Yelagudige and Aldur villages of Chikkamagalur Taluk. Respondent/Bank (formerly, Corporation Bank) extended various credit facilities to the writ petitioners in the nature of agricultural cash credit loans, agricultural term loans and mortgage loans in relation to the coffee plantation.

6. There are three schedules, viz., Schedule 'A', Schedule 'B' and Schedule 'C' comprising of 212.04 acres, 136 acres and 23.17 acres respectively, situated at Hirekolale village, Kasaba Hobli, Chikkamagalur Taluk and District. The nature of loan in this case is an Agricultural Term Loan of Rs.490.00 lakhs and the purpose being to pay off the share of a retiring partner so as to acquire the absolute title over Yellikudige estate measuring 154.17 acres. The loan amount along with margin money of Rs.210.00 lakhs was released to the retiring partner Sri.K.R.Sethna of Yellikudige estate. There was a Coffee Crop Hypothecation Loan for 1998-99 season of Rs.10.00 lakhs under Planter's Credit Card Scheme. That was to meet Coffee crop raising/estate maintenance expenses of 1998-99 season. The repayment was to be by the sale proceeds of 1998-99 season's coffee crop estimated at 72

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tonnes valued at Rs.54.00 lakhs. The equitable mortgage was of Yellikudige estate admeasuring 154 acres 17 guntas along with hypothecation of plant and machinery valued at Rs.700.00 lakhs. There was a collateral security by way of equitable mortgage of Watekhan Coffee Estate admeasuring 215.16 acres valued at Rs.662.95 lakhs. The personal guarantees of continuing partners in their individual capacity were also given. So also, coffee crop loans of the year 1997-98 in the names of the appellants herein were to be closed (as per Annexure 'A'). There were loans taken in the season 2000-01 by hypothecation of coffee crops and mortgage of the Watekhan estate and Yellikudige estate (Annexure 'B').

7. Annexure 'C' is the sanction of the Coffee Crop Hypothecation Loan during the season 2004-05 for maintenance of Watekhan Estate. Thus, the loans were sanctioned under the Corporate Kisan Cash Credit Scheme (KCCS). The Record of Rights (RTCs) in respect of the lands in Schedule 'A', Schedule 'B' and Schedule 'C' are as per Annexures 'D' to 'D16', 'E' to 'E20' and 'F' to 'F3' respectively. The aforesaid documents would clearly indicate that the Schedules 'A', 'B' and 'C' lands were being

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utilized for the purpose of Coffee plantation as on the dates when the respective loans were sanctioned. Further, the nature of the loan was also for the purpose of improvement of the Coffee plantation and also to pay off the share of the retiring partner of the firm engaged in cultivation of coffee. It is evident that the schedule lands were being used for coffee cultivation on the date of the sanction of the respective loans.

8. Since, the writ petitioners did not repay the debt, demand notice dated 28.05.2019 was issued under Section 13(2) of the SARFAESI Act calling upon petitioner No.1 to pay a sum of Rs.18,81,45,558/-. A reply or representation was made in response to the said notice on 06.07.2019 to which the Bank gave its reply on the same day. Another representation was made on behalf of the petitioners on 23.08.2019 stating that no action under SARFAESI Act can lie in respect of the schedule lands. But, the Bank, replied on 26.09.2019 brushing aside the objection of the petitioners. The Bank proceeded to issue possession notice dated 27.09.2019 under Section 13(4) of the SARFAESI Act, read with Section 9 of the Security Interest (Enforcement) Rules, 2002 ("2002 Rules" for

short) and it took symbolic possession of the schedule land.

9. Plaintiff No.1 approached the Debts Recovery Tribunal-I, Bengaluru, ('DRT' for short) in S.A. No.542/2019 and also filed an application for stay of further proceedings. In the meanwhile, e-auction notice was issued on 14.02.2020 by the Bank. Ultimately, the Bank issued notice dated 12.10.2020 (Annexure 'S') for the sale of the Schedule lands by way of e-auction to be held on 18.11.2020. The same was assailed in the writ petition and a declaration was sought to the effect that the action of the respondent in respect of the schedule lands is illegal, void and without jurisdiction.

10. The learned Single Judge, by the impugned order held, since the Bank has initiated proceedings under the SARFAESI Act, the petitioners have a remedy by way of an appeal under Section 17 of the SARFAESI Act and hence, the writ petition was dismissed on 13.11.2020. Being aggrieved, the appeal has been filed. Subsequent to the dismissal of the writ petition e-auction was held on

18.11.2020. The auction purchaser has filed an application for impleadment in this appeal.

Brief facts of the case in Writ Appeal No.545 of 2020:

11. The facts in this case are that petitioner No.1 therein is a company engaged in the execution of hydro-electrical irrigation and infrastructure projects. Petitioner No.2 is the Director of petitioner No.1 Company. Petitioner No.1 had applied to respondent No.1/Bank for a short term loan of Rs.20 crores on the security of all the movable assets of petitioner No.1. An agreement styled as "Term Loan Agreement" was entered into between petitioner No.1 as borrower and the respondent/Bank on 21.11.2008. The immovable assets of petitioner No.1 included two flats (S 402 and S 703) situated at "ACS – Vasundhara" Phase-II, Site Nos.2 and 3, near Kodihalli, Bengaluru. They are shown as item No.1 of the petition schedule property. Petitioner No.2 on behalf of petitioner No.1 had signed a Letter of Undertaking regarding creation of mortgage of item No.1 of the schedule property on 21.11.2008. In addition, petitioner No.2 created charge on immovable property, i.e., coffee estate situated at Kolagave village of

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Chickamagalur District in favour of the respondent/Bank which is referred as item No.2 of the schedule property. Item Nos.1 and 2 of the schedule property were mortgaged for creating credit facilities aggregating to Rs.210 crores under bank guarantee/letter of credit account/short term loan. Thus, equitable mortgage agreements were entered into in respect of schedule item Nos.1 and 2 of the immovable properties. Two apartments which form part of item No.1 of the Schedule property were auctioned under the SARFAESI Act, but when it came to dealing with item No.2, it was contended by the appellants herein that the said land being coffee plantation and agricultural land, could not be proceeded against, under the provisions of the SARFAESI Act having regard to Section 31(i) of the said Act.

12. The petitioners in this case assailed notices dated 14.08.2012 (Annexures 'A' & 'B') in respect of item Nos.1 and 2 of the schedule property and assailed letter dated 31.03.2015 (Annexure 'C') rejecting the representation dated 18.03.2015 made by the petitioners in respect of item No.2 of the schedule property, which is a coffee plantation and to quash the measures taken by the

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Bank under the SARFAESI Act in respect of item No.2 of the Schedule property, which is a coffee plantation comprised in 200 acres with building and structures at Ashirwad Estate, Kolagave village, Jagar Hobli Post, Chikamagalur Taluk and District.

13. The learned Single Judge by his order dated 14.10.2020 observed that since there is an alternative statutory remedy, the writ petition was not maintainable and hence, it was dismissed reserving liberty to the petitioners to approach the appropriate forum. Being aggrieved by the dismissal of the writ petition, the writ appeal has been preferred.

Submissions:

14. Learned senior counsel, Sri.S.S.Nagananda, appearing for the appellants in both the writ appeals contended that the writ petitions have been dismissed summarily without appreciating the fact that the petitioners raised the question of jurisdiction of the respondent/Banks in initiating action under the provisions of the SARFAESI Act on the schedule lands which are coffee plantations as under Section 31(i) of the said Act,

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they, being agricultural lands, the Act does not apply. He contended that the jurisdiction of the respondent/Banks to take any measure under the provisions of the Act in respect of the coffee plantations being agricultural lands was questioned by filing a petition under Article 226 of the Constitution of India. The writ petitions were maintainable as there is no definition of the expression "agricultural land" under the provisions of the SARFAESI Act. Therefore, it was necessary to interpret and give a meaning to the said expression in light of the fact that in both these cases, action under the SARFAESI Act was sought to be initiated in respect of coffee plantation for the purpose of recovery of outstanding dues, which was without jurisdiction. Learned senior counsel submitted that if coffee plantation comes within the nomenclature of agricultural land under Section 31(i) of the said Act, then the SARFAESI Act does not apply to such land. Therefore, the necessity of giving an interpretation to the expression "coffee plantation" was sought by the appellants/writ petitioners in the writ petitions in order to determine whether the respondent/Banks had any jurisdiction to initiate action in respect of the coffee plantations.

15. It was further submitted that, learned Single Judges have failed to appreciate the said aspect of the matter which goes not only to the jurisdiction of the Banks to initiate any action or take any measure under the SARFAESI Act in respect of the coffee plantation which is agricultural land, but also failed to appreciate that the SARFAESI Act does not apply to any agricultural land.

16. In this context, learned senior counsel for the appellants relied upon certain judgments to contend that coffee plantation is just like any other plantation and the Madras High Court and Kerala High Court have held that the lands on which cardamom, coca, turmeric, cinnamon and rubber are grown, are plantation crops. The lands on which the said crops are grown are agricultural lands and therefore, on the basis of the said interpretation, in the instant case, the schedule lands on which coffee is grown must be declared to be agricultural land, in which event, the provisions of the SARFAESI Act would not apply in respect of the said lands.

17. Learned senior counsel contended that in order to seek such a determination, which touches upon the

question of jurisdiction or the power of the respondent/Banks to initiate any action or take any measure under the provisions of the Act, for the purpose of recovery of outstanding dues, is a question which ought to have been considered by the learned Single Judges and ought not to have relegated the parties to file an appeal under Section 17 of the SARFAESI Act. In this context, the judgments relied upon are as follows:

- (i) ***Mohammed Basheer K.P. vs. Deputy General Manager and others, [(2010 (2) KLJ 225], (Mohammed Basheer K.P.);***
- (ii) ***Commissioner of Income Tax, West Bengal vs. Raja Benoy Kumar Sahas Roy, AIR 1957 SC 768, (Raja Benoy Kumar Sahas Roy).***
- (iii) ***Eshwar Purushothaman Gardens vs. Indian Bank, [2012 (5) CTC 257], (Eshwar Purushothaman Gardens);***
- (iv) ***J.Malliga and others vs. Union Bank of India and others, [2010 (4) CTC 710], (J.Malliga) and***
- (v) ***Indian Bank and others vs. K. Pappireddiyar and others, [AIR 2018 SC 3540], (K.Pappireddiyar).***

18. Learned senior counsel further submitted that when the SARFAESI Act does not apply to agricultural lands, the measures taken or the action initiated by the respondent/Banks in respect of the coffee plantations was without jurisdiction, is illegal, null and void and outside the scope and ambit of the Act and therefore, had to be quashed by the learned Single Judges. Since, the issue of jurisdiction arose in the instant cases, the writ petitions were maintainable. This is because the interpretation of the expression "agricultural land" in relation to the schedule land, which are coffee plantations, was necessary in order to determine the validity of the action of the respondent Banks *vis-à-vis* the coffee plantations in question. Therefore, the writ petitions ought to have been entertained and not dismissed by relegating the parties to the DRT.

19. Learned senior counsel contended that the DRT has no authority to interpret the statute but to only consider, as to, whether, the measures initiated are in accordance with law or not and hence, the impugned orders of the learned Single Judges may be set aside and

the issues that arise in these writ petitions may be considered.

20. In support of his submissions, learned senior counsel for the appellants relied upon the following judgments on the issue of maintainability of the writ petitions despite Section 17 of SARFAESI Act:

- (i) ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others, [(1998) 8 SCC 1],***
(Whirlpool Corporation);
- (ii) ***State of H.P. and others vs. Gujarat Ambuja Cement Limited and Another, [(2005) 6SCC 499],***
(Gujarat Ambuja Cement Limited);
- (iii) ***Embassy Property Developments Private Limited vs. State of Karnataka, [2019 SCC Online SC 1542]*** *(Embassy Property Developments).*

21. It was contended that since, there is no decision till date which answers the question, as to, whether, the coffee plantation is an agricultural land within the meaning of Section 31(i) of the SARFAESI Act, it was

necessary that the writ petitions were considered on merits.

22. In the above context, learned senior counsel drew our attention to the dictionary meaning of the expression 'agricultural land', the definition of 'agriculture' under the Karnataka Land Reforms Act, 1961 (Land Reforms Act, 1961); Karnataka Land Revenue Act, 1961 (Land Revenue Act, 1964) and other enactments where the expression 'agricultural land' or 'agriculture' are defined or used, which shall be alluded to later.

23. *Per contra*, learned senior counsel, Sri.Dhyan Chinnappa, appearing for the learned counsel for Union Bank of India, contended that the learned Single Judge in W.P.No.12461/2020 had rightly dismissed the writ petition on the ground of maintainability in view of the availability of an alternative remedy under Section 17 of the SARFAESI Act. He submitted that the DRT has the jurisdiction to consider the issue of the applicability of the Act to coffee plantations, which are the subject matter in these cases. The question, whether, a coffee estate is agricultural land could have been considered by the DRT in

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an appeal filed under Section 17 of the SARFAESI Act, as any person aggrieved by the measures taken by the financial institutions under the provisions of the SARFAESI Act, could maintain an appeal before the DRT. He submitted that there is an efficacious, alternative remedy available before the DRT which could have considered the issues raised in these cases.

24. Learned senior counsel, alternatively, submitted that in the event this Court were to hold that there was no alternative remedy available for the petitioners and therefore, they were constrained to file the writ petitions, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution then, the matters may be remanded to the learned Single Judges for a consideration of the question, as to, whether, a coffee plantation comes within the scope and ambit of the expression "agricultural land" under Section 31(i) of the SARFAESI Act. He submitted that in the appeals, it may not be necessary to answer the said issue and the matter may be remanded to the learned Single Judge.

25. Learned senior counsel Sri Dhyan Chinnappa in support of his contentions placed reliance on the following judgments:

- (i) ***ITC Limited vs. Blue Coast Hotels Limited, [(2018) 15 SCC 99], (ITC Limited);***
- (ii) ***Authorised Officer, State Bank of Travancore and another vs. Mathew K.C. [(2018) 3 SCC 85], (Mathew K.C.).***

26. The other contention of learned senior counsel was on the aspect of the use to which the agricultural land was put to, which is one of the major considerations to be taken note of while determining whether the SARFAESI Act applies to such lands or not. In this context, learned senior counsel contended that in the case of coffee plantation, which is the subject matter in Writ Appeal No.538 of 2020, there is provision made for home stay and residence and therefore, the lands are no longer coffee estate as there is change of user and therefore, it has ceased to be a coffee plantation and would not come within the scope and ambit of the expression 'agricultural land'. Therefore, Section 31(i) of the SARFAESI Act would

not apply in the instant case. Hence, the measures taken by the respondent/Banks are just and proper and the same would have to be taken to their logical conclusion and it would have been so but for the writ petitions filed by the petitioners in the instant case.

27. Learned senior counsel contended that there are huge outstanding dues payable to the respondent-Bank and instead of taking steps to repay the loan amount as well as the interest thereon by the writ petitioners/debtors to the Bank, appellants herein, are only procrastinating the matter by filing the writ petitions before this Court. That the learned Single Judge was right in dismissing the writ petitions on the premise that there was an alternative remedy available for the petitioners and therefore the orders of the learned Single Judges would not call for any interference in the appeals filed against the said order.

28. Learned senior counsel placed reliance on the following judgments and sought for dismissal of the appeals:

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- (i) ***United Bank of India vs. Satyawati Tandon and others, [(2010) 8 SCC 110], (Satyawati Tandon);***
- (ii) ***ICICI Bank Limited and others vs. Umakantha Mohapatra and others, [(2019) 13 SCC 497], (Umakantha Mohapatra);***
- (iii) ***Authorised Officer, State Bank of India vs. Allwyn Alloys Pvt. Ltd. And others, [(2018) 8 SCC 120], (Allwyn Alloys).***
- (iv) ***Green Valley Farms vs. Syndicate Bank, [2019 SCC Onine Ker 4760], (Green Valley Farms);***

29. Learned Senior Counsel, Sri Shashikiran Shetty, appearing for the impleading applicant / the purchaser of the 212 acres of land, submitted that on 18.11.2020 subsequent to the dismissal of the writ petition, auction was conducted by the respondent/Bank and the impleading applicant is the successful bidder and hence, the impleading applicant is entitled to the ownership and possession of the land in question. But the writ petitioners have raised frivolous issues before this Court, which may not be entertained and the writ petition itself may be dismissed or, in the alternative, parties may

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be relegated to the DRT for the adjudication of their respective disputes, including seeking an interpretation of the expression of agricultural land under the provisions of the SARFAESI Act.

30. Learned senior counsel submitted that around 17 crores has been deposited by the impleading applicant, who is the successful bidder and the impleading applicant is a necessary party to these proceedings. His application may be allowed and the impugned order may be sustained by dismissing the writ petitions.

31. Learned counsel for the respondent/Bank in Writ Appeal No.545 of 2020, Sri.H.R.Katti, submitted that the writ petition filed by the appellants herein was not maintainable for two reasons: firstly, what was assailed was notice dated 14.08.2020 issued under Section 13(2) of the SARFAESI Act. To that notice, a reply was given on 18.03.2015 and 31.03.2015. Subsequently, on 01.04.2015, another notice was issued under Section 13(4) of the SARFAESI Act in respect of 200 acres of coffee plantation. On 01.04.2015 itself, symbolic possession of the same was taken and a mahazar was

drawn. Within seven days thereafter, paper publication was made. That no prejudice has been caused to the appellants, as the appellants had, for the purpose of seeking the loan, mortgaged the coffee estate and in the absence of repayment, the Bank was justified in recovering the outstanding dues by taking recourse under the provisions of the SARFAESI Act, even in respect of the coffee plantation. The said land does not come within the purview of agricultural land under Section 31(i) of the SARFAESI Act.

32. He submitted that the learned Single Judge was right in upholding the plea of alternative remedy urged on behalf of the Bank and relegating the writ petitioners to the DRT. In this regard, learned counsel for the Banks drew our attention to the various definitions of the expression 'plantation' and contended that the coffee plantation does not come within the scope and ambit of "agricultural land" under Section 31(i) of the Act. He submitted that even if the land in question is a coffee plantation, action was rightly initiated against the same under Section 13(4) of the SARFAESI Act and symbolic possession has been taken on 01.04.2015.

33. Learned counsel for the respondent/Bank submitted that O.A. No.636/2013 has been filed by the respondent/Bank against the petitioners only on 09.12.2015. There is an order of attachment before judgment but the said proceeding has not progressed on account of the pendency of the matter before this Court.

34. Learned counsel for the respondent/Bank specifically drew our attention to the provisions of Section 104 of the Land Reforms Act to contend that on a reading of the same, it becomes clear that the coffee plantation is not an agricultural land as it is exempted from certain provisions of that Act and such land could be dealt with in any manner known to law and hence, the appeal may be dismissed.

Points for Consideration:

35. Having heard learned counsel for the respective parties, the following points would arise for our consideration:

- (i) Whether the writ petitions were rightly dismissed on the ground of maintainability in view of the availability of an alternative remedy

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before the DRT under Section 17 of the SARFAESI Act?

- (ii) Whether, the lands in question, namely, coffee plantations would fall within the scope of the expression 'agricultural land' under Section 31(i) of the SARFAESI Act?
- (iii) What order?

36. The detailed narration of facts and contentions would not call for reiteration. The seminal question which arises in these appeals is, *whether, coffee plantations, which are the subject lands in both these appeals, fall within the scope and ambit of the expression 'agricultural land' under Section 31(i) of the SARFAESI Act?* But before answering the said question, it is necessary to discuss on the issue of maintainability of the writ petitions before this Court.

Re: Point No.1:

Maintainability of the Writ Petitions under Article 226 of the Constitution:

37. Ordinarily, writ jurisdiction is not available in cases where there is adequate and specific legal remedy

provided under the statute. The remedy of mandamus and certiorari will be subject to exercise of sound judicial discretion and will not be issued where there is another adequate and specific legal remedy competent to afford relief upon the same subject-matter. Certiorari will not lie where there is another adequate remedy by appeal or otherwise, where the inferior Court has jurisdiction. But where the law gives an appeal and the party is deprived of it without any fault or negligence on his part, *Certiorari* will lie in lieu of or as a substitute for an appeal, if it is shown to be in addition to such cause, a meritorious case. However, to be a bar, the other remedy must be adequate. Adequate remedy is one which is equally beneficial, speedy and sufficient and not merely one, which at sometime in the future, will bring about relief. Where the exigencies of the case are such that the ordinary methods of appeal or error may not prove adequate either in point of promptness or completeness, so that a partial or total failure of justice may result, then certiorari may issue. When an appeal does lie, however, in order to quash a proceeding by certiorari, it is necessary that there be lack of jurisdiction appearing on the face of the record.

38. In a case where there is the want of jurisdiction disclosed on the face of petition that is, when it clearly appears the authority had no jurisdiction with the subject-matter or of the parties, then writ may issue notwithstanding the availability of alternative remedy and as already noted, existence of alternative remedy to be a bar must be adequate.

39. On the general principles that ought to regulate the exercise of judicial discretion when alternative remedies are available, there are a few settled propositions. One of them is, if any applicant claims to be aggrieved by a decision made without jurisdiction or in breach of the rules of natural justice, the fact that he has not taken advantage of a statutory right of appeal should normally be regarded as irrelevant. Conversely, if an applicant seeks an order of certiorari after having appealed unsuccessfully, certiorari may be refused where he has failed to raise objections to jurisdiction or to complain of breach of natural justice at an earlier stage when in full possession of the facts, but if he has raised these questions in an appeal and then raised again in his

application for certiorari, recent practice clearly indicates that where the proceedings impugned were a nullity, an award of certiorari will not readily be denied. If the application for certiorari is made while an appeal is pending, an award of certiorari may still be justified if the questions to be raised on appeal go to the merits of the case and the application for certiorari is based on jurisdictional grounds or breach of natural justice not going to the merits. Also, the Court ought not to refuse certiorari because of alternative remedies other than appeal unless it is clearly satisfied that those other remedies are more appropriate. (*Source: Writ Remedies by Justice B.P.Banerjee, III Edition*).

40. The following judgments of the Hon'ble Supreme Court on the aspect of maintainability of a writ petition under Article 226 of the Constitution in the face of an alternative remedy are referred to as under:

(a) In ***Veerappa Pillai vs. Raman & Raman Ltd., [AIR 1952 SC 192]***, it was observed that where a particular statute provides a self-contained machinery for determination of questions arising under the Act, the remedy that is provided under the Act should be followed

except in cases of acts, which are wholly without jurisdiction or in excess of jurisdiction, or in violation of principles of natural justice or refusal to exercise jurisdiction vested in them or there is an error on the face of the record and such act, omission, error or excess has resulted in manifest injustice.

(b) Further, alternative remedy is no bar where a party comes to the Court with an allegation that his right has been or is being threatened to be infringed by a law which is *ultra vires* the powers of the legislature which enacted it and as such void, vide ***Bengal Immunity Co. vs. State of Bihar [AIR 1955 SC 661]***.

(c) Similarly, when a fundamental right is infringed, the bar for entertaining the writ petition and granting relief on the ground of alternative remedy would not apply, vide ***State of Bombay vs. United Motors Ltd. [AIR 1953 SC 252]*** and ***Himmat Lal vs. State of M.P. [AIR 1954 SC 403]***.

(d) The rule of alternate remedy being a bar to entertain a writ petition is a rule of practice and not of jurisdiction. In appropriate cases, High Court may

entertain a petition even if the aggrieved party has not exhausted the remedies available under a statute before the departmental authorities, vide ***State of West Bengal vs. North Adjai Cool Company [1971 (1) SCC 309]***.

(e) Further, alternative remedy must be effective. An appeal in all cases cannot be said to have provided in all situations, where an appeal would be ineffective and writ petition in such a case is maintainable, vide ***Ram and Shyam Company vs. State of Haryana [AIR 1985 SC 1147]***.

(f) Where an authority has acted without jurisdiction, High Court should not refuse to exercise its jurisdiction under Article 226 on the ground of existence of alternative remedy vide ***Dr. Smt. Kuntesh Gupta vs. Management H.K. Mahavidyaya [AIR 1987 SC 2186]***. Thus, an alternative remedy is not an absolute bar to the maintainability of a writ petition.

41. On the issue of maintainability of the writ petition, learned counsel for the appellants relied upon the following decisions:

(a) In ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others, [(1998) 8 SCC 1], (Whirlpool Corporation)***, at paragraph 15, it was observed that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But, the High Court has imposed upon itself certain restrictions, one of which is, if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But, the availability of an alternative remedy has been consistently held not to operate as a bar in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged.

In the said decision, reliance was also placed on ***Rashid Ahmad vs. Municipal Board, Kairana, [AIR 1950 SC 163], (Rashid Ahmad)***, to observe that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article

226 of the Constitution. This proposition was, however, qualified by the significant words, "*unless there are good grounds therefor*", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 of the Constitution could still be entertained in exceptional circumstances.

Reference was also made to ***State of U.P. vs. Mohd. Nooh, [AIR 1958 SC 86]***, (*Mohd. Nooh*), wherein it was observed that the rule requiring the exhaustion of statutory remedies before the writ will be granted, is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

Ultimately, in paragraph 20 of *Whirlpool Corporation*, the Hon'ble Supreme Court observed as under: "*Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the*

alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

In the said case (*Whirlpool Corporation*), it was also observed that the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction.

In the said case, the Registrar of Trade Marks issued to the appellant therein a notice under Section 56(4) of the Trade and Merchandise Marks Act, 1958 to show cause against the proposed cancellation of appellants' Certificate of renewal. It was held that the issuance of such a notice by the Registrar was without authority and it was quashed by the High Court.

(b) In ***State of H.P. and others vs. Gujarat Ambuja Cement Limited and Another, [(2005) 6SCC 499]***, (*Gujarat Ambuja Cement Limited*), a detailed discussion on the plea regarding alternative remedy was made. It was held that the principle of alternative remedy

is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of the fact that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate, efficacious, alternative remedy. If somebody approaches the High Court without availing the alternative remedy, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted. The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere.

However, there are well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is, when the proceedings are taken before the forum under a provision of law which is *ultra vires*, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. Also, that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained.

But, normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show

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that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. But, if the High Court had entertained a petition despite availability of an alternative remedy, it would not be justifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies, unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

In the said case, the question was liability to pay purchase tax on the royalty paid by the respondents, i.e., the holder of mining lease, where there was a price for removal of minerals and thus, attracted liability to pay purchase tax. The Hon'ble Supreme Court in the said decision rejected the plea that the High Court should not have entertained the writ petition. Thereafter, the question relating to liability to pay purchase tax on royalty paid was taken up for consideration by discussing on the meaning of the words "royalty", "dead rent", "mining lease". It was observed that royalty paid by the holder of a mining lease under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 was not the price

for removal of minerals and hence, did not attract liability to pay purchase tax.

(c) In ***Embassy Property Developments Private Limited vs. State of Karnataka, [2019 SCC Online SC 1542]***, (*Embassy Property*), one of the preliminary questions that arose was whether the High Court ought to interfere under Article 226/227 of the Constitution, with an Order passed by the National Company Law Tribunal (NCLT) in a proceeding under the Insolvency and Bankruptcy Code, 2016 (IBC), ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal (NCLAT) and if so, under what circumstances.

In the said case, there is an exposition on the well recognised exceptions to the self-imposed restraint of the High Courts, namely, in cases where a statutory alternative remedy of appeal is available, or there is lack of jurisdiction on the part of the statutory/quasi-judicial authority against whose order judicial review is sought. It was observed that an “error of jurisdiction” was always distinguished from “in excess of jurisdiction”, till the

judgment of the House of Lords in ***Anisminic Ltd. vs. Foreign Compensation Commission [(1969) 2 WLR 163]*** (*Anisminic*). In *Anisminic*, the real question was not, whether, an authority made a wrong decision but whether they enquired into and decided a matter on which they had no right to consider. It was observed by the Hon'ble Supreme Court that just four days before the House of Lords delivered the judgment in *Anisminic*, an identical view was taken by a three judge Bench of the Hon'ble Supreme Court in ***West Bengal & Others vs. Sachindra Nath Chatterjee & Another, [(1969) 3 SCR 92]***, (*Sachindra Nath Chatterjee*) wherein the view taken by the Full Bench of Calcutta High Court in ***Hirday Nath Roy vs. Ramachandra Barna Sarma, [ILR LXVIII Calcutta 138]***, (*Hirday Nath Roy*) was approved. It was held therein that "*before a Court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for.*" This would mean that the jurisdiction must include (i) the power to hear and decide the questions at issue and (ii) the power to grant the relief asked for. Ultimately, in

paragraph 24, it was observed as follows: *“Therefore, insofar as the question of exercise of the power conferred by Article 226 of the Constitution, despite the availability of a statutory alternative remedy, is concerned, Anisminic cannot be relied upon.”* The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction should certainly be taken into account by High Courts, when Article 226 of the Constitution is sought to be invoked bypassing a statutory, alternative remedy provided by a special statute.

In the said case, the question was, as to, whether, the NCLT lacked the jurisdiction to issue a direction in relation to a matter covered by Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the Statutory Rules issued thereunder; or, there was mere wrongful exercise of a recognised jurisdiction, for instance, asking a wrong question or applying a wrong test or granting a wrong relief. On a detailed discussion, it was held that the NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since, NCLT chose to

exercise jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non judice*. In the instant case, the State of Karnataka had invoked the jurisdiction of the High Court under Article 226 of the Constitution without taking recourse to the appellate remedy under NCLAT. It was held that the judicial review was permissible and the High Court was justified in entertaining the writ petition assailing the order of the NCLT, directing execution of a supplemental lease deed for the extension of the mining lease.

(d) Learned Senior counsel appearing for the respondent in Writ Appeal No.538 of 2020 placed reliance on ***Authorised Officer, State Bank of Travancore and another vs. Mathew K.C. [(2018) 3 SCC 85]***, (*Mathew K.C.*) wherein it was observed that SARFAESI Act is a complete Code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions. The remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18 was adequately provided under the Act.

Therefore, the High Court ought not to have entertained the writ petition in view of the adequate alternative statutory remedies available. In that case, an interim order granted by the High Court in exercise of jurisdiction under Article 226 of the Constitution, staying further proceedings at the stage of Section 13(4) of the SARFAESI Act, on certain deposit to be made was questioned. It was observed that the writ petition ought not have been entertained and interim order granted for the mere asking without assigning special reasons, that too, without even granting opportunity to the other side to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. In the said case, it was also observed that the discretionary jurisdiction under Article 226 of the Constitution is not absolute but had to be exercised judiciously in the given facts of a case and in accordance with law.

The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as observed in ***Commissioner of Income Tax and Others vs. Chhabil***

Dass Agarwal, [(2014) 1 SCC 603], (*Chhabil Dass Agarwal*). In the latter decision, it has been held that the exceptions to the rule of non-interference when efficacious, alternative remedy is available are as under which are illustrative and non-exhaustive:

- (i) where remedy available under statute is not effective but only mere formality with no substantial relief;
- (ii) where statutory authority not acted in accordance with provisions of enactment in question, or;
- (iii) where statutory authority acted in defiance of fundamental principles of judicial procedure, or;
- (iv) where statutory authority resorted to invoke provisions which are repealed, or;
- (v) where statutory authority passed an order in total violation of principles of natural justice.

(e) In **United Bank of India vs. Satyawati Tondon and others, [(2010) 8 SCC 110]**, (*Satyawati Tondon*) it was observed that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed

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under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective, alternative remedy by filing an application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

(f) Of course in ***ICICI Bank Limited vs. Umakanta Mohapatra and others, [(2019) 13 SCC 497]***, (*Umakanta Mohapatra*), it was held, the writ petition was not maintainable and therefore, allowed the appeals.

(g) In ***Authorised Officer, State Bank of India vs. Allwyn Alloys Private Limited and others, [(2018) 8 SCC 120]***, the Hon'ble Supreme Court opined that Section 34 of the SARFAESI Act clearly bars filing of a civil suit. No civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under the Act to determine and no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

42. We have discussed the propositions on the bar to the writ remedy on account of availability of an

alternative remedy from various angles. We have also discussed the case law cited at the Bar.

43. In the instant case, the contention of learned senior counsel for the petitioners is that in view of Section 31(i) of the SARFAESI Act, the provisions of the Act would not apply to agricultural lands. Thus, the provisions of the said Act would not apply to coffee plantation/estate, which are the subject matter of lands in the instant case, in respect of which action has been initiated under Section 13 of the SARFAESI Act. It was contended that the SARFAESI Act does not apply to agricultural lands within the scope and ambit of which coffee plantation or estate falls. Thus, the action initiated by the respondent/bank as against the subject land is without jurisdiction and therefore, the writ remedy under Article 226 of the Constitution is available. Thus, when exercise of statutory power is without jurisdiction or lack of it and the action taken is erroneous, the party aggrieved cannot be relegated to challenge the said action in the usual course by way of appellate remedy under Section 17 of the SARFAESI Act.

44. In this regard, reference could also be made to Article 300A of the Constitution, where no person shall be deprived of his property save by authority of law. Even though the right to hold property has ceased to be a fundamental right under the Constitution of India, but only a constitutional right, yet, an aggrieved individual has the remedy to move the High Court under Article 226 for any violation of Article 300A of the Constitution. The protection of Article 300A is available not only to any person, including legal or juristic person, and is not confined only to a citizen. The expression "property" under Article 300A means only that which can by itself be acquired or disposed of or taken possession. It includes private property in all its forms, and understood, both movable and immovable, corporeal and incorporeal, such as, intellectual property rights. When a person has right or interest in property, the same cannot be deprived except by authority of law. Deprivation of property may take place in various ways, such as seizure of goods or immovable property from the possession of an individual, but in a manner known to law. Deprivation means, the rights constituting property rights taken away, also

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deprivation by authority of law means, by or under a law made the competent legislature.

45. Thus, the question in this case is, whether coffee plantation could be interpreted to be agricultural land, within the meaning of Section 31(i) of the SARFAESI Act, in which case it is a bar for the applicability of the provisions of the Act. In our view, in order to examine a challenge to an action initiated under the provisions of the SARFAESI Act in respect of the agricultural land and as to, whether, the subject land is an agricultural land or not, the petitions filed under Article 226 of the Constitution of India were maintainable. In such a case, the High Court cannot adopt a pedantic approach but has to decide the matter keeping in view the fact that right to property continues to be an important constitutional right and in terms of Article 300A, no person can be deprived of his property except by authority of law, vide ***Sri Radhey Shyam (Dead) Through LRs. & others vs. State of Uttar Pradesh & others [(2011)5 SCC 553]***.

46. Therefore, in our view, the writ petition raised a question about applicability of SARFAESI Act to coffee

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plantation/estate on the ground that the same is an agricultural land, having regard to Section 31(i) of the SARFAESI Act. Whether the said provision is not applicable to agricultural land and therefore, the action initiated is illegal and contrary to the object and purpose of the provision had to be considered. It was necessary to give an answer to such a question before concluding, whether, the actions of the respondent/banks were in accordance with law or not in these cases. If the answer to the question, whether coffee plantation/estate is an agricultural land within the meaning of Section 31(c) of the SARFAESI Act, is in the affirmative, then the provisions of the Act would not apply and the action initiated by the respondent/bank would be without jurisdiction. Any action of an authority without jurisdiction goes to the root of the matter and in such a case, a writ petition would lie under Article 226 of the Constitution. In such circumstances, it would not be sound exercise of discretion to relegate the parties to the remedy by way of an appeal. This is particularly so, when a constitutional right, such as Article 300A of the Constitution is involved and the applicability of the SARFAESI Act to coffee estate in the context of

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whether it is an agricultural land or not would be an important question which has to be decided in the first instance before deciding on the legality of the action otherwise.

47. Hence, in our view, the writ petitions filed under Article 226 of the Constitution in the instant case were maintainable. This is particularly so, having regard to the issue raised in these writ petitions as it involves interpretation of law. It also touches upon the applicability of the SARFAESI Act and the jurisdiction on the respondent/bank to take measures under Section 13 of the said Act vis-à-vis the subject lands, which are coffee plantations. Hence, we answer point No.1 in favour of the appellants.

Re: Point No.2:

Whether coffee plantation is an agricultural land under Section 31(i) of the SARFAESI Act?

48. This would take us to the next point which is to decide, as to, whether, coffee plantations are agricultural lands within the meaning of Section 31(i) of the SARFAESI Act. Before proceeding further, it would be necessary to

understand the object of the SARFAESI Act and allude to the background of the said enactment. In this regard, it would be useful to refer to the judgment of the Hon'ble Supreme Court in ***Mardia Chemicals vs. Union of India, [(2004) 4 SCC 311]***. (*Mardia Chemicals*), wherein reference was made to Narasimham Committee constituted in the year 1991 relating to the financial system prevailing in the country. In Chapter V of the Report under the heading '*Capital Adequacy, Accounting Policies and other Related Matters*', it was opined that special Tribunals to deal with the recovery of dues of the advances made by the banks was necessary. Placing reliance on the Tiwari Committee, it was observed that setting up of special Tribunals could expedite the recovery process. The Narasimham Committee in its Second Report submitted in the year 1992, dealt with legal and legislative framework in Chapter VIII of the said Report. One of the measures recommended was to vest the financial institutions through special statutes, the power of sale of the asset without intervention of the Court and for reconstruction of the assets.

49. After the report of the Narasimham Committee, yet another Committee was constituted for bringing about the needed steps within the legal framework. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy, to have yet speedier legal method to recover the dues, apart from recovery of debts due to the banks and financial institutions. Acting on the said recommendations, SARFAESI Ordinance, 2002 was promulgated on 21.06.2002. Thereafter, it was replaced by a Bill which was passed by both Houses of the Parliament. The said Act received the assent of the President on 17.12.2002 as the SARFAESI Act, which came into force with effect from 21.06.2002.

50. The object of the Act is to regulate the securitisation and reconstruction of financial assets and enforcement of the security interest and to provide for a central database of the security interests created on property rights, and for matters connected therewith or incidental thereto. Chapter III deals with the enforcement of security interests which comprises of Sections 13 to 19.

Chapter VI deals with miscellaneous provisions and therein, Section 31 reads as under:

"31. Provisions of this Act not to apply in certain cases.—The provisions of this Act shall not apply to—

- (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;
- (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);
- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);
- (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);
- (e) * * * * *
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);
- (g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

- (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;
- (i) **any security interest created in agricultural land;**
- (j) any case in which the amount due is less than twenty per cent of the principal amount and interest thereon."

51. Thus, the question to be determined is whether the provisions of SARFAESI Act would apply to any security interest created in "agricultural land", vide Section 31(i). The expression, agricultural land, is not defined under the Act and therefore, the meaning of the said expression would have to be discerned with reference to the plain and dictionary meaning as well as other legislations which deal with the agricultural land.

52. For an appreciation of the question under consideration, it would be useful to refer to the following judgments which arise in the context of applicability of the SARFAESI Act to plantation crops in the first instance:

- (a) In ***Mohammed Basheer K.P. vs. Deputy General Manager and others, [(2010 (2) KLJ 225]***, (*Mohammed Basheer K.P.*) the issue raised in the writ

appeal was whether the SARFAESI Act applied to lands on which rubber plant or trees are grown. In other words, whether, the rubber plantation was exempted as agricultural land from the application of the SARFAESI Act. In that case, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Commissioner of Income Tax, West Bengal vs. Raja Benoy Kumar Sahas Roy, AIR 1957 SC 768, (Raja Benoy Kumar Sahas Roy)***, to observe that the term 'agriculture' includes raising on the land of products which have some utility, either for consumption or for trade and commerce. The term, "agriculture", cannot be defined or understood by the nature of products cultivated. No such classification is conceivable unless specifically provided for, having regard to the specific need to make such classification. If such classification is to provide different consequences of a piece of statute law, including its applicability, then such classification must be found explicit on a clear expression in that particular statute. It was held that rubber plantation or rubber sapling grown on land was an agricultural activity and therefore, the land on which the rubber was cultivated was agricultural land. Hence, the

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writ appeal was allowed and it was held that all steps taken against the land in question therein under the SARFAESI Act were quashed and the writ petition was allowed to that extent by the Kerala High Court.

(b) In the judgment of the Hon'ble Supreme Court in ***Commissioner of Income Tax, West Bengal vs. Raja Benoy Kumar Sahas Roy, [AIR 1957 SC 768]***, (*Raja Benoy Kumar Sahas Roy*), the question was whether on facts and circumstances of that case, certain sum was agricultural income and exempt from the payment of tax under the Income Tax Act. In order to interpret the expression 'agricultural income', the Hon'ble Supreme Court delineated on the meaning of 'agriculture' and 'agricultural purpose' and fell back upon the general sense in which they have been understood in common parlance. The dictionary meaning of agriculture was referred to and also the meaning as given in Wharton's Law Lexicon. Ultimately, the Hon'ble Supreme Court observed that the primary sense in which the term 'agriculture' is understood as ager-a field and culture-cultivation i.e., cultivation of field which, in the strict field sense of the term means tilling of the land, sowing of the seeds, planting, or similar

operations on the land. After the produce sprouts from the land, other operations, such as weeding, digging of the soil around the growth, removal of undesirable undergrowths, tending, pruning, etc. have to be done. Thereafter, harvesting and running the produce for the market are operations which have to be carried out. The latter would all be agricultural operations when taken in conjunction with the basic operations above described and it would be futile to say that they are not agricultural operations at all. According to the Hon'ble Supreme Court, the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations which we have described above, would not be enough to characterise them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land. It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach

themselves to the products of the land and acquire the characteristic of agricultural operations. Thus, the cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above, all of which operations, basic as well as subsequent, form one integrated activity of the agriculturist and the term "agriculture" has to be understood as connoting this integrated activity of the agriculturist.

The Hon'ble Supreme Court further observed that one cannot dissociate the basic operations from the subsequent operations, and say that the subsequent operations, even though they are divorced from the basic operations can constitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed in regard to any land, that land can be said to have been used for "agricultural purposes" and the income derived therefrom can be said to be "agricultural income" derived from the land by agriculture. In that sense, the connotation of the

term "agriculture" has been in the wider sense as comprising within its scope the basic as well as the subsequent operations described above. The products may be food grain or vegetables or fruits which are necessary for the sustenance of human beings including plantations and groves, or grass or pasture for consumption of beasts or articles of luxury such as, betel, coffee, tea, spices, tobacco etc., or commercial crops like, cotton, flax, jute, hemp, indigo, etc.

Thus, the test enunciated in this judgment was that the basic idea in the expression "agriculture" is cultivation of land in the sense of tilling of land, sowing of seeds, planting and similar work done on the land itself. The basic conception is the essential *sine qua non* of any operation performed on the land. If the basic operations are there, the rest of the operations which are consequent thereto, namely the subsequent operations, are also part of agriculture, but if the basic operations are wanting, the subsequent operations do not acquire the characteristic of agricultural operations. That, the human labour and skill spent in the performance of subsequent operations cannot be said to have been spent on the land itself, though it

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may have the effect of preserving, fostering and regenerating the products of the land.

The Hon'ble Supreme Court further observed that the distinction is not important in cases where the agriculturist performs these operations as a part of his integrated activity in cultivation of the land. Where, however, the products of the land are of spontaneous growth, unassisted by human skill and labour, and human skill and labour are spent merely in fostering the growth, preservation and regeneration of such products of land, the question falls to be considered, whether, these subsequent operations performed by the agriculturist are agricultural operations and enjoy the characteristic of agricultural operations. This is because the products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are not products of agriculture and the income derived therefrom is not agricultural income, as there is no process of agriculture involved in the raising of these products from the land.

In the said case, it was held that the forest land therein was more than 150 years old and trees had completely fallen and the proprietors had planted fresh trees in those areas, and they had performed operations for the purpose of nursing the trees planted by them. Hence, insofar as those trees were concerned, the income derived therefrom would be agricultural income. But, the whole of the income derived from the said forest could not be treated as non-agricultural income.

(c) In ***Eshwar Purushothaman Gardens vs. Indian Bank, [2012 (5) CTC 257]***, (*Eshwar Purushothaman Gardens*), a Division Bench of Madras High Court considered whether the land given as security on which commercial/cash crops viz., coconut, sugarcane, Turmeric, Mango, Coco, etc., are grown and having a farm house, servant quarters, vermiculture sheds, cattle sheds, etc., was an agricultural land or not. Following the judgment in *Mohammed Basheer K.P. and Raja Benoy Kumar Sahas Roy (supra)*, it was observed that the connotation of the term 'agriculture' must be given an expanded interpretation to comprise within its scope the basic as well as the subsequent operations of cultivation of

land to grow crops to raise products. The products may be grain or vegetables or fruits, which are necessary for the sustenance of human beings, including plantations and groves, or grass or pasture for consumption of beasts or articles of luxury such as betel, coffee, tea, spices, tobacco, etc., or commercial crops like cotton, flax, jute, hemp, indigo, etc. That agriculture cannot be confined merely to the production of grain and food products for human beings and beasts but it must also include all products of the land which have some utility either for consumption or for trade and commerce which also include forest products.

(d) Reference was also made to the ***Commissioner of Wealth Tax, Andhra Pradesh vs. Officer in charge (Court of Wards) Paigah, [AIR 1977 SC 113]***, with regard to the relevant test to determine the issue as to whether a particular property is agricultural in nature. The Supreme Court in the aforesaid case observed that the determination of the character of land according to the purpose for which it is meant or set apart and can be used is a matter which ought to be determined on the facts of each particular case. *The Supreme Court opined,*

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"what is really required to be shown is the connection with an agricultural purpose and user, and not the mere possibility of user of land by some possible future owner or possessor, for an agricultural purpose."

It was also observed by the Madras High Court that when the available materials are sufficient to arrive at a clear finding that the secured asset is an agricultural property, there is no point in directing the borrower/guarantor to approach the DRT. When the very initiation of SARFAESI proceeding is under challenge on the ground of statutory bar, and the available materials are sufficient to decide the issue, it cannot be said that still the party should be directed to approach the DRT. It was further observed that the question regarding alternative remedy would lose its significance in that case in view of the voluminous documents produced by the petitioner to show that the security was created in their agricultural land. It was further observed that, mere denial in the counter-affidavit unaccompanied by documents to prove such defence, would not result in raising a disputed question so as to direct the parties to approach the DRT.

(e) The controversy in ***J.Malliga and others vs. Union Bank of India and others, [2010 (4) CTC 710]***, (*J.Malliga*) was with regard to cardamom plantation and the question, as to, whether, what activities that were done for Cardamom cultivation on the lands would be agricultural lands. It was held that the Cardamom cultivation did not comprise in merely raising products of land in narrower sense of term like tilling of land, but would also include operations, basic as well as the subsequent which formed an integrated activity. In that case, there was no dispute that the Cardamom estate was mortgaged, the land was used for planting the crop and cultivation of cardamom, requires normal agricultural activities. Therefore, the SARFAESI Act did not apply to such lands and invocation of the SARFAESI Act was held to be barred under Section 31(i) thereof.

(f) In ***Indian Bank and others vs. K.Pappireddiyar and others, [AIR 2018 SC 3540]***, (*K.Pappireddiyar*), it was observed 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. Whether a parcel of

land was 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 the security interest and the purpose for which it was set apart.

The matter was remanded by the Hon'ble Supreme Court to the Madras High Court to adjudicate on the basic issue, as to, whether, the land in respect of which the security interest was created was agricultural in nature or not. It was further held that the question as to whether the land is agricultural has to be determined on the basis of the totality of facts and circumstances including the nature and character of the land, the use to which it as put and the purpose and intent of the parties on the date on which the security interest was created.

(g) In the said decision, there is a reference to ***ITC Limited vs. Blue Coast Hotels Limited, [(2018) 15 SCC 99]***, (*Blue Coast Hotels Limited*). In this decision, the facts were that the Industrial Financial Corporation of India (IFCI), the secured creditor, in the capacity of a financial institution, had entered into a corporate loan agreement with Blue Coast Hotels (debtor) for a sum of

Rs.150 crores. The agreement included creation of a special mortgage to secure the corporate loan. The mortgaged property comprised of the whole of the debtor's hotel property including agricultural land on which the debtor was to develop villas. The debtor defaulted in repayment of the loan and the debtor's account became a Non-Performing Asset (NPA). Notice under Section 13(2) of the SARFAESI Act was sent by the creditor calling upon the debtor to pay the amount overdue within a period of sixty days. This was followed by a notice issued under Section 13(4) whereby the symbolic possession of the hotel was taken over by the creditor and subsequently, there was a sale by a public auction. A notice of sale by a public auction was issued in the newspaper. One of the questions that arose in the said case was, whether, the land mortgaged by the debtor as a security interest consisted of agricultural land to which the provisions of the SARFAESI Act did not apply. The land, therefore, could not have been recovered. It was observed that the total land on which the Goa Hotel was located was 1,82,225 sq.m., of these 2,335 sq.m. was used for growing vegetables, fruits, shrubs and trees for captive consumption of the

hotel, which was 12.8% of the total area. It was held that the land in question was not agricultural land and that the High Court had 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 was pending. Therefore, the test is not *per se* whether the land is shown to be agricultural in nature in the revenue entries. The question, whether, the land is agricultural has to be determined on the basis of the totality of facts and circumstances, as observed in *K.Pappireddiyar (supra)*.

53. Learned counsel for the respondent/Bank in Writ Appeal No.545 of 2020 relied upon the following judgments:

- (i) ***United Bank of India vs. Satyawati Tandon and others, [(2010) 8 SCC 110], (Satyawati Tandon);***
- (ii) ***Smt.Meenakshamma vs. The Authorised Officer, Indian Bank, (S.A. No.397/2012, DD: 08.02.2013 on the file of Debts Recovery Tribunal, Bengaluru);***

(iii) ***ITC Limited vs. Blue Coast Hotels Limited, [(2018) 15 SCC 99], (Blue Coast Hotels).***

We have discussed the first and the third of the aforesaid decisions. The other decision is of the Debts Recovery Tribunal (DRT) Bengaluru, which we have perused.

Legal Framework:

54. A reading of the aforesaid decisions would indicate that the expression 'agricultural land' in Section 31(i) of the SARFAESI Act has been interpreted in light of the Dictionary meaning and various other enactments. Essentially, in those cases, the consideration was on 'agriculture' as an activity, a process or a procedure involving a series of steps for producing various types of crops namely food crops, plantation crops, forest produce or commercial/cash crops, products of agriculture used in trade and commerce in the manufacture of industrial material/products etc.

55. But, in our view, those judgments would not be of much assistance in interpreting the phrase 'agricultural land' under Section 31(i) of SARFAESI Act. For that, it is necessary to deduce the meaning and connotation of the said expression from State laws relating to 'agriculture' and thereby unravel the meaning of 'agricultural land' in Section 31(i) of the SARFAESI Act. Also, in these appeals, learned senior counsel for the appellants has placed reliance on Land Reforms Act, Land Revenue Act and the Dictionary meaning of the expression 'agricultural land' in Section 31(i) of the SARFAESI Act. It becomes necessary to consider the aforesaid enactments as SARFSESI Act does not define the said expression. The reason being, Parliament was conscious of the fact that, the subject 'agriculture' along with its connotations is a State subject (List II of Seventh Schedule of the Constitution) and therefore, did not define the expression 'agricultural land' under Section 31(i) of the SARFAESI Act.

56. Before proceeding further, it would be useful to refer to Articles 246 of the Constitution. Article 246 deals with subject matter of laws made by Parliament and by the Legislatures of States.

(a) Clause (1) of Article 246 states that notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the VII Schedule (Union List).

(b) Clause (2) of Article 246 of the Constitution, states that notwithstanding anything in clause (3), the Parliament and the Legislature of any State also have the power to make laws with respect to any matters enumerated in List-III to the VII Schedule (Concurrent List).

(c) Clause (3) thereof, states that the Legislature of any State has exclusive power to make laws for the State with respect to any matters enumerated in List-II of the VII Schedule (State List). However, clause (3) of Article 246, is subject to clauses (1) and (2) which begins with a *non obstante* clause.

(d) The power to legislate which is dealt with Article 246 has to be read in conjunction with the Entries in the three Lists of the Seventh Schedule, which are the

fields of legislation which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the *vires* of a provision of a statute is assailed. In such circumstances, a liberal construction must be given to the entry by looking at the substance of the legislation and not its mere form. However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the doctrine of pith and substance is applied to find out the true character of enactment and the entry within which it would fall. The doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which entry a piece of legislation could be related. If there is any

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trenching on the field reserved to another legislature, the same would be of no consequence. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

(e) In case of any conflict between entries, in List-I and List-II, the power of Parliament to legislate under List-I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the entries of List-II, the State Legislature's competence cannot be questioned on the ground that the field is covered by Union list or the Concurrent list, vide ***Prafulla Kumar vs. Bank of Commerce, Khulna, [AIR 1947 P.C. 60]*** (*Prafulla Kumar*).

57. The entries in List I and List II to which the laws are under consideration are as under:

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(a) Entry 45 of List-I of the VII Schedule deals with 'Banking'. SARFAESI Act, 2002 is also relatable to Banking. The object of the SARFAESI Act is to regulate Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest and for matters connected therewith or incidental thereto. Thus, the SARFAESI Act being an enactment traceable to Entry 45 of List-I of the VII Schedule, it has excluded the enforcement of the Act insofar as the security created in agricultural lands are concerned without defining the said expression as the subject 'agricultural lands' is relatable to the respective entries under List-II and is a State subject. In the circumstances, we have to deduce the meaning of the expression 'agricultural land' found in Section 31(i) of the SARFAESI Act with reference to the relevant State enactments.

(b) Entry 14 of List II (State List) deals with the subject 'agriculture' including 'agricultural education and research, protection against pests and prevention of plant diseases'. Entry 18 of the said list deals with land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents;

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transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation. Entry 46 of List II deals with taxes on agriculture income and Entry 47-48 speak of duties in respect of succession to agricultural land and estate duty in respect of agricultural land. Thus, while interpreting the expression "agricultural land", reliance would have to be placed on the relevant State enactment.

58. In light of the above, the State law on which reliance has been placed is extracted as under:

A. The relevant definition and provisions of the **Land Reforms Act** are as under:

"2. Definitions.—(A) In this Act, unless the context otherwise requires.—

(1) **"Agriculture"** includes.—

- (a) aquaculture;
- (aa) horticulture;
- (b) the raising of crops, grass or garden produce;
- (c) dairy farming;
- (d) poultry farming;
- (e) breeding of livestock;
- (f) grazing;

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but does not include the cutting of wood
only;

x x x

(10) "**To cultivate**" with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression "uncultivated" shall be construed correspondingly;

Explanation.—A person who takes up a contract to cut grass, or to gather the fruits or other produce of any land, shall not on that account only be deemed to cultivate such land;

x x x

(18) "**Land**" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes;

x x x

(25) "**Plantation crops**" means cardamom, coffee, pepper, rubber and tea;

x x x

79-A. Acquisition of land by certain

persons prohibited.- (1) On and from the commencement of the Karnataka Land Reforms (Amendment) Act, 1995, no person who or a family or a joint family which has an assured annual income of not less than rupees twenty five lakhs from sources other than agricultural lands shall be entitled to acquire any land whether as land owner, landlord, tenant or mortgagee with possession or otherwise or partly in one capacity and partly in another.

(2) For purposes of sub-section (1).-

- (i) the aggregate income of all the members of a family or a joint family from sources other than agricultural land shall be deemed to be income of the family or joint family, as the case may be, from such sources;
- (ii) a person or a family or a joint family shall be deemed to have an assured annual income of not less than rupees twenty five lakhs from sources other than agricultural land on any day if such person or family or joint family had an average annual income of not less than rupees twenty five lakhs from such sources during a period of five consecutive years preceding such day.

Explanation.- A person who or a family or a joint family which has been assessed to income tax under the Income Tax Act, 1961 (Central Act 43 of 1961) on an yearly total income of not less than rupees twenty five lakhs for five consecutive years shall be deemed to have an average annual income of not less than rupees twenty five lakhs from sources other than agricultural lands.

(3) Every acquisition of land otherwise than by way of inheritance or bequest in contravention of this section shall be *null* and void.

(4) Where a person acquires land in contravention of sub-section (1) or acquires it by bequest or inheritance he shall, within ninety days from the date of acquisition, furnish to the Tahsildar having jurisdiction over the Taluk where the land acquired or the greater part of it is situated a declaration containing the following particulars, namely.-

- (i) particulars of all lands;
- (ii) the average annual income of himself or the family;
- (iii) such other particulars as may be prescribed.

(5) The Tahsildar shall, on receipt of the declaration under sub-section (4) and after such enquiry as may be prescribed send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification, declare that with effect from such

date as may be specified in the notification, such land shall stand transferred to and vest in the State Government without further assurance free from all encumbrances. From the date specified in such notification the Deputy Commissioner may take possession of such land in such manner as may be prescribed.

(6) For the land vesting in the State Government under sub-section (5), where the acquisition of the land was by bequest or inheritance, an amount as specified in Section 72 shall be paid and where the acquisition was otherwise than by bequest or inheritance, no amount shall be paid.

79-B. Prohibition of holding agricultural land by certain persons.- (1) With effect on and from the date of commencement of the Amendment Act, except as otherwise provided in this Act.-

- (a) no person other than a person cultivating land personally shall be entitled to hold land; and
- (b) it shall not be lawful for.-
 - (i) an educational, religious or charitable institution or society or trust, other than an institution or society or trust referred to in sub-section (7) of Section 63, capable of holding property;
 - (ii) a company;

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- (iii) an association or other body of individuals not being a joint family, whether incorporated or not; or
- (iv) a co-operative society other than a co-operative farm, to hold any land.

(2) Every such institution, society, trust, company, association, body or co-operative society.-

- (a) which holds lands on the date of commencement of the Amendment Act and which is disentitled to hold lands under sub-section (1), shall, within ninety days from the said date, furnish to the Tahsildar within whose jurisdiction the greater part of such land is situated a declaration containing the particulars of such land and such other particulars as may be prescribed; and
- (b) which acquires such land after the said date shall also furnish a similar declaration within the prescribed period.

(3) The Tahsildar shall, on receipt of the declaration under sub-section (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification, declare that such land shall vest in the State Government free from all encumbrances

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and take possession thereof in the prescribed manner.

(4) In respect of the land vesting in the State Government under this section an amount as specified in Section 72 shall be paid.

Explanation.- For purposes of this section it shall be presumed that a land is held by an institution, trust, company, association or body where it is held by an individual on its behalf.

x x x

80. Transfers to non-agriculturists barred.- (1) (a) No sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift or exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be lawful in favour of a person.-

(i) who is not an agriculturist, or

(ii) who being an agriculturist holds as owner or tenant or partly as owner and partly as tenant land which exceeds the limits specified in Section 63 or 64; or

(iii) who is not an agricultural labourer; or

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- (iv) who is disentitled under Section 79A or Section 79B to acquire or hold any land:

Provided that the Deputy Commissioner having jurisdiction over the area or any officer not below the rank of an Deputy Commissioner authorised by the State Government in this behalf in respect of any area may grant permission for such sale, gift, or exchange, to enable a person other than a person disentitled to acquire or hold land under Section 79-A or Section 79-B who bona fide intend taking up agriculture to acquire land on such conditions as may be prescribed in addition to the following conditions, namely.-

- (i) that the transferee takes up agriculture within one year from the date of acquisition of land, and
- (ii) that if the transferee gives up agriculture within five years, the land shall vest in the State Government subject to payment to him of an amount equal to eight times the net annual income of the land or where the land has been purchased, the price paid for the land, if such price is less than eight times the net annual income of the land.

(2) Nothing in sub-section (1) shall apply to lands granted under Section 77.

81. Sections 79-A, 79-B, and 80 not to apply in certain cases.- (1) Nothing in Section 79-A or Section 79-B or Section 80 shall apply to.-

- (a) the sale, gift or mortgage of any land or interest therein in favour of the Government: the Karnataka State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950 (Central Act LXIV of 1950), the Karnataka Power Transmission Corporation Limited constituted under the Companies Act, 1956 the Karnataka Housing Board constituted under the Karnataka Housing Board Act, 1962 (Karnataka Act 10 of 1963), the Industrial Areas Development Board constituted under the Karnataka Industrial Areas Development Act, 1966 (Karnataka Act, 18 of 1966), the Karnataka Slum Clearance Board established under the Karnataka Slum Areas (Improvement and Clearance) Act, 1973, (Karnataka Act 33 of 1974) the Bangalore Development Authority constituted under the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976), a Nagarabhivruddhi Pradhikara constituted under the Karnataka Nagarabhivruddhi Pradhikaragala Adhinyama, 1987 (Karnataka Act 34 of 1987);
- (b) the mortgage of any land or interest therein in favour of.-
- (i) a co-operative society;

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- (ii) a financial institution;
- (iii) x x x x x;
- (iv) x x x x x;
- (v) x x x x x;
- (vi) any company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid up share capital is held by the State Government or the Central Government or both;
- (vii) any corporation, not being a company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) established or constituted by the State Government or the Central Government or both;
- (viii) the Coffee Board constituted under the Coffee Act, 1942 (Central Act 7 of 1942),

as security for any loan or other facility given by such society, bank, company, corporation or Board for agricultural purposes.

Explanation.- In this clause 'agricultural purposes' include making land fit for cultivation, cultivation of land, improvement of land, development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting and farming, cattle breeding, animal husbandry, dairy farming, seed farming, pisciculture, apiculture, sericulture, piggery, poultry farming and

such other activities as are generally carried on by agriculturists, dairy farmers, cattle breeders, poultry farmers and other categories of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the acquisition of implements and machinery, in connection with any such activity;

- (c) the sale of any land or interest therein referred to in clause (b) in enforcement of the said security;
- (d) the sale of any land in favour of a sugar factory for purposes of research of seed farm or sale in favour of the Coffee Board constituted under the Coffee Act, 1942 (Central Act 7 of 1942).

(2) The institutions referred to in clause (b) of sub-section (1) acquiring land or interest therein shall dispose of the same by sale, within the prescribed period:

Provided that pending such sale the land may be leased for a period not exceeding one year at a time and the lease shall stand determined when the land is sold or on the expiry of one year, whichever is earlier and notwithstanding anything to the contrary in this Act or in any other law for the time being in force the lessee shall not be entitled to any right other than as such lessee in the land.

(3) Any sale by the institution under this section shall be subject to the other provisions of this Act.

x x x

104. Plantations.—The provisions of Section 38, Section 63 other than sub-section (9) thereof, Sections 64, 79-A, 79-B and 80, shall not apply to plantations.

Explanation.—In this section ‘Plantation’ means land used by a person principally for the cultivation of plantation crop and includes.—

- (i) any land used by such person for any purpose ancillary to the cultivation of such crop or for preparation of the same for the market; and
- (ii) agricultural land interspersed within the boundaries of the area cultivated with such crop by such person.

not exceeding such extent as may be determined by the prescribed authority as necessary for the protection and efficient management of such cultivation.

B. The relevant provisions of the **Land Revenue Act** are as under:

2. Definitions.—In this Act, unless the context otherwise requires.—

x x x

(8) '**Class of Land**' means any of the following classes of land, namely, dry land, wet land, garden land or plantation land;

Explanations.—For purposes of this Act.—

x x x

(d) '**Plantation Land**' means land in which a plantation crop, that is, cardamom, coffee, pepper, rubber or tea, can be grown.

x x x

(14) "**Land**" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages or other defined areas;

- C. The relevant definition and provisions of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** are as follows:

"3. In this Act, unless the context otherwise requires.—

x x x

d) "**agricultural land**" means land used for the purpose of--

- (i) agriculture or horticulture;
- (ii) dairy farming, poultry farming, pisciculture, sericulture, seed farming breeding of livestock or nursery growing medicinal herbs;

(iii) raising of crops, trees, grass or garden produce; and

(iv) land used for the grazing of cattle;”

D. The relevant definition under **Income Tax Act, 1961** reads as under:

2. In this Act, unless the context otherwise requires,—

(1A) “**agricultural income**” means—

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by—

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the

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nature described in paragraph (ii)
of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that—

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town

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area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(B) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

Explanation 1.—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.

Explanation 2.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

Explanation 3.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

E. The relevant definition and provisions of the **Karnataka Agricultural Income Tax Act, 1957** is as follows:

"2. Definitions.-

(1) In this Act, unless the context otherwise requires,—

(a) "**agricultural income**" means,—

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- (1) any rent or revenue derived from land situated in the State of Karnataka and used for growing plantation crops;
- (2) any income derived from such land by,—
 - (i) agriculture, or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him in respect of which no process has been performed other than a process of the nature described in paragraph (ii);
- (3) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in paragraphs (ii), and (iii) of sub-clause (2) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of

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the rent-in-kind by reason of his connection with the land requires as a dwelling house or as a store-house or other out-building;

Explanation.—Income derived from any building means the receipts by way of rent from the building or portion thereof let out for rent.”

- F. The relevant definition and provisions of the **Karnataka Agricultural Produced Marketing (Regulation) Act, 1966 (APMC)** are as follows:

“2. Definitions:—In this Act, unless the context otherwise requires,—

(1)“**Agricultural produce**” means the produce or goods specified in the Schedule.

SCHEDULE

VIII PLANTATION CROPS AND SPICES

13. Coffee seeds to the extent of free sale quota:—

- (i) raw coffee (cherry coffee)
- (ii) cured coffee seeds
- (iii) uncured coffee seeds”

- G. The relevant definition and provisions of the **Karnataka Town and Country Planning Act, 1961** are as given below:

“2. Definitions.—In this Act, unless the context otherwise requires,—

(1) '**Agriculture**' includes horticulture, farming, growing of crops, fruits, vegetables, flowers, grass, fodder, trees or any kind of cultivation of soil, breeding and keeping of livestock including cattle, horses, donkeys, mules, pigs, fish, poultry and bees, the use of land which is ancillary to the farming of land or any purpose aforesaid, but shall not include the use of any land attached to a building for the purposes of garden to be used along with such building; and 'agricultural' shall be construed accordingly;"

H. **P.Ramanatha Aiyar's Advanced Law Lexicon** (5th Edition, 2017, Lexis Nexis) gives the following meanings to the respective words, namely agriculture and plantation:

" **(1) Agriculture:** The science or art of cultivating soil, harvesting crops and raising livestock.

(2) Plantation: Large scale farming operation, carried on by hired labour.

Ex: Rubber plantation.

The ordinary significance of the term "plantation" is a farm. These terms are nearly synonymous. A plantation is a place planted; land brought under cultivation; ground occupied by trees or vegetables, which have been planted."

59. We have perused the definition of the word 'agriculture' under various enactments. Under the Land Reforms Act the definition of 'agriculture' is an inclusive one which also includes the raising of crops, grass or garden produce. The expression "plantation crops" is defined to mean cardamom, coffee, pepper, rubber and tea, etc. This implies that all other crops are non-plantation crops. The word "land" means agricultural land, including garden land, plantation, but does not include house site or land used exclusively for non-agricultural purposes. Under Section 104 of the said Act, certain provisions of the said Act do not apply to plantations. The word 'plantation' is explained under Section 104 to mean land used by a person principally for the cultivation of plantation crops and includes any land used ancillary to the cultivation of such crop or for preparation of the same for the market and agricultural land within the area cultivated with such crop for the protection and efficient management of such cultivation.

60. Under the Land Revenue Act, the definition 'class of land' includes plantation land. Plantation land

means land on which a plantation crop i.e., cardamom, coffee, pepper, rubber and tea can be grown.

61. Thus, under both the Land Reforms Act and Land Revenue Act, plantation crops and plantation land refer to only cardamom, coffee, pepper, rubber and tea.

62. Under 2013 Act, 'agricultural land' means land used for the purpose of raising or crops. Crops would include plantation crops referred to above.

63. Under Karnataka Agricultural Income Tax Act, 1957, 'Agricultural Income' means any revenue derived from land situated within the State and used for growing plantation crops. On an analogy, the expression plantation crops would include coffee. Under the APMC Act also, under Schedule 8, coffee is included as a plantation crop. In all the aforesaid enactments, coffee has been defined to be a plantation crop

64. Thus, the need to interpret the expression "agricultural land" under the SARFAESI Act can be on the basis of the following tests:

- (I) That the word "Agriculture", which is inherent in the expression "Agricultural Land" in Section 31(i) of the SARFAESI Act, must be given a contextual interpretation and not an expansive one.
- (II) That the contextual interpretation depends upon the nature of crops grown on the land. Whether it refers to only non-commercial crops, i.e., excluding plantation or cash crops? Thus, whether agricultural land can take within its scope and ambit land on which plantation crops such as coffee, tea, rubber, cardamom and pepper are grown?
- (III) Generally speaking, while determining the nature of the land and as to whether it is agricultural land, the character of the land according to the purpose for which it is meant or set apart can be an important test. Thus, there must be a connection between the user of the land and the purpose, which is agricultural

purpose. Also, agricultural activity does not mean only cultivation *per se*, but it is an integrated activity which would include not only the cultivation of crops but also its process for its future use.

- (IV) Use and nature of the land must be determined on the date of creation of the security interest and for the purpose for which it was set apart.
- (V) The purpose and intent on the date on which security interest was created.
- (VI) The revenue entries showing the land to be agricultural in nature would not *per se* be a determinative factor. But, the totality of the facts and circumstances of the case has to be borne in mind.
- (VII) In the event there is any change in the user of the agricultural land for non-agricultural activity, the same would have also a bearing when action is initiated under the provisions of the SARFAESI Act.

65. In fact, the Hon'ble Supreme Court in *K.Pappireddiyar* (supra) has observed that the nature of the land use to which it has been put to on the date of creation of security interest and the purpose to which it was set apart are matters which have to be taken into consideration. Even in the case of *Blue Coast Hotels*, it was observed that, the question whether the land is agricultural or not had to be determined on the basis of totality of facts and circumstances and not whether the land was shown to be agricultural in nature in the revenue entries *per se*.

66. In the instant case, what has to be considered is, whether, land on which coffee is grown is agricultural land or not. The same has to be also in light of the relevant provisions of the State Acts which throw light as to how a coffee estate / plantation is construed.

67. Sub-Section (1) of Section 2(A) of the Karnataka Land Reforms Act defines '*agriculture*' to include the raising of crops. The expression '*plantation crops*' is defined to mean cardamom, coffee, rubber, pepper and

tea as per sub-Section (25) of Section 2(A) of the said Act. This implies that all other crops are non-plantation crops.

68. Chapter VIII of the Karnataka Land Reforms Act deals with exemptions. Section 104 deals with plantations. The said section states that the provisions of Section 38, Section 63 other than sub-section (9) thereof, Sections 64, 79-A, 79-B and 80 shall not apply to plantations. For the purpose of that section, "plantation" means the land used by a person principally for the cultivation of plantation crop and includes (i) any land used by such person for any purpose ancillary to the cultivation of such crop or for preparation of the same for the market; and (ii) agricultural land interspersed within the boundaries of the area cultivated with such crop by such person, not exceeding such extent as may be determined by the prescribed authority as necessary for the protection and efficient management of such cultivation.

69. As already noted the expression "plantation crops" is defined in Section 2(A)(25) of the Karnataka Land Reforms Act to mean cardamom, coffee, rubber, pepper and tea. Thus, in case of these plantation crops, *inter alia*,

Sections 79-A, 79-B and 80 of the said Act would not apply. Section 79-A states that the acquisition of land by certain persons is prohibited. Section 79-B prohibits the holding of agricultural land by certain persons. Section 80 states that transfer to non-agriculturists is barred. The said Section includes not only sale, gift, exchange, lease of any land or interest therein, but also states that mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall not be lawful in favour of a person, who is not an agriculturist, or who is disentitled under Section 79-A or Section 79-B to acquire or hold any land, unless the Deputy Commissioner having jurisdiction over the area, permits such sale, gift or exchange, etc.

70. However, Section 81(1)(b)(i) & (ii) of the Karnataka Land Reforms Act states that, nothing in Section 79-A or Section 79-B or Section 80 would apply, *inter alia*, to the mortgage of any land or interest therein in favour of (i) a co-operative society or (ii) a financial institution, as security for any loan or other facility given by such society, bank, etc., for any "agricultural purposes". The expression "agricultural purposes" includes making land fit for

cultivation, cultivation of land, improvement of land, development of land, development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting and farming, cattle breeding, animal husbandry, dairy farming, seed farming, pisciculture, apiculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by agriculturists, dairy farmers, cattle breeders, poultry farmers and other categories of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the acquisition of implements and machinery, in connection with any such activity. Section 81(1)(c) states that nothing in Section 79-A or Section 79-B or Section 80 would apply to the sale of any land or interest therein referred to in clause (b) in enforcement of the said security i.e., mortgage to a co-operative society or bank.

71. Thus, Section 81 is an exception to Section 79-A, Section 79-B and Section 80. Therefore, there could be a mortgage of any land or interest therein in favour of a bank or a financial institution and also sale of any land or interest therein mortgaged to any financial institution for

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enforcement of the security for any loan or other facility for agricultural purposes. This would imply that the land on which coffee plantation is raised is no doubt agricultural land on a plain interpretation, but, such land is exempted from the provisions contained in Sections 79A, 79B and 80 of the said Act. Thus, when an agricultural land is mortgaged to a bank and the mortgage is for agricultural purposes and if the outstanding dues to the financial institution are not paid, the same could be enforced for realization of the debt. Thus, irrespective of whether the land on which plantation or other crops are grown, Section 80 enables mortgage of such land for obtaining a loan for agricultural purpose.

72. Then, the question would arise, as to, what would be the position if the land on which plantation crop grown, is mortgaged to any financial institution for a non-agricultural purposes, i.e., as security for any loan or other facility for non-agricultural purposes. In such a case, Section 104 states that the bar under Section 79-A, 79-B and Section 80 would not apply to plantations. This would mean that such plantations could be mortgaged even for non-agricultural purposes, in which event, the security of lands on which plantation crops are raised for the loan

could be realized under the provisions of Land Reforms Act. Then, can such land be excluded from the scope and ambit of agricultural land under Section 31(i) of the SARFAESI Act is the question.

73. On a conjoint reading of Section 81 with Section 104 of Karnataka Land Reforms Act, what emerges insofar as land on which plantation crops, such as coffee are grown, such lands are exempted from the provisions of Sections 79-A, 79-B and 80 and they could be dealt with by way of sale, lease, gift, mortgage or exchange and the limitations mentioned in those sections do not apply to such land.

74. More particularly, Sections 79-A, 79-B and 80 do not apply to the mortgage of any land or interest therein in favour of a financial institution when as a security for any loan or other facility is given by such financial institution for agricultural purposes. The expression "agricultural purposes" is given a wide meaning in Section 81 of the Land Reforms Act.

75. Further, there could also be sale of any land or land in which interest is created by way of a mortgage for

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the purpose of enforcement of the said security in respect of land on which plantation crops are grown. This would mean that there would be no restriction on transfer of interest in land on which plantation crop is grown by way of mortgage in favour of a financial institution and any such land mortgaged to a financial institution could be sold for the enforcement of the said security.

76. Thus, coffee, being a plantation crop within the meaning of Section 2(A)(25) of the Land Reforms Act, is exempted from the provisions of Sections 79-A, 79-B and 80 as per Section 104 of the said Act. Also, under Section 81 of the said Act, the bar under Section 79-A, 79-B and 80 of the said Act would not apply in the case of mortgage of any land or interest therein to any financial institution as security for any loan or other facilities given by such financial institution for agricultural purposes. Hence, any land used for raising a plantation crop, if mortgaged to a financial institution, even if for non-agricultural purposes, could also be sold for enforcement of the said security.

77. In ***Shankar Bhairu Bamane vs. Syndicae Bank and others, [ILR 1998 KAR 3028]***, (*Shankar*

Bhairu Bamane), Sections 80 and 81 of the Land Reforms Act were considered and it was observed, a reading of Section 81 makes it clear that there is no bar for even financial institutions to acquire agricultural properties; a bank can also bid and purchase agricultural properties. This is on account of the exemption under Section 81 of the said Act.

78. The Karnataka State Legislature has been very cautious in exempting only lands on which plantation crops are grown from the purview of Sections 79-A, 79-B and Section 80 of the Land Reforms Act, which means that, the bar contained in those sections would apply in the case of lands on which crops which are not in the nature of plantation crops are raised. Such lands only i.e., lands on which plantation crops are not raised, in our view, are agricultural lands for the purpose of Section 31(i) of the Act. This means the bar contained under Sections 79-A, 79-B and 80 of the Land Reforms Act, do not apply as per Section 104 of the said Act to plantation lands or land on which plantation crops are grown. Such lands would not come within the purview of agricultural land under Section 31(i) of SARFAESI Act.

79. In this context, it would be useful to note that, the expression 'plantation crop' under sub-section (25) of Section 2(A) of the Land Reforms Act means cardamom, coffee, pepper, rubber and tea. Therefore, Section 104 which deals with plantation is placed in the *Exemptions* Chapter of the Land Reforms Act. Also, Section 81 which is an exception to Section 79-A and Section 79-B deal with restrictions on holding or a transfer of agricultural land have also to be borne in mind, while applying the same to the facts of the present case.

80. In this context, it would be useful to refer to the 'Principles of statutory interpretation' by Justice G.P. Singh", 14th Edition, wherein it has been observed that if a word has been defined in 'interpretation clause' or 'definition clause', *prima facie*, that definition governs wherever that word is used in the body of that statute. That means if, in an enactment, the Parliament or the Legislature has defined a term in a particular manner, the said term as defined would govern what is proposed, authorized or done under that enactment, but where the context makes the definition given in the

interpretation/definition clause inapplicable, a defined word when used in the body of the statute, may have to be given a different meaning from that contained in the interpretation clause. Therefore, all definitions in the interpretation clause normally commences with the expression *'unless there is anything repugnant in the subject or context'* or *'unless the context otherwise requires'*.

81. Under the provisions of the Land Reforms Act, the land used for the purpose of growing plantation crop though an agricultural land for all other purposes, nevertheless, such plantation land is exempted from the provisions of Sections 79-A, 79-B and 80, which implies that it is not treated on par with the land on which non-plantation crops or other agricultural produce is grown.

82. Thus, insofar as the State of Karnataka is concerned, having regard to Section 104 and Section 81 of the Land Reforms Act, lands on which the plantation crops are grown, being exempt from the restrictions pertaining to agricultural land mentioned in Section 79-A, 79-B and 80, in view of Section 104 and Section 81 of the said Act,

would not come within the scope and ambit of the 'agricultural land' under Section 31(i) of the SARFAESI Act. In this regard, we find much force in the argument of Sri. Katti appearing for respondent-Bank.

83. Thus, on a contextual interpretation, land on which plantation crops are grown is not agricultural land within the meaning of Section 31(i) of the SARFAESI Act.

84. In this context, we also place reliance on the judgment of the Madras High Court in ***D.Ravichandran vs. The Manager, Indian Overseas Bank and another, CDJ 2006 MHC 789, (Writ Petition No.250/2006 disposed of on 02.02.2006)***, wherein it has been observed that clause (i) of Section 31 of the SARFAESI Act states that the provisions of the Act shall not apply to any security interest created in agricultural land. The Act does not define the term "Agricultural Land". The object of the Act is to improve the recovery process by vesting the powers with the banks and financial institutions powers to take possession of secured assets and sell them in case the borrowers commit default in repayment of the loan. If that is the subject of the enactment and object of the Act,

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the term "agricultural land" cannot be given such a liberal and wide construction or interpretation. Further, when the loan is borrowed from a bank and there is a default in repayment and measures are initiated under the SARFAESI Act, after issuance of notice and receipt of reply, questions such as the loan being agricultural loan or the land being the agricultural land may not be raised, particularly when the credit facility is in the nature of agricultural loan on agricultural lands being given as secured assets. This reasoning is in line with what we have deduced above. The same is also in consonance with the provisions of Land Reforms Act and Karnataka Agricultural Income Tax Act, 1957, which apply only to plantations crops.

85. In Writ Appeal No.538 of 2020, the loan was obtained for agricultural purposes and there being no bar for the mortgage of any land or interest therein in favour of the financial institution such as a bank, as security for agricultural purpose, the sale of such land or interest therein for the enforcement of the said security is permissible as per Section 80 read with Section 104 of Land Reforms Act.

86. In Writ Appeal No.545/2020, under Section 104 of the Land Reforms Act, there being an exemption of the applicability of the provisions of Section 79-A, 79-B and 80 to plantations or lands on which the plantation crops are raised, such as coffee estate, the said lands could be mortgaged for the purpose of credit facility to a financial institution and the bar under Sections 79-A, 79-B and 80 would not apply. Hence, there was no bar for the mortgage of coffee estate in this case. Consequently, for the realization of the outstanding debt, the security could be enforced by sale of the land or interest therein.

87. Thus, what emerges is that the land on which plantation crops are raised (coffee in the instant case), if mortgaged or given by way of a security to a financial institution to obtain a credit facility, whether for an agricultural purpose or for a non-agricultural purpose, the said security could be enforced and Section 31(i) of SARFAESI Act does not apply to such land. That means the financial institution can enforce the security created on such lands. We make it clear that this judgment concerns the interpretation of lands on which plantation crops are grown being construed as agricultural lands within Section 31(i) of the SARFAESI Act only as the lands in these cases concern

plantation crops. We have not ventured to consider the matter in the context of non-plantation crops.

88. Hence, in the instant case, the securities created in the coffee plantations can be enforced for the realization of the debts as coffee plantation would not come within the scope and ambit of agricultural land under Section 31(i) of the SARFAESI Act insofar as State of Karnataka is concerned.

Conclusions:

89. In view of the aforesaid discussion, the following conclusions are arrived:

- (i) That in these cases, the writ petitions were maintainable under Article 226 of the Constitution of India;
- (ii) That the expression 'agricultural land' in Section 31(i) of the SARFAESI Act, does not include land on which plantation crops are grown namely, cardamom, coffee, pepper, rubber and tea as defined in Section 2(A)(25) of the Land Reforms Act. Therefore, the measures initiated by the respondent banks in relation to the coffee estates in these appeals are not hit by

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Section 31(i) of the SARFAESI Act, as the said Act is applicable to land on which plantation crops are grown, including coffee plantation, in the instant cases.

90. In the result, the writ appeals are **disposed** in the aforesaid terms.

Parties to bear their respective costs.

In view of the disposal of the appeals in the aforesaid terms, pending applications stand disposed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*RK/-S**
*Ct: R**