IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.P.No.29670 of 2017

Vijaya Bank, Regional Office
Raja Plaza, III floor, 1112, Avinashi road
Near lakshmi mills,
Coimbatore, Tamilnadu-641037
rep. by its Chief Manager &
Authorised Officer .. Petitioner

Vs.

1. The Chief Secretary
   Government of Tamil Nadu
   Secretariat, Fort St.George
   Chennai-600 009

2. The Home Secretary
   Home & Public Administration Department
   Secretariat, fort St.George
   Chennai-600 009

3. The Secretary to Government
   Finance Department,
   Government of Tamil Nadu .. Respondents

(R3 suo motu impleaded vide order dt.27.03.19 made in WP.29670/17)

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to ensure strict compliance of the time limit enumerated under Section 14 of the SARFAESI Act by the District Magistrate/District collector in passing orders by them on the applications under the said section and/or frame such guidelines.

For Petitioner : Mr.P.Ilaya Rajkumar
For Respondents : Mr.E.Manoharan, AGP

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O R D E R

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

Petitioner bank a nationalized bank, represented by its Chief Manager has filed this instant petition for Public Interest, praying for a direction to the respondents, to ensure strict compliance of the time limit enumerated under Section 14 of the SARFAESI Act,2002 by the District Magistrate/District collector in passing orders by the District Collector, them on the applications under Section 14 of the SARFAESI Act,2002 and/or frame such guidelines.

2. Petitioner bank has approached this Court for a direction to deal with the applications under Sec. 14 by the District Magistrates, for enforcement of the securities, in realizing of the dues, in the NPA accounts of various banks. Banks and notified financial institutions are empowered under the special enactment, namely The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act', 2002, to enforce the securities for realisation of the dues, without the intervention of the courts. For all practical purposes, the enactment,' enables the banks and financial institutions to approach the District Collectors, for necessary assistance, for taking possession of the secured assets, and to avoid any law and order problem. Since the said provision is not being effectively implemented, and being frustrated and defeated by various executive delays, as could be seen from the various materials placed in the typed set of documents, the petitioner bank is constrained approach this Court, for appropriate directions. According to the bank, an effective implementation of the provisions of the enactment under Section 14 of the SARFAESI Act,2002 without any lethargically attitude, huge time spent on litigations and court hours refused to be addressed.

3. Petitioner Bank is one of the nationalised banks in India and offers, a wide range of financial assistance and services, to the customers through various delivery channels. Petitioner Bank a nationalized bank on 15th April 1980 along with 5 other banks. As of now, Petitioner Bank has crossed a milestone business of Rs. 2,30,146 Crores. Bank has got 32 Regional Offices of which 2 Regional Offices, with 150 branches in the state of TAMILNADU. Petitioner Bank during the course of their banking business activities are catering to the needs of the individual borrowers and Institutional borrowers by lending various types of loans i.e., starting from people in the lower strata of society middle class people to the Corporate sector and also taking care of the interest of students in the matter

of lending educational loans. The entire banking activities, are carried on by the petitioner strictly, in terms of the guidelines of the Reserve Bank of India.

4. Petitioner further submitted that during the year 1990, Banks and Financial institutions, experienced considerable difficulties, in recovering loans and enforcement of securities, charged with them and that existing procedure for recovery of debt, due to the banks and financial institutions, blocked a significant portion of their funds in unproductive assets, value of which deteriorated with the passage of time. As on 30th September 1990, more than 15,00,000 cases were filed by the Public Sector Banks and about 304 cases filed by financial institutions were pending in various courts, for recovery of debts involved, more than Rs. 5622 Crores were in dues to Public Sector banks and about Rs.391 crores in dues of the financial institutions. Locking up of such huge amount of public money in litigation, had prevented proper utilization and recycling of funds for the development of the country. Accordingly, the Central Government constituted a Committee headed by Shri. M.Narasimham. Based on the recommendation of the said Committee, Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms, were formed. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted on 24.06.1993 to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith. Accordingly across the country DRT's/DRAT's have been constituted. The Bank's/Financial Institutions started filing the cases before the DRT. The said Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has been subjected to various amendments over a period of time, and presently the enactment itself is known as Recovery of Debt and Bankruptcy Act.

5. Petitioner has further submitted that during the year 2000 while the banking industry in India was progressively complying with the international prudential norms and accounting practices, there was no legal provision for facilitating securitization of financial assets of banks and financial institutions. Further, unlike International Banks, the banks and financial institutions in India did not have power to take possession of security and sell them. Since the existing legal frame work relating to commercial transaction had not kept pace with the changing commercial practices and financial sector reforms, which resulted in slow pace of recovery of defaulting loans and mounting levels of Non-Performing Assets (NPAs) of banks and financial institutions. Accordingly, the Central Government have constituted another Committee headed by Shri.

Narasimham and Shri. Andhyarujina for the purpose of examining banking sector reforms and considered the need for changes in the legal system in respect of these areas. These committees, inter alia, suggested enactment of a new legislation for securitization an empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the Court. Acting on these suggestions, The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June 2002, to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected there with or incidental there to. Later the Ordinance has been replaced by an enactment. The provisions of the said Act enables banks and financial institutions to realize long terms assets, manage problem of liquidity, assets liability mismatches and improve by exercising powers to take possession of securities, sell them and reduce non performing of assets by adopting measures for recovery or reconstruction.

6. Petitioner has further contended that as per the SARFAESI Act,2002 under Part III, provides for enforcement of security interest and the manner in which the same has to be enforced. Issuance of a demand notice is contemplated under Sec. 13 (2) of the Act and thereafter on the non compliance, the Authorised Officer is vested with the power to take possession and deal with the secured asset, under Sec. 13 (4) of the Act. To enable an effective enforcement by taking physical possession, necessary assistance can be sought by a non-adjudicatory mechanism empowering the Chief Metropolitan Magistrate/District Collector to assist the secured creditor in taking physical possession of the secured asset. He further submitted that certain amendments were made to Sec.14, primarily, fixing a responsibility on the Authorised Officer, by directing to file an affidavit as regarding the compliance of the statutory provisions and the rules.

7. Petitioner has further submitted in several case the Hon'ble Supreme Court had specific occasions to deal with the interpretation of the said provision, in the case of Transcore, reported in 2006 (5) CTC 753 and SCB vs Noble Kumar, reported in (2013) 9 SCC 620. Petitioner has further submitted that this Court on an earlier occasion had to deal with Section 14, in the context whether the Chief Metropolitan Magistrate referred in the section would also include Chief Judicial Magistrate. The Full bench of this Court in the case of K.Arockiyaraj vs Chief Judicial Magistrate, Srivilliputhur & another., reported in 2013 (6) MU 641, proceeded to hold that Chief Judicial Magistrate is not equivalent to Chief Metropolitan Magistrate and the strict consideration of the provision make it clear that other than in metropolitan areas, only District Magistrate can exercise the

power and not the Chief Judicial Magistrate. Effectively after the decision of the Full Bench, the secured creditors can only seek for remedy under Sec. 14 of the Act before the District Magistrates as the jurisdiction of the Chief Judicial Magistrates is barred, whereas in the metropolitan city the petitions are still filed before the Chief Metropolitan Magistrate.

8. Petitioner further stated that legislature had also made an important amendment to the provision, raising to the situation that there is enormous delay in considering the application and therefore stipulated by an affirmative statement that, the applications shall be disposed of in any case within a period of 30 days. Even after the amendment and a executive instruction from the first Respondent to the various District Collectors, the position still remains the same.

9. Petitioner has further submitted that in terms of Sec. 14 of the Act the Banks and Financial Institutions approach the Chief Metropolitan Magistrate, if the Secured Assets are situated within the Metropolitan Areas and before the District Magistrate i.e., District Collector, in case the Secured Asset are outside the Metropolitan Area. Whereas in Sec-14 Application filed by the Banks/Financial Institutions before the District Magistrate i.e., District Collectors orders are not being passed, in terms of the time limit fixed under the Act. In view of the same the Banks/Financial Institutions are put to hardship and they are not able to take possession of the secured Asset i.e. Mortgaged properties enabling them to bring the same for sale for realizing their dues. The said situation has compelled the Banks/Financial Institutions to approach the High Court by filing Writ Petitions seeking for a Mandamus to pass orders in their Application filed by them before the District Collector/District Magistrate. On an enquiry, the petitioner comes to know that about 200 writ petitions have been filed so far, in the principal bench and Madurai bench and the same came to be disposed. Even after the orders of this Court the District Collector/District Magistrate are not complying with the direction of this Court In view of the same Banks/Financial Institutions are compelled to file contempt petition for implementing the order passed by this Court. As such huge delay is being caused to the Banks/Financial Institutions in enforcing the mortgage for recovering their dues. As such the object of the Act is being defeated in view of the delay caused in disposing of the Applications filed by the Banks/Financial Institution under the Section 14 of the SARFAESI Act. The District Collector/District Magistrate is duty bound to adhere to the time limit fixed under the Act, in passing orders taking into consideration of huge public money being due and

recoverable by the Banks/Financial Institutions is only by sale of the Property alone, after taking physical possession.

10. Petitioner has further submitted that the respondents being the executive ought to have ensured that District Magistrate/District Collector are adhering to the time limit prescribed under the Act, without any delay and thereby, strictly implementing the Act. Whereas no steps worth has been taken by the respondents in exercising their powers vested with them. Since there is a huge delay in passing orders in the applications filed by the Banks/Financial Institution and several applications are pending for passing orders, Banks/Financial Institution through the General Manager-Convenor, State Level Bankers Committee has brought it to the knowledge of the respondents and requested to intervene in the matter. On such request being made the respondent having felt that the District Magistrates/District Collectors are not passing orders within the time limit has sent a communication to all District Collectors vide Letter No.19498/Res.II/2014-1, dated 09.07.2014 for speedy disposal of the applications. Even there after the situation has not changed and still the District Magistrates/District Collectors are not passing orders within the time limit prescribed under the Act, as could be seen from the data compiled by the responses under the RTI Act. Appropriate directions from this Hon'ble Court will go in a long way to alleviate the situation and there would be an accountability for the District Collectors as other wise, they may have to face contempt proceedings before this Court.

11. Petitioner has further submitted that through their officials had gathered information under the Right to Information Act, 2005 to ascertain the pendency of the applications filed by Banks/Financial Institutions, the reply received from the Various District Collectors reveals that there were applications pending for more than year. Whereas, in the present scenario, mounting of arrears of NPA is increasing day by day. Further a major role in recovering the dues by the Banks/Financial Institution is lying in the hands of the District Magistrate/District Collector i.e. ENFORCEMENT OF SECURITY INTEREST under Sec. 14 of the SARFAESI Act. Because of the long pendency and huge delay in passing orders by the District Magistrate/District Collector the Banks/Financial Institutions are not able to enforce the Mortgage/charge/hypothecation for realizing their dues. Hence the Petitioner is approaching this Court by filing the Present Writ Petition with a prayer seeking for a direction to the respondent to ensure strict compliance of the time limit enumerated under sec.14 of the Sarfaesi Act by the District Magistrate/District Collector in passing orders by them under the Act.

12. Petitioner has further submitted that a Mandamus may be issued directing the Respondents to ensure strict compliance of the time limit enumerated under Section 14 of the SARFAESI Act by the District Magistrate/District Collector in passing orders by them on the applications under the said Section and or frame such guidelines to enforce the same.

13. Heard Mr.P. Ilaya Rajkumar, learned counsel for the petitioner and the learned Additional Government pleader appearing for the respondents.

14. While considering the averments, submissions and taking note of the Section 14 of the SARFAESI Act, 2002, the Hon'ble Division Bench of this Court on 21.01.2019, passed the following order:

> Mr.Om Prakash, learned Senior Counsel assisted by Mr.P.Elaya Rajkumar, would submit that for taking possession of the secured assets, the petitioner/Banks have to necessarily approach the jurisdictional District Magistrate/District Collector and the difficulty faced by them is that each District Collector is formulating his own guidelines as to the disposal of the said application.
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> 2. The learned Senior Counsel has drawn the attention of this Court to the judgment rendered by a Full Bench of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 27.11.2015 in the case of T.R.Jewellery and Others v. State Bank of India and others and also drawn the attention of this Court to Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for brevity the "SARFAESI Act") and would submit that statutory obligation is cast upon the jurisdictional District Collectors to pass appropriate at the earliest on the applications filed under Section 14 of the SARFAESI Act and if assets are not taken possession, there may be every likelihood of disposal or alienation of the said property and the banks which advance loans may not be able to recover the dues.
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> 3. The learned Senior Counsel has invited the attention of this Court to the information published by the Public Information Officer, PA (General) to the District Collector, Namakkal, dated 15.09,2017 in M.M.27468/2017/M4, and would submit that in so far as Namakkal District is

concerned, a direct enquiry is also conducted to summon the borrower also and in the light of the said provision, the said procedure adopted by the District Collector, Namakkal is wholly unnecessary and since day in and day out, nationalised banks are finding it difficult to get appropriate orders on the applications filed by them under Section 14 of the Act. Hence, the petitioner/Bank is constrained to approach this Court Court by way of Public Interest Litigation.

4. The learned Senior Counsel would further submit it is high time that the Government frames appropriate guidelines and communicate the said direction to all the District Collectors and the concerned Revenue officials so that these kind of problem will not occur in future.

5. Mr.E.Manoharan, learned Additional Government Pleader appearing for the official respondents 1 and 2 would pray for short accommodation to get necessary instructions as to the framing of the said guidelines.

6. This Court has considered the rival submissions and also perused the material placed on record.

7. It is relevant to extract Section 14 of the SARFAESI Act:-

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in subclause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 rad with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the 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:

Provided also that the requirement of filing affidavit stated in the first proviso shall not

apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.
(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-
(i) to take possession of such assets and documents relating thereto; and
(ii) to forward such assets and documents to the secured creditor]
2. For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any Court or before any authority."

8. Statutory obligation is cast upon the jurisdictional District Collectors to pass appropriate orders as early as possible in respect of the application filed under Section 14 of the Act by the Banks.

9. From the submissions made and materials placed, it prima facie appears that each District Collector is formulating his own policy as to the disposal of the said application and it takes longer time for such a disposal. As rightly pointed out by the learned Senior Counsel appearing for the petitioner that the secured properties have to be taken possession, auctioned and dues to be realised as the banks run its' operations on public money. Therefore, this Court is of the considered view that the affidavit of the first respondent is absolutely necessary. The first respondent by taking note of this order is directed to file a comprehensive affidavit as to the framing of proper and necessary guidelines for dealing with the applications filed under Section 14 of the SARFAESI Act by the District Collector.

List on 07.02.2019."

15. When the matter came up for hearing on 27.03.2019, this Court passed the following order:

> " Mr.E.Manoharan, learned Additional Government Pleader submitted that earlier, having regard to the delay in disposal of the applications filed under Section 14 of the SARFAESI Act, 2002 Secretary to the Government, Finance Department, Government of Tamilnadu, has issued two instructions in the form of letters dated 09.07.2014 and 03.08.2017 to the District Collectors to expedite the disposal of the said applications.
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> 2. Added further learned Additional Government Pleader submitted that the District Collector is the original authority under several enactments, appellate or revision authorities, as the case may be and that he has already been entrusted with duties and responsibilities under beneficial schemes also. But the writ petitioner has not impleaded the Secretary to the Government, Finance Department, Government of Tamilnadu, as necessary party.
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> 3. Having regard to the above submissions, in exercise of powers under Article 226 of the Constitution of India, we suo motu implead Secretary to the Government, Finance Department, Government of Tamilnadu, as 3rd respondent in this writ petition.
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> 4. Registry is directed to make necessary amendments wherever required.
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> 5. For filing affidavit by the Secretary to the Government, Finance Department, Government of Tamilnadu, post on 02.04.2019, in the motion list."

16. Mr.E.Manoharan, learned Additional Government Pleader took us through to the index to the typed set of papers, with regard to the several communications from the Principal Secretary to Government, Finance Department to all the District Collector/District Magistrates, that applications filed by the Banks/Financial Institutions under Section 14 of the SARFAESI Act,2002, have to be disposed of expeditiously. Communications of the Principal Secretary to Government, Finance Department, Government of Tamil Nadu are extracted.

(i) Letter from the Principal Secretary to Government, Finance Department to all District Collectors dated 09.07.2014 reads thus:

Finance (Res.II) Department,
Secretariat,
Chennai.9

From
Thiru K. Shanmugam, IAS.,
Principal Secretary to Government
To
All District Collectors (By Name).
Sir/Madam,

Sub: SLBC - Taking possession of securities under SARFAESI Act, 2002 - Assistance of District Collectors - Requesting - Regarding.

Ref: From the General Manager, Convenor - SLBC Chennai-2, Letter No. SLBC / TN/4/ 2014-15 Dated.02.04.2014.

* * * * *

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.

Sd/-
Principal Secretary to Government

(ii) Letter from the Secretary to Government, Finance Department to all District Collectors dated 03.08.2017 reads thus:

Finance (Res.II) Department
Secretariat
Chennai-9

Letter No.32082/Fin/Res.II/2017 dated 03.08.2017

From
Thiru M.A. Siddique, IAS,
Secretary to Government (Expenditure]

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

Sub:SARFAESI Act, 2002 - Action of District Collector being Chief Metropolitan magistrate/District Magistrate under section 14,private 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

* * * * *

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 Authorized 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.

Yours faithfully,
for Secretary to Government

(iii) Letter from the Secretary to Government, Finance Department to the District Collector, Cuddalore dated 03.80.2017 reads as under:

From
Thiru M.A. Siddique, IAS,
Secretary to Government (Expenditure)
To
The District Collector, Cuddalore (W.e.)
Sir,

Sub : SARFAESI Act, 2002- Application filed by the Vijaya Bank before the District Magistrates Thiruvannamalai, Cuddalore, Kanchipuram, Thiruvallur and vellore - request for intervention action of District Collector being Chief Metropolitan Magistrates/ District Magistrate under Section 14 - appropriate file - Action requested - Reg.

Ref: Received from the letter Regional Manager, Vijaya Bank, Chennai and Zonal Manager, Indian Bank, Dharmapuri addressed to Chief Secretary Government.

1. Lr.No Legal/CHN/sarfaesi/30/2017dated 19.05.2017
2. Lr.No. Legal/CHN/sarfaesi/21/2017dated 16.05.2017
3. No. LegaI/CHN/sarfaesi/31/2017dated 22.05.2017
4. Lr.No. LegaI/CHN/sarfaesi/32/2017dated 22.05.2017
5. Lr.No. Legal/CHN/sarfaesi/33/2017dated 22.05.2017
6. Lr.No. Legal/CHN/sarfaesi/34/2017dated 22.05 2017
7. Letter dated 28.06.2017.

I invite your attention to the references cited (copies of reference enclosed) and request you to look into the matter personally, in order to settle the issue amicably, within the ambit of the established law of the land.

2) As you aware, the Vijaya Bank has raised some serious allegations, which need to be resolved immediately so as to avoid any escalation of the issue. I would appreciate appropriate views from your side on the remarks of the Vijaya Bank in the representations cited in the references.

3) The action taken on the matter may also be appraised to the Government, as soon as possible with intimation to the Vijaya Bank. This may be treated as "MOST IMMEDIATE".

Yours faithfully
for Secretary to Government

(iv) Letter from the Additional Chief Secretary to Government, Finance Department to the Commissioner of Revenue Administratin, Chepauk, Chennai-5 (based on the letter received from the Petitioner's bank) dated 31.07.2018.

Finance (Res.II) Department
Secretariat, Chennai-9
Letter No.39232/Res.II/2018, dated 31.07.2018

From
Thiru K. Shanmugam, IAS.,
Additional Chief Secretary to Government

To
The Commissioner of Revenue Administration,
Ezhilagam Building,
Chepauk,
Chennai - 5 (w.e)

Sir,

Sub: SARFAESI Act, 2002 - Application filed by the Vijaya Bank & Bank of Baroda before the District Magistrates - Request for intervention of Government - For speedy action of District Collectors - Requested - Reg.

Ref: 1.Letter received from the Deputy General Manager, Vijaya Bank, RO, Chennai, letter No, ROC/AGM/ 1464/2018, dated 18.07.2018.
2. Letter received from the Assistant General Manager (DRM), RO, Chennai, letter No.RO:CBE:LEG:54:55, dated 03.07.2018.

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I invite your attention to the references cited (copies of references enclosed) and request you to issue necessary instructions to all the District Collectors, so as to adhere to the provisions o f the SARFAESI Act, 2002, under intimation to Government.

Yours faithfully
for Additional Chief Secretary to Government

(v) Letter from the Additional Chief Secretary to Government, Finance Department to the Commissioner of Revenue Administration, Chepauk, Chennai - 5 dated 13.02.2019 reads as follows:

K. SHANMUGAM Finance [Res.II) Department ,
Additional Chief Secretary to
Secretariat,
Government Chennai-600 009

D.O.Letter No.6888A/Res.II/2019-1,dated 13.02.2019 Dear Dr.Satyagopal,

Sub: Writ Petition - W.P.No.29670 o f 2017 filed by Vijaya Bank, Regional Office, Raja Plaza, III Floor, 1112 Avinashi Road, Coimbatore represented by its- Chief Manager and Authorised Officer – Reg.

Ref: Letter received from the Additional Government Pleader, Government Pleader’s Office, Law Officer's Block, High Court, Chennai, letter dated 09.02.2019.

I invite your attention to the reference cited wherein the Additional Government Pleader, Chennai has stated that in the Writ of Mandamus filed by Vijaya Bank, the Hon'ble Division Bench o f Madras High Court has directed the State Government to issue suitable instructions with regard to-compliance regarding the time limit enumerated under Section 14 of the SARFAESI Act, to the District Collectors.

2. As the above Writ petition is posted for hearing on 21.02.2019, I request you to issue necessary instructions to all the District Collectors, so as to adhere to the provisions o f the SARFAESI Act, 2002.

Yours sincerely,

(vi) Letter from the Additional Chief Secretary to Government, Finance Department to the Commissioner of Revenue Administration, Chepauk, Chennai – 5 dated 26.02.2019 reads as follows:

Finance (Res.II) Department
Secretariat, Chennai-9
Letter No.221./ACS(F)/Fin(Res.II)/2019. dated 26.02.2019

From
Thiru K. Shanmugam, IAS.,
Additional Chief Secretary to Government

To
The Commissioner o f Revenue Administration,
Ezhilagam Building,
Chepauk,
Chennai - 5 (w .e)

Sir,

Sub: SARFAESI Act, 2002 - Representation for the early disposal of 259 nos Petitions filed under sec 14 of the SARFAESI Act filed on behalf of our company – Reg.

Ref: Letter received from the Officer of Dewan Housing Finance corporation Ltd., "Kalpalathika Towers", dated 07.02.2019.

I invite your attention to the references cited (copy enclosed) and request you to issue instructions to all the District Collectors, so as to adhere to the provisions of the SARFAESI Act, 2002, under intimation to Government.

Yours faithfully

for Additional Chief Secretary to Government

(vii) Circular issued by the Commissioner of Revenue Administration (in reference to pending W.P.No.29760/2017) regarding compliance of Section 14 (SARFAESI Act 2002) issued to all District Collectors dated 01.03.2019 reads as under:

Commissionerate of
Revenue Administration and
Disaster Management,
Chepauk, Chennai 600 005.

CIRCULAR

PRESENT: Dr. KORLAPATI SATYAGOPAI, I.A.S.,
Additional Chief Secretary/
Commissioner of Revenue Administration

Rc.No.RA.6(3)/6075/2019
Dated:01.03.2019

Sub: Writ Petition-W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore - to ensure - strict compliance - under - Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 -

Instructions issued- Reg.

Ref: 1. Writ Petition W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore.

2. Additional Chief Secretary to Government, Finance Department D.O.Letter N0 . 6888A/ Res.II/2019-1, dated 13.02.2019.

The Government in Finance Department, Secretariat Chennai- 600 009 in their D.O. letter 2nd cited it has informed that the Additional Government Pleader, High Court of Madras has stated that in the Writ Mandamus filed by Vijaya Bank, Coimbatore in W .P.No.29670/2017, the Division Bench of Madras High Court has directed State Government to issue suitable instructions to the District Collectors with regard to compliance regarding the time limit enumerated under Section 14 of the SARFAESI Act 2002 and requested this Commissionerate to issue necessary instructions to all the District Collectors so as to adhere the provisions of the SARFAESI Act 2002.

2) Section-14 of the SARFAESI Act: Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset, states that

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

(2) For the purpose of securing compliance with provisions of sub section (1) the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used, such force, as may, in his opinion, be necessary

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority

3) In the amendment issued in Sub-section (1) for Section 14 of the SARFAESI Act, 2002, the following provisions have been inserted, namely

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in subclause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 rad with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the 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:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

4) After sub-section (1) of Section 14 of the SARFAESI Act, 2002 the following sub-section has been inserted namely

(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor (ie) the Banker

5) In the amendment issued in sub-section (1) of the Section 14 of the Principal Act,

(i) In the second proviso, after the words "secured assets", the words " within a period of thirty days from the date of application" have been inserted (ii) after the second proviso, the following proviso has been inserted namely:-

" Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his/her control, he/she should be recorded reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days"

6) The District Collectors are hereby directed to follow the above said instructions scrupulously and orders should be passed within the stipulated time limit. Any delay noticed in this regard will be viewed very seriously.

7) The District Collectors are also

instructed a periodical report should be sent to this Commissionerate before 5th of every month on the following format.

District Name	Total No.of pending cases as on date	No of cases order passed during the month	No of cases pending		
			More than 1 month	More than 2 months	More than 3 months

8) The receipt of the circular may be acknowledged by return post.

Sd/- K.SATYAGOPAL
Additional Chief Secretary/
Commissioner of Revenue Administration

17. Learned Additional Government Pleader further submitted that in an identical issue, a Hon'ble Division Bench of this Court in W.P.No.7813 of 2016 by order dated 22.04.2016 has given a directions to the District Collector. The operative portion of the judgment reads as follows:

> " 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."

This Court in W.P.No.4932 of 2018 by its order dated 12.03.2018 dealing with a similar issue has held as follows:

> "7. 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 and the earlier order of this Court in W.P.No.7813 of 2016, dated 22.04.2016, this Court is inclined to pass the following orders:
>
> The District Collector, Thiruvallur District, is directed to dispose of the application dated 07.07.2017, if not done earlier, within a period of three weeks, from the date of receipt of a copy of this order. While doing so, District Collector, Thiruvallur, should act in accordance with Section 14 of the SARFAESI Act, 2002.
>
> 8. With the above observation and direction, this writ petition is disposed of accordingly. No costs.

18. Grievance of the petitioner bank is that applications filed under Section 14 of the SARFAESI Act,2002, are not being disposed in time, banks/financial institutions have to approach this Court by filing writ petitions, to obtain orders directing the District Collectors/District Magistrates for obtaining physical assistance and even after obtaining orders there is delay in passing order, and eventually realisation of the accounts declared as NPA by taking physical possession and sale is delayed. Though, petitioner bank has raised a concern over speedy realisation of public money, and the orders to be passed within time, prescribed under Section 14 of the SARFAESI Act,2002. There are several Acts, which prescribe summary procedures and time. Due to coming into force of new enactments, awareness, there is docket explosion and with the limited number, infrascturcture, even Courts are not able to adhere to the time schedule prescribed in the Acts. Right to speedy investigation and consequently, speedy trial in criminal matters is a fundamental right, which can be enforced. But the same yardstick cannot be strictly applied and enforced in all matters. A District Collector/District Magistrate is the administrative Head of the District. Let us consider the duties and responsibilities of a District Collector/District Magistrate as detailed by the learned Additional Government Pleader in the brief note submitted to this Court.

19. Placing on record the submission of the learned Additional Government Pleader and in the light of the above directions issued by the Additional Chief Secretary to Government vide D.O.Letter No.6888A/Res.II/2019-1, dated 13.02.2019 and the direction of Commissionerate of Revenue

Administration and Disaster Management, Chepauk, Chennai vide Rc.No.Ra6(3)/6075/2019 dated 01.03.2019 and the earlier order of this Court in W.P.No.4932 of 2018 dated 20.03.2018, this Court is inclined to pass the following orders:

The respondents are directed to issue necessary directions to the jurisdictional District Collectors to pass appropriate orders as early as possible in respect of the application filed under Section 14 of the SARFAESI Act,2002 by the Banks. While doing so, the District Collectors are directed to follow the procedure set out under Section 14 of the SARFAESI Act,2002.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai-600 009

2. The Home Secretary
Home & Public Administration Department
Secretariat, fort St.George
Chennai-600 009

3. The Secretary to Government
Finance Department,
Government of Tamil Nadu

+2cc to M/s.Ramalingam, Advocate sr.31904
+1cc to Government Pleader sr.31952

W.P.No.29670 of 2017

nr 18/06/2019