

Tenancy created by the borrower after receipt of notice under Section 13(2) of the SARFAESI Act, without prior written consent of the secured creditor, confers no enforceable right, title, or interest against the secured creditor or auction purchaser

The Calcutta High Court in the case of **Boon Realtors vs Julien Educational Trust [F.M.A.T 493 of 2025]** dated June 09, 2026, has that a tenancy created by the borrower after receipt of notice under Section 13(2) of the SARFAESI Act, without prior written consent of the secured creditor, is hit by Section 13(13), is a nullity, and confers no enforceable right, title, or interest against the secured creditor or auction purchaser. Further, where the reliefs in a civil suit are directed against sale certificate, sale deed, and other consequences of measures taken under Section 13(4), such dispute falls within the scope of Section 17 and the jurisdiction of the civil court is barred by Section 34 of the SARFAESI Act.

The Court also affirmed that intermittent user of vacant land does not amount to physical possession, and symbolic or deemed possession delivered under a SARFAESI sale can, in such circumstances, suffice to establish possessory right in favour of the auction purchaser.

The Court observed that the tenancy agreement dated 4 January 2016 was executed long after the notice under Section 13(2) dated 13 May 2011 and therefore squarely offended Section 13(13) of the SARFAESI Act. Since no written consent of the secured creditor had been shown, the Court held that the tenancy was a nullity and conferred no title upon the plaintiff. The Court also rejected the plaintiff's objection regarding service or knowledge of the notice, observing that the law did not require service of notice under Sections 13(2) or 13(4) upon anyone other than the borrowers, and that the plaintiff, claiming through the borrowers, had no locus to challenge the propriety of such notice after the process had culminated in a valid sale certificate and sale deed.

On possession, the Court found it significant that the plaintiff had neither sought a possessory injunction in the plaint nor in the temporary injunction application. It noted that the plaintiff's own case, including its letter dated 6 November 2023, showed only beneficial use from September 2023 and not continuous possession. The Court held that such intermittent user by students and guardians during school hours could not amount to physical possession. Since the property was vacant land, the Court held that symbolic or deemed possession delivered under the sale certificate and sale deed was sufficient to clothe the appellant with possessory rights, especially when no continuous physical possession had been established by the plaintiff.

The Court also held that the plaintiff's reliance on the expressions "tenanted," "as is where is," and related wording in the sale documents was misplaced. It found that the "tenants" referred to in the sale notice were other persons involved in prior litigation and not the present plaintiff. It further held that the sale deed had to be read as a whole and, when so read along with the sale certificate, it clearly showed that possession had been handed over to the appellant and the sale was free from encumbrances known to the secured creditor.

On maintainability, the Court compared the prayers in the suit with Sections 13, 17, and 34 of the SARFAESI Act and held that every relief sought by the plaintiff, declaration that the sale certificate and sale deed were illegal, cancellation of those documents, and injunction restraining the appellant from asserting rights under them, was in substance a challenge to measures taken under Section 13(4). Such grievances, the Bench held, lay before the Debts Recovery Tribunal under Section 17, and therefore the civil court's jurisdiction was expressly barred by Section 34. It added that maintainability of the suit was an essential component of a prima facie case for injunction, and since the suit was prima facie barred, no injunction ought to have been granted.

The Court further found that the trial judge had committed errors by overlooking the effect of Section 13(13), misconstruing the "as is where is" clauses, holding that Section 34 did not bar the suit, and granting protection regarding possession despite there being no such prayer in the injunction application. It also held that the trial court had ignored an earlier injunction order protecting the appellant's possession in relation to the same property.