IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.17206 of 2018

National Trust Housing Finance Ltd.,
A Company incorporated under the Companies Act,
having its office at
No.1/10, Club House Road, Subramanian Building,
Ground Floor, Anna Salai,
Chennai - 600 002, rep. by its Authorised Officer,
Mr.S.Pugalendhi ... Petitioner

vs.

The District Collector cum District Magistrate,
Office of the Collectorate,
Vellore District. ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent, namely the District Collector cum District Magistrate of Vellore to provide administrative assistance on an expeditious basis under Section 14 of the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred and called as the SARFAESI Act to take possession of the secured assets with respect to the applications filed by the petitioner, which is pending on the file of the respondent.

For Petitioner : Mr.S.Jothishmuppidath
for M/s.V.Jayachandran and Asso.

For Respondent : Mr.V.Prabhu
Government Advocate

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Seeking assistance, for taking physical possession, National Trust Housing Finance Limited, Chennai, represented by its Authorised Officer, has filed three petitions, in respect of the borrowers viz., Mr.Natarajan, Mr.Gopi.I and Ms.S.Selvi, respectively, during December 2016 and September 2017, under Section 14 of the SARFAESI Act, 2002, before the District Collector cum District Magistrate, Vellore District, respondent herein.

2. According to the petitioner, the said petitions are pending for more than ten months. Left with no other alternative, instant writ petition has been filed for a mandamus, directing the respondent, to pass orders on the petitions, filed under Section 14 of the SARFAESI Act, within such time frame to be fixed by this Court.

3. On this day, when the writ petition came up for admission, on instructions, Mr.V.Prabhu, learned Government Advocate submitted that orders are yet to be passed in the petitions filed under Section 14 of the SARFAESI Act, 2002. He prayed for four weeks time.

4. Heard the learned counsel appearing for the parties and perused the materials available on record.

5. Section 14 of the SARFAESI Act, 2002 mandates that on receipt of an affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets, within a period of 30 days from the date of application. Proviso to the said Section states that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate, within the said period of thirty days, for the reasons beyond his control, he may after recording reasons, in writing, for the same, pass the order within such also period but not exceeding in aggregate 60 days.

6. The Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014, has issued directions, stating that there should be speedy disposal of the application filed under Section 14 of the SARFAESI Act. The said letter is extracted hereunder:-

"I am to invite your kind attention to the reference cited (copy enclosed) wherein the GM, SLBC, Chennai, has requested to advise the District Collectors (District Magistrates) for speedy disposal of applications filed by banks to assist in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002.

2. In this connection, I am to request you to take necessary action for speedy disposal of the applications filed by the banks in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002, without affecting the image of the administration."

7. Following the said letter, in W.P.No.7813 of 2016, dated 22.04.2016, a Hon'ble Division Bench of this Court, has passed the following order:-

"In the light of the above, we direct the District Collector (District Magistrate), Thanjavur District, to pass orders on the Application dated 18/8/2015 in file Ref.No.34810/2015, filed under Section 14 of the SARFAESI Act, within the period of two months from the date of receipt of a copy of this order. While doing so, procedure set out under Section 14 of the Act should be followed. Mr.B.Kumar, learned Additional Government Pleader is directed to forward the copy of this order to the Principal Secretary to Government, Finance (Res.II), Department, Chennai for appropriate follow up action. Along with the supporting affidavit, to the instant writ petition, the petitioner has also enclosed the copies of the petitions, dated 8/1/2014, 7/5/2014, 11/9/2014, 24/12/2014 and 31/1/2015, filed under Section 14 of the SARFAESI Act, 2002."

8. Further, the Secretary to Government, Finance (Res.II) Department vide, Letter No.32082/Fin/Res.II/2017, dated 03.08.2017, has issued directions to all District Collectors, stating that they are supposed to act on the SARFAESI Application within a period of 30 days for the purpose of taking possession by lending banks. The said letter is extracted hereunder:-

To
All District Collector (w.e.)
Sir / Madam,

Sub: SARFAESI Act, 2002 - Action of District Collectors being Chief Metropolitan Magistrate / District Magistrate under Section 14, appropriate file action requested - Reg.

Ref: Letter received from the Zonal Manager of Indian Bank, Zonal Office - DDDC Building, 1st

Floor, 91, Pennagaram Road, Dharmapuri - 636 701, dated 28.06.2017 addressed to the CS to Government of Tamil Nadu.

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I am to invite your attention to the reference cited received from the Zonal Manager, Indian Bank in connection with taking appropriate action under Section 14 of the SARFAESI Act, 2002.

2. As per Section 14 of the SARFAESI Act, 2002 the Authorised Officer of lending banks can approach the District Collectors being CMM/DM, by filing an application to take actual possession / Control over the property of the NPA. According to the Act, the District Collectors are supposed to act on that application within a period of 30 days for the purpose of taking possession by lending banks. Therefore, I am to request you to take immediate action as per the SARFAESI Act without any delay.

3. I am also to request you to acknowledge the receipt of this letter."

9. Placing on record the submission of the learned Government Advocate and in the light of the directions issued by the Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014, following the earlier order of this Court in W.P.No.7813 of 2016, dated 22.04.2016, and also the subsequent directions of the Secretary to Government, Finance (Res.II) Department vide Letter No.32082/Fin/Res.II/2017, dated 03.08.2017, we direct, the District Collector cum District Magistrate, Vellore District to dispose of the petitions filed, seeking assistance for taking physical possession, if not done earlier, within a period of four weeks, from the date of receipt of a copy of this order. While doing so, District Collector cum District Magistrate, Vellore District, should act in accordance with Section 14 of the SARFAESI Act, 2002

10. With the above direction, this writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector cum District Magistrate,
Officer of the Collectorate,
Vellore District.

+1cc to Mr.  Advocate, S.R.No.45355 & 46181
+1cc to the Government Pleader, S.R.No. 45234

W.P.No.17206 of 2018

skv(CO)
TR(31/07/2018)