

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08/10.09.2020

DELIVERED ON : 18.09.2020

C O R A M

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.NOS. 28047, 25192 OF 2019, 24655 OF 2018, 32467 OF 2016 AND
29972 OF 2018
AND W.M.P.NOS.20401 & 24765 OF 2019

W.P.No. 28047 of 2019

M/s.Tamilnadu Mercantile Bank Ltd.,
Nerkundram Branch,
Rep. Through its Authorized Officer,
Regional Office:
No.16, Pulla Avenue, Shenoy Nagar,
Chennai - 30. ... Petitioner

vs

The District Magistrate/
The District Collector,
Office of District Collectorate,
Thiruvallur, Thiruvallur District. .. Respondent

W.P.No. 24655 of 2018

State Bank of India
Stressed Assets Recovery Branch,
No.32, Montieth Road, Egmore, Chennai - 08
Rep. By its Chief Manager and
Authorized Officer, Mr.R.Bhaskar .. Petitioner

vs

1.The District Magistrate cum District Collector,
Thiruvallur, Thiruvallur District.

2.Yuvaraj Jayakumar
3.A.Kalaiselvi

.. Respondents

W.P.No.25192 of 2019

M/s.Asset Reconstruction Company (India) Ltd
Rep. By its Authorized Officer,
The Ruby, 10th Floor, Senapati Bapat Marg,
Dadar (West), Mumbai - 400 028.

.. Petitioner

vs

The District Collector
(The District Magistrate)
Salem District, Salem.

.. Respondent

W.P.No.32467 of 2016

Indian Bank,
Chinniampalayam Branch,
1/202, Avinashi Road,
Coimbatore 641 062,
Rep.By its Chief Manager.

.. Petitioner

vs

1. The District Collector,
The Authority Under Section 14 of SARFAESI Act,
Coimbatore District, Coimbatore.
2. M/s.K.N.R.Packaging India (P) Ltd,
Regd.O- Sriram Mohan Complex,
1050/796, 7971, Sathy Road, Coimbatore
and Factory - 3/257/3-4, Muthu Gouden Pudur,
Sulur Tk, Coimbatore - 641 402.
3. K.P.Narayanasamy
4. K.N.Sakthivel
5. S.Amirthamani
6. A.Ramalingam
(R2 to R6 impleaded vide order dated 16.04.19
made in WMP.No.2744/19 in WP.No.32467/16)

.. Respondents

W.P.No.29972 of 2018

Indian Overseas Bank,
Asset Recovery Management Branch,
No.11/952, Cross Cut Road,
Gandhipuram, Coimbatore - 12
Rep. By its Authorized Officer/
Assistant General Manager.

.. Petitioner

vs

1. The District Magistrate and District Collector,
Coimbatore.
2. J.B.Conductors,
Rep. By its Proprietrix
Mrs.Renuka J.Bhojani,
"Amrit", No.12A, Ramalinga Nagar,
4th Cross, Coimbatore - 641 011.
3. Renuka J Bhojani
4. Himali J Bhojani
5. Varun Bhojani
6. Jagadish Bojhani
7. M/s.Focus Marketing,
Rep. By its Managing Partner
R.Kumaravelu,
Thudiyaloor Post,
Coimbatore - 641 034.
8. M/s.Aquasub Engineering,
Rep. By its Managing Partner,
Thiru. Kumeravelu,
Thudiyaloor Post,
Coimbatore - 641 034. ... Respondents

Prayer in W.P.No. 28047 of 2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pursuant to the order in Rc.No.22708/2018/M2 dated 16.082019 passed by the respondent and quash the same and further direct the respondent to render assistance to the petitioner for taking physical possession of the property.

Prayer in W.P.No. 24655 of 2018:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the 1st respondent vide No. Rc.18302/2017/M2, culminating in her order dated 2/8/2018, quash the same and direct the 1st respondent to take possession of the property situated at Plot No.29, No.175/69, Ms.Jaffer Nagar, Karani Village, Thiruvallur Taluk, admeasuring to an extent of 2800 sq ft in survey no. 201 and 202 and hand over the same o the petitioner bank.

Prayer in W.P.No. 25192 of 2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned proceedings in K.Dis 3423/2019/C5 dated .06.2019 on the file of the respondent and to quash the said impugned order, being in derogation of the statutory provisions and decisions of the Hon'ble Supreme Court of India and consequently direct the respondent to pass appropriate order in the petitioner's application in RC No.3423/2017 under Section 14 of the SARFAESI Act rendering necessary assistance to the petitioner to take vacant physical possession of all secured assets as set out therein.

Prayer in W.P.No. 32467 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the proceedings in O.Mu.379/2016 Uu3 dated 03/03/2016 on the file of the respondent, quash the same and consequently direct the respondent to pass orders in the application dated 30.12.2015 filed under Section 14 of the SARFAESI Act appointing a suitable officer to take physical possession of the property namely Land and Building bearing door No.1/611, Kilakku Thottam, Chettipalayam Road, Malumichampatti Village, Coimbatore in present SF No.71/9, and 69/1A totally measuring 2 Acres and 44.25 cents with the RCC Building measuring 680 sq ft and RCC varandah measuring 374 sq.ft and hand over the same to the petitioner.

Prayer in W.P.No. 29972 of 2018:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 1st respondent dated 22/11/2017 in Ref No.5289/2015/E3 quash the same and consequently direct the 1st respondent to take possession of the asset covered under the said proceeding namely the land measuring 4848 Sq.Ft with the constructed area of 4198 Sq.ft situated at SF No.394, 375 and 395/1 in T.S.No. 12/147/2, Ward No.12, Old Door No.22 A, New Door No.12 A bearing building name "Amrit" at site No.7, TP Scheme No.6, Old Municipal Ward No.88, New Municipal Ward; No.15, Ramalinga Nagar, 4th Cross, Sanganoor Village, Coimbatore - 641 011 and hand over the same to the petitioner under Section 14 of the SARFAESI Act.

For Petitioner(s)...

Mr.S.Sethuraman
in WP.28047/19
Mr.F.B.Benjamin George
in WP.32467/16
Mr.Om Prakash, Sr.Adv

for Ms.L.Poompavai
in WP. 24655/18
Mr.Om Prakash, Sr.Adv
for Mr.P.Elayarajakumar
for M/s.Ramalingam Associates
in WP. 25192/19

For Respondent(s)...

Mr.S.R.Rajagopal
Addl.Advocate General
assisted by
Mr.G.K.Muthukumar, Spl.G.P
in WP. 28047/19
for R1 in WP. 32467/16
in WP Nos. 25192 & 24655/19
& 29972 of 2018 for R1

Mr.M.Santhanaraman,
for RR2 to 4 and 6
others - No appearance
in WP.No.29972 of 2018

C.Deivasigamani for R2 to R6
S.Seshachalam for R7
in WP. No. 32467/16

No appearance for R2,R3
in WP.No.24655/18

Mr.F.B.Benjamin George
for impleaded respondent
in W.M.P.No.20401/19

COMMON ORDER

M.M.SUNDRESH., J

The commonality of the issue makes us to dispose of all these writ petitions by a single order.

2. These writ petitions have been filed by the lenders aggrieved over the orders passed by the authority on the applications filed seeking to invoke Section 14 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') towards handing over of the physical possession of the secured assets.

3. In W.P.No.29972 of 2018, the application filed by the petitioner was rejected by taking note of the criminal complaints in the form of First Information Report pending at the relevant point of time. Only the residential properties are to be taken possession of. There are pending suits touching upon the very same property. The suit filed by the alleged tenant is also pending. Accordingly, it was held that the request cannot be considered, particularly when the tenancy Act would prevail over the SARFAESI Act. It is also seen that the petitioner initiated fresh action thereafter. A notice invoking Section 13 (4) of the SARFAESI Act was also put to challenge and the interim conditional order granted has been complied with by the private respondents. However, such an action was initiated by the petitioner without prejudice to the action taken already.

4. W.P.No. 24655 of 2018 has been filed challenging the order passed by the District Magistrate-cum-District Collector, Thiruvallur District, by which the application filed invoking Section 14 of the SARFAESI Act was rejected as not maintainable on the premise that the petitioner has auctioned and sold the property already.

5. W.P.No. 32467 of 2016 challenges the order of the District Collector, Coimbatore, rejecting the application filed, by a cryptic order, by placing reliance upon the letter of the Tahsildar concerned that the mortgaged property is an agricultural one, and therefore would not be amenable for taking action under the SARFAESI Act.

6. W.P.No. 28047 of 2019 is against the order which itself is again rejecting the application filed for possession on the premise that the sale has already been effected.

7. Thus, in all these writ petitions, the issue for consideration is as to whether the District Magistrate is competent to go into the merits of the case such as existence of tenancy, classification of the land as agricultural land, pendency of the civil proceedings and the locus standi to file an application after the sale is effected in favour of the third party.

Submissions on behalf of the petitioners:

8. Learned counsel appearing on behalf of the petitioners submitted that the order impugned cannot be sustained in the eye

of law. The District Magistrate or the Chief Metropolitan Magistrate, as the case may be, cannot go into the merits of the case. What is required to be done by them is to specify the compliance of Section 14(1) of the SARFAESI Act. Once that is done, consequences will have to follow. It is only a mechanism by which the District Magistrate or the Chief Metropolitan Magistrate will have to facilitate in taking possession in favour of the creditor. There is difference between taking symbolic possession and physical possession. There is no bar for maintaining the application by the secured creditor even if sale is effected in favour of the third party. The question of tenancy, the land being agricultural or not, pendency of the suit, among other issues, cannot be decided by the District Magistrate in exercise of power under Section 14 of the SARFAESI Act.

9. Insofar as W.P.No. 29972 of 2018 is concerned, the learned counsel appearing for the petitioner submitted that the subsequent proceedings are obviously without prejudice to the earlier one. Therefore, they would not act as a bar.

10. To buttress their submissions, reliance has been made on the following decisions (i) Harnandrai Badridas v. Debidutt Bhagwati Prasad and others reported in (1973) 2 SCC 647, (ii) Standard Chartered Bank v. C.Noble Kumar and others reported in (2013) 9 SCC 620, (iii) Harshad Govardhan Sondagar v. International Asset Reconstruction Company Limited and others reported in (2014) 6 SCC 1, (iv) Vishal N.Kalsaria v. Bank of India and others reported in (2016) 3 SCC 762, (v) Authorized Officer, Indian Bank v. D.Visalakshi and another reported in (2019) SCC Online SC 1242, (vi) Bajarang Shyamsunder Agarwal v. Central Bank of India and Another reported in (2019) 9 SCC 94, (vii) ITC Limited v. Blue Coast Hotels Limited and others reported in (2018) 15 SCC 99 and (viii) Indian Bank & another v. K.Pappireddiyar and another reported in (2018) 18 SCC 252.

Submissions on behalf of the Respondents:

11. Learned Additional Advocate General appearing for the District Magistrates in all these cases submitted that it is not as if the said authority is a mere post box. Certainly, an element of adjudication is involved. The District Magistrate will have to satisfy on the material before proceeding to act further. There may be a case where the Government land can be taken possession of. Similarly, when there is non-compliance of Section 14(1) of the SARFAESI Act, the application filed is liable to be rejected. When sale is already effected, the secured creditor loses his title. Therefore, he cannot invoke Section 14 of the SARFAESI Act. Similarly, the issue qua the nature of land being agriculture or otherwise and the one of

pendency can very well be decided by the District Magistrate. Learned Additional Advocate General placed reliance upon the decisions of the Calcutta High Court (i) United Bank of India v. State of West Bengal reported in 2017 SCC Online Cal 13041 and (ii) Central Bank of India v. Debasish Nandy and others in F.M.A.T 1835 of 2014 dated 05.02.2016. Incidentally, it is also submitted that the judgments relied upon by the learned counsel appearing for the petitioners are distinct on facts.

12. Learned counsel appearing for the private respondents in W.P.No. 29972 of 2018 submitted that in view of the subsequent development in which the proceedings initiated were put to challenge and the matters are pending before the Debts Recovery Tribunal with interim orders which have been duly complied with, the writ petitions will have to be dismissed. Further, the petitioner has chosen to proceed only against the house property leaving the other one. There is non-compliance of Section 14(1) of the SARFAESI Act as the affidavit filed was without adequate particulars.

13. Mr. Benjamin George, learned counsel appearing for the writ petitioner in W.P.No. 29722 of 2018, by way of reply, submitted that the question of non-compliance does not arise for the action taken in the year 2014 as the amendment was subsequent. The other properties could not be proceeded because of the difficulties and the problem created by the private respondents. In the pending suits, the petitioner/Bank is not a party and the complaints given were closed. An attempt to alienate the property of the borrower was made without consent of the Bank. In any case, there is no prohibition in law to proceed against the present property.

14. Learned counsel appearing for the respondents in all other matters reiterated the submission made by the learned Additional Advocate General. Accordingly, it is submitted that there is sufficient power available to the District Magistrate to go into the merits of the case.

15. We have heard the learned counsel appearing for the parties.

16. Before proceeding with the contentions raised at the Bar, let us have a close scrutiny of Section 14 of the SARFAESI Act which is extracted hereunder:

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.— (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of

the secured assets 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 assets, 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 sub-clause (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 read 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 [within a period of thirty days from the date of application]:

[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 control, he may, after recording reasons in writing for the same, pass the order within such also period but not exceeding in aggregate sixty days.]

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.”

17. Section 14 of the SARFAESI Act is meant only to assist the secured creditor in taking possession of the secured assets. This is the sum and substance as well as the object and import of this provision. Section 14 of the SARFAESI Act is required to be invoked only when a secured creditor is not in possession. Section 13(4) speaks of taking possession. A symbolic possession can be recorded under this provision apart from actual possession being taken. Thus, when the actual possession is unable to be taken, the secured creditor will have to seek the help of Section 14 of the Act through the authority constituted for the aforesaid purpose. Therefore, Section 13(4) of the Act has to be read in consonance and in conjunction with Section 14 of the Act. That is the reason why Section 14 of the Act speaks of giving assistance to the secured creditor. This provision is nothing but a provision meant to give effect to the earlier one. Therefore, in a case where the possession has already been taken, there is no need for the secured creditor to invoke Section 14 of the Act. To put it differently, only in a case where the actual possession is required to be taken and the secured asset is required to be sold or to be transferred, the application is required to be filed under Section 14. Section 14 of the SARFAESI Act thus not only provides for taking possession but also provides for a control of the secured asset.

18. When such an application by way of request is made, the District Magistrate shall take possession and thereafter forward the asset along with documents to the secured creditor. Therefore, the mandated duty under this provision is to hand over the possession when asked to the secured creditor by the District Magistrate. The proviso to Section (1) enjoins upon certain compliance qua the secured creditor. These compliances are procedural in nature, so as to enable the District Magistrate to know the facts. There is no difficulty in upholding that the District Magistrate is expected to satisfy the factual position after going through the particulars mentioned in the affidavit, but by no stretch of imagination be extended to be a process of adjudication. To be noted, the borrower or the guarantor is not required to be heard while invoking the powers under Section 14. This once again reiterates the role that is required to be played by the District Magistrate. An order passed is not a quasi judicial order but only a continuation of the earlier proceedings. If anybody claims an independent right, it can only be raised and adjudicated upon before the Tribunal and certainly not by the District Magistrate in exercise of powers under Section 14.

19. In a case where there is no compliance of Section 14(1) by not disclosing the requisite facts in the affidavit, it may be a ground for returning the application, but not meant to be rejected by declining to exercise the powers conferred.

20. The decision of the District Magistrate upon perusing the affidavit is only to its contents. Thus, the contents of the affidavit have to be read in consonance with the documents and the existential facts and thus nothing beyond. The second proviso to Section 14 therefore clearly says that after undertaking the said exercise, the District Magistrate shall pass orders towards taking possession of the secured asset.

21. Under Section 14(1) (a) of the Act, the District Magistrate can authorize an officer subordinate to him. This authorization is also for the purpose of taking possession of such assets and documents relating thereto. When there is any possible resistance, the District Magistrate will give effect to the order passed under Section 13(4) and is at liberty to use the necessary force. Sub-Section 2 of Section 14, therefore, speaks of such usage of force only for the purpose of securing compliance with sub-section (1) which is either to take possession or control of a secured asset. Therefore, this provision is part of the overall scheme of the enactment. This understanding can be strengthened on a reading of sub-section (3) which prohibits any challenge to an act of District Magistrate in complying with Section 14(1) before any Court or authority.

22. In *Authorized Officer, Indian Bank v. D. Visalakshi and another*, reported in (2019) SCC Online SC 1242, the Apex Court held as under:

40. Now we may turn to the decision in *Standard Chartered Bank (supra)*. The Court was called upon to consider the argument that secured creditor before invoking the remedy Under Section 14 of the 2002 Act, must necessarily make an attempt to take possession of the secured assets and can take recourse thereto only if he fails in that effort and encounters resistance to such an attempt. While considering that argument, the Court analysed Sections 13, 14 and 15 of the 2002 Act and opined that Section 14 of the 2002 Act enables the secured creditor who desires to seek the assistance of "State's coercive power" for obtaining possession of the secured assets to make a request in writing to the authority designated therein, within whose jurisdiction the secured asset is located. It also noted that the

authority after receiving such request Under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice Under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in paragraph 23 of the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in Clauses (i) to (ix). In paragraph 25 of this decision, the Court noted as follows:

25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.

41. The Court then went on to observe in paragraph Nos. 33 and 36 of the reported judgment as follows:

33. We are of the opinion that the High Court clearly erred in recording such a conclusion. The language of Rule 8 does not demand such a construction. On the other hand, a Magistrate whose functioning is structured by the Code of Criminal Procedure is required to act in accordance with the provisions of the said Code unless expressly ordained otherwise by any other law. It is not a case that Code of Criminal Procedure never prescribed for the procedure to be followed by the Magistrate in a case where the Magistrate is required to take possession of property. For example, Under Section 83 of the Code, a criminal court is authorised to attach the movable or immovable property or both belonging to a proclaimed offender. Sub-sections (3) and (4) to Section 83 specifically provide that once an order of attachment Under Sub-section (1) is made by the criminal court, the property which is the subject-matter of such

attachment shall either be seized or taken possession of as the case may be depending upon the fact whether the property is movable or immovable. Both the Sub-sections contemplate the appointment of Receiver. It is declared Under Sub-section (6) that the powers, duties and liabilities of a Receiver appointed Under Section 83 are the same as those of a Receiver appointed under the Code of Civil Procedure, 1908.

XXX XXX XXX

36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:

36.1. (i) The first method would be where the secured creditor gives the requisite notice Under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated Under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

36.2. (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice Under Rule 8(1) is given. In that case he will take recourse to the mechanism provided Under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided Under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

36.3. (iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly Under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under

Clause 36.2.(ii) above.

36.4. In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent Rules from the Security Interest (Enforcement) Rules, 2002, shall apply.

42. Concededly, the Court was not called upon to consider the specific issue that arises for our consideration, in this batch of cases. To wit, whether the CJM is competent to deal with the request made by the secured creditor Under Section 14 of the 2002 Act in the same manner as can be done by the CMM in metropolitan areas and DM in non-metropolitan areas. Nevertheless, what is significant to note is that this decision clearly delineates the nature of inquiry required to be conducted by the authority referred to in the Section 14 of the 2002 Act. By its very nature the inquiry, is an administrative or executive measure and to borrow the phrase used in the said judgment, "State's coercive power"-for obtaining possession of the secured assets. It is possible to suggest that as the authority is required to make inquiry and pass an order, it would partake the colour of being a quasi-judicial inquiry. In any case, the stated authority is not empowered to adjudicate on any issue(s) that may be raised regarding the rights of the concerned parties.

x x x

50. Suffice it to observe that keeping in mind the subject and object of the 2002 Act and the legislative intent and purpose underlying Section 14 of the 2002 Act, contextual and purposive construction of the said provision would further the legislative intent. In that, the power conferred on the authorised officer in Section 14 of the 2002 Act is circumscribed and is only in the nature of exercise of State's coercive power to facilitate taking over possession of the secured assets.

23. In *Bajarang Shyamsunder Agarwal v. Central Bank of India* and another reported in (2019) 9 SCC 94, the Apex Court was pleased to hold that the tenant is entitled to be in possession for a term for which a registered document was executed in his favour. It is imperative that the factum of tenancy is revealed by the parties during the pendency of the proceedings. The tenant in sufferance cannot invoke the provisions of the SARFAESI Act. The following paragraphs read as under:

24.3 In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed Under Section 107 of the T.P. Act.

x x x

30. It is pertinent to note that at the time when the SARFAESI Act proceedings were pending, the factum of tenancy was never revealed by the parties. The earlier order dated 09.03.2012, passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai directing the Assistant Registrar to take over the possession of the secured asset, is silent about any existing encumbrance over the secured asset. It was only after passing of the aforesaid order of the Chief Metropolitan Magistrate, that the Appellant-tenant started agitating his rights before the Small Causes Court based on a completely different fact scenario, without a whisper of the alleged tenancy under the concluded Section 14, SARFAESI Act proceedings. The Respondent No. 2-borrower/landlord did not even respond to the claims of the Appellant-tenant. The Respondent No. 1-bank has produced multiple records to substantiate their claim that the tenant was nowhere to be seen earlier and that this tenancy was created just to defeat the proceedings initiated under the SARFAESI Act. On the contrary, the Appellant-tenant has failed to produce any evidence to substantiate his claim over the secured asset. In such a situation, the Appellant-tenant cannot claim protection under the garb of the interim protection granted to

him, ex parte, by solely relying upon the xerox of the rent receipts.

31. In such an event, wherein the claim of the Appellant-tenant is not supported by any conclusive evidence, the rejection of the stay application by the Chief Metropolitan Magistrate cannot be held to be erroneous. Although the counsel of the Appellant-tenant has placed ample reliance upon the Vishal N. Kalsaria Case (supra), but the same would not help the cause of the Appellant-tenant herein, as the earlier case proceeded with the assumption of a valid and bona fide tenancy. But in the present case, the stay application of the Appellant-tenant seems to be an afterthought. It is clear that the Respondent No. 2-borrower/landlord never intimated the Respondent No. 1-bank about the alleged tenancy. In light of the above, we are unable to accept the claim of bona fide tenancy of the Appellant-tenant.

32. In any case, considering the counterfactual pleaded by the Appellant-tenant himself, that he was a tenant who had entered into an oral agreement, such tenancy impliedly does not carry any covenant for renewal, as provided Under Section 65-A of T.P. Act. Therefore, in any case, Section 13(13) SARFAESI Act bars entering into such tenancy beyond January, 2012. As the notice Under Section 13(2) SARFAESI Act was issued on 30.04.2011, subsequent reckoning of the tenancy is barred. Such person occupying the premises, when the tenancy has been determined, can only be treated as a 'tenant in sufferance'. We should note that such tenants do not have any legal rights and are akin to trespassers.

x x x

35. The operation of the Rent Act cannot be extended to a 'tenant-in-sufferance' vis-a-vis the SARFAESI Act, due to the operation of Section 13(2) read with Section 13(13) of the SARFAESI Act. A contrary interpretation would violate the intention of the legislature to provide for Section 13(13), which has a valuable role in making the SARFAESI Act a self-executory instrument for debt recovery. Moreover, such an interpretation would also violate the mandate of

Section 35, SARFAESI Act which is couched in broad terms.

24. The issue qua the maintainability of an application by a secured creditor to take possession after the sale is also concluded by the Apex Court in ITC Limited v. Blue Coast Hotels Limited and others reported in (2018) 15 SCC 99. We may profitably refer the following paragraph:

"48. In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement. Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction purchaser and thus remained a secured creditor in the Act."

25. The Apex Court further held that the question as to whether the land is an agricultural one or otherwise has to be seen on its own facts. Even the entries in the revenue records could only be termed as prima facie.

26. Thus, from the above said decisions, we are of the view that the District Magistrate is not expected to undertake the exercise which is not conferred on him.

27. Much reliance has been made on the decisions of the Calcutta High Court by the learned Additional Advocate General. We are afraid, in the light of the discussions made, that the decisions relied upon cannot be termed as good law.

28. As rightly submitted by the learned counsel appearing for the petitioner in W.P.No. 29972 of 2018, the District Magistrate ought not to have ventured into the area which he cannot embark upon. Though it is submitted by the learned counsel appearing for the petitioner that it is not a party to the suit nor has to do anything with the other proceedings, we are not willing to go into it in extenso as we hold that the District Magistrate cannot go into these issues. Suffice it to state that the initiation of the subsequent proceedings afresh would not bar the order being obtained before us.

Therefore, this proceedings would certainly fall to the ground, including the pending case before the Debts Recovery Tribunal along with the interim orders.

29. Similarly, the question related to non-compliance of Section 14(1) of the SARFAESI Act also does not impress upon us. The District Magistrate did not reject the application on this ground but went on to decide the matter on merit after hearing the borrower as well. It is the borrower/respondent who brought to the notice of the District Magistrate about the pending suits apart from producing other materials, though in law he need not necessarily be heard. We may further note that the notice was also sent by them to the borrower and the guarantor. Even the guarantor has been heard, as could be seen from the orders passed. A criminal complaint was also made against the third party pertaining to the other property of the borrower, which we are not concerned with in this proceedings.

30. The submission made by the learned Additional Advocate General that the nature of the agricultural land has to be verified by the District Magistrate, as in the given case it may even belong to the Government, cannot be countenanced. The District Collector is expected to act as District Magistrate under the SARFAESI Act. Therefore, his role under the Act is only to facilitate handing over of the possession from the borrower to the creditor. However, this will not take away his role as the District Collector or the Revenue Officials to take care and protect the Government property. Therefore, both the roles are not expected to mix with each other as he is exercising the statutory powers under the Act. Thus, the said contention deserves to be rejected.

31. In the above mentioned case, the District Collector can always take action to take possession if the land is a Government land after handing over the same in favour of the secured creditor while functioning as the District Magistrate. To be noted, the role played by the District Collector is the same as the Chief Judicial Magistrate and, therefore, he cannot have a better or higher role than the other.

32. In the result, the impugned orders are set aside and the writ petitions are allowed accordingly. Consequently, the District Magistrate concerned is directed to pass orders facilitating the possession in favour of the petitioners. Appropriate orders will have to be passed within a period of four weeks from the date of receipt of a copy of this order. Liberty is also given to the parties to challenge the said orders in the manner known to law, if so advised. We make it clear that our observations are only prima facie in nature and, therefore, in the event of applications being filed as

aforesaid, by the borrower/guarantor/tenants, as the case may be, they should be decided on their own merits, not being influenced by our order on facts. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssm

To

1. The District Magistrate/
The District Collector,
Office of District Collectorate,
Thiruvallur, Thiruvallur District.
2. The District Collector
(The District Magistrate)
Salem District, Salem.
3. The District Magistrate and District Collector,
Coimbatore District,
Coimbatore.

+2cc to M/s.Ramalingam Associates, Advocate, S.R.No.30436
+1cc to Mr.K.S.Karthick Raja, Advocate, S.R.No.30666
+1cc to Mr.S.Sethuraman, Advocate, S.R.No.30609

W.P.Nos.28047, 25192 of 2019,
24655 of 2018, 32467 of 2016
and 29972 of 2018

MR (CO)
CS/09/11/2020

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