



APAC NEWSLETTER

Legal, Compliance and ESG

9th February 2023

Dear Readers, we bring to your reading and attention following topics:

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A. Important Case Laws

~ Legal Team

1. No prior notice is required to be issued before classifying the account of a person as NPA and Classifying an account of Borrower as NPA does not give him any cause of action to file a writ petition

Case Name: M/s Neelam Beverages Vs. State of Madhya Pradesh

Case Citation: [\(2022\) ibclaw.in 276 HC](#)

Hon'ble High Court held that no prior notice is required to be issued before classifying the account of a person as NPA. However, the case of M/s Amar Alloys Private Limited (Regd.) Vs. State Bank of India, on which learned counsel for the petitioner has placed reliance is under pending adjudication before the Supreme Court and even otherwise. The court is not convinced with observation made by the Division Bench of Punjab and Haryana High Court in the aforesaid case rather the view taken by the Jharkhand High Court in the case of Partitran Trust is more appropriate. Further, it held that mere issuance of notice under Section 13(2) of the SARFAESI Act, 2002, does not give any cause of action to the petitioner/borrower to file a writ petition under Article 226 of the Constitution of India before the High Court.

2. Once secured property is put as a security by way of mortgage, the same will not be treated as agricultural land and burden is upon borrower to prove that secured properties are agricultural lands and actually being used as agricultural lands and/or agricultural activities are going on.

Case Name: K. Sreedhar Vs. M/s Raus Constructions Pvt. Ltd. & Ors.

Case Citation: [\(2023\) ibclaw.in 06 SC](#)

In this landmark judgment, Hon'ble Supreme Court held that once the secured property is put as a security by way of mortgage etc. meaning thereby the same was not treated as agricultural land, such properties cannot be said to be exempted from the provisions of the SARFAESI Act under Section 31(i) of the SARFAESI Act. The Hon'ble Court set aside impugned order of High Court holding that the High Court has shifted the burden upon the secured creditor to prove that the properties are non-agricultural lands. When it was the case on behalf of the borrowers that in view of Section 31(i) of the SARFAESI Act, the properties were agricultural lands, the same were being exempted from the provisions of the SARFAESI Act, the burden was upon the borrower to prove that the secured properties were agricultural lands and actually being used as agricultural lands and/or agricultural activities were going on.

3. Whether the MSMED Act, 2006 would prevail over the SARFAESI Act, 2002?

Case Name: Kotak Mahindra Bank Ltd. Vs. Girnar Corrugators Pvt. Ltd. & Ors.

Case Citation: (2023) ibclaw.in 05 SC

In this case, Division Bench of the High Court has allowed an appeal and has quashed and set aside the judgment passed by the learned Single Judge and has observed that MSMED Act will prevail over SARFAESI Act, 2002. Hon'ble Supreme Court held that Section 26E of the SARFAESI Act which is inserted in 2016 is also having a non-obstante clause. As per the settled position of law, if the legislature confers the later enactment with a non-obstante clause, it means the legislature wanted the subsequent/later enactment to prevail. Thus, a priority conferred / provided under Section 26E of the SARFAESI Act would prevail over the recovery mechanism of the MSMED Act. The aforesaid is to be considered along with the fact that under provisions of the MSMED Act, more particularly Sections 15 to 23, no priority is provided with respect to the dues under the MSMED Act, like Section 26E of the SARFAESI Act. It also held that while exercising power under Section 14 of the SARFAESI Act, even the District Magistrate and/or the Chief Metropolitan Magistrate has no jurisdiction to adjudicate the dispute between secured creditor and debtor Court.

4. While deciding Section 14 application under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), is the District Magistrate empowered to decide dispute of any other nature between the parties to the extent that only after such disputes of other nature are decided only then an order for physical possession will be passed?

Case Name: Balkrishna Rama Tarle Dead Thr LRS & Anr. versus Phoenix ARC Private Limited & Ors

Case Citation: Special Leave Petition No. 16013 of 2022, Supreme Court of India

In this case, there was tenant on the mortgaged property. When section 14 application was filed by the secured creditor, the District Magistrate/Designated Authority passed an order that once the concerned secured creditor terminates the tenancy rights of the third person in respect of the mortgaged property by following due procedure of law, only then further orders regarding possession of the mortgaged property under Section 14 of the SARFAESI Act will be decided. While deciding this case in the Petition, the Hon'ble Supreme Court observed that powers exercisable by District Magistrate under Section 14 of the SARFAESI Act are not adjudicatory. The Court further held that once all the requirements under Section 14 of the

SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the District Magistrate to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the District Magistrate is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be referred to raise objections in the proceedings under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal. Thus, while deciding Section 14 application under SARFAESI, the District Magistrate must not decide dispute of any other nature between the parties. Once elements of Section 14 are fulfilled, the Magistrate must pass the necessary order for physical possession of the secured asset in favour of the Secured Creditor.

B. Importance of Rajasthan Records of Rights

~ Kiran Thakur- Manager Legal

Importance of Rajasthan Records of Rights

Rajasthan Records of Rights is an extract from the land records register held by the Revenue Department of State Government. This revenue record (ROR) contains all information regarding the land/property and history of landholders. This land record extract is a vital indicator of the legal status of a land/property. The Rajasthan ROR register is maintained in the Revenue Departments for every village separately. Rajasthan Government digitised all land records online. Landowners or Property holder in Rajasthan can easily access Government land records through the official website. In this article, we look at the procedure to get a certified copy of Rajasthan Records of Rights online in detail.

Importance of obtaining a certified copy of Rajasthan records of rights is described here:

- Rajasthan records of rights (ROR)/ Jamabandi endorses the real owner of a land;
- This land revenue record (ROR) is helpful to detect false claim on the property;
- Usage of an extract of revenue records avoids the land grabbing;
- Rajasthan record of rights (revenue record) can be used in the court litigations related to land/property;
- Rajasthan records of rights will help holder to avoid any legal hassles in the future.

Uses of Rajasthan Records of Rights (ROR)

The following are some of the important purposes of Rajasthan Records of Rights (ROR):

- In Rajasthan, ROR can be used to check the ownership of an ancestral land or any other property;
- Extracts of ROR/Jamabandi can be used to get details of land type, and the variety of activities carried out on land;
- Rajasthan ROR (revenue record) is a vital document to obtain information regarding the agricultural aspect of the land and its surrounding areas;
- ROR (land records) is required at Registrar's office when sale transaction of land (mutation) is being done;
- Rajasthan record of rights is one of the mandatory documents to raise farm credit to apply for the loan from a bank;
- The court may need land records proofs in case of any civil litigation. Extract of ROR can be produced for this purpose;
- It is crucial to check the property card of the seller and ensure ownership of the area while buying land in Rajasthan;
- Buyer has to verify the ownership of the land (ROR) on which the flat is constructed while purchasing a flat.

Attributes in Rajasthan Records of Rights

The Rajasthan Records of Rights (ROR extract) contains the following details about land or property:

- Changes in ownership
- Nature and limits of owner's rights and conditions
- Mutation numbers
- Type of irrigation (such as Irrigated kind or Rainfed nature)
- Type of soil (agricultural or non-agricultural)
- The field in possession of landholder and the classification of each area are entered from the Dag Chitha
- Survey number of the land
- Area of the earth – fit for cultivation
- Details of charges of attachment and decrees as per the order of the civil court or revenue authorities
- If any aspects of pending litigations

- Details of pending loans for buying seeds, pesticides or fertilisers
- Information on the type of crops planted in the last cultivating season
- Aspects of tax paid or unpaid
- Details of the loan taken by the owner

Eligibility Criteria

The certified copy of Rajasthan records of rights will be provided, if there are no disputes regarding its ownership and the concerned land should not Rajasthan Government land or any assigned land belonging to the Government.

Online Procedure for Getting Rajasthan Records.

Procedure to obtain a Rajasthan Records of Rights (ROR) is described in detail below:

Step 1: Applicant needs to visit the home page of the Rajasthan Apna Khata web page.

Step 2: From the home page, you need to select the Apna Khata. The link will redirect to new page.

Step 3: The digital map of Rajasthan will be displayed. To view the records of rights details, you need to select the appropriate district where the property/ land is situated.

Step 4: By selecting the district, digital map of Tahsil will be displayed. The applicant needs to select the concerned.

Step 5: By selecting the Tehsil, the link will redirect to a new page. Select the Cadastral year for which the Jamabandi/Records of rights (ROR) is needed. Once you selected the link will redirect to new page.

Step 6: In the new page the selected District, Tahsil name, the selected year will be available. One can get the records of rights details by following methods:

- View all accounts of Mauja by name
- View all reports of Mauja as per Khasara number
- View account number
- View account holder name

Step 7: If the applicant wants to view all accounts of Mauja by name, filter Mauja list of the letters as shown. If you wish to view by account number or Khasara number or name, the same will have to be provided.

Step 8: Once you selected the method, provide details, and click on Get duplicate option. The revenue record (ROR) with details of Name of royalty, Father's/, Husband's name, Account Number, Khasara number, Authority record will be displayed.

Step 9: By clicking on the print option, the certified copy of Rajasthan records of rights can be obtained.