

08.09.2021.
Item No. 97.
Court No.13
ap

**W.P.A. No. 12718 of 2021
(Through Video Conference)**

**Sri Somnath Nandy
Versus
Punjab National Bank & Ors.**

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman.

..For the petitioner.

Ms. Lipika Ghosh,
Mr. Ashis Kumar Mukherjee,
Mr. Saurabh Prasad.

...For the Bank.

Mr. Subhabrata Datta,
Mr. Abdus Salam.

...For the State.

Mr. Somnath Naskar,
Ms. Priyanka Saha.

...For the private respondent.

The writ petitioner has purchased immovable property under a SARFEASI sale conducted by the United Bank of India now known as Punjab National Bank. The physical possession of the property was not taken and the property was put up for sale. The writ petitioner purchased the said property and which is in occupation and possession of the principal borrowers/guarantors.

By a judgment and order dated 7th January, 2020 passed in W.P. No. 23899 (W) of 2019, a Co-ordinate Bench of this Court has directed the Bank to move the District Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in

short SARFEASI Act, 2002) and seek assistance in taking physical possession of the property.

On an argument made that the Bank has lost the right to move under Section 14 of the SARFEASI Act, 2002, since after sale and registration of convenience in favour of the writ petitioner, the Co-ordinate Bench of this Court has held that the Bank has not lost its right to maintain the application under Section 14 of the SARFEASI Act, 2002. The Bank had already made such application in January 2018 prior to sale.

The District Magistrate for some reason does not appear to have passed orders under Section 14 of the SARFEASI Act, 2002.

Counsel for the private respondent/borrower would argue that in terms of the decision of a Co-ordinate Bench of this Court dated 1st September, 2017 passed in W.P. No. 21814 (W) of 2017 (United Bank of India & Anr. – Vs. – State of West Bengal & Ors.), the Bank has lost its right to move under Section 14 of the SARFEASI Act, 2002 if sale is conducted without taking possession of the property.

It is submitted that the said decision was not considered or placed before the Co-ordinate Bench of this Court dated 7th January, 2020. However the said order of the Co-ordinate Bench of this Court has

neither been challenged in appeal nor has any review been sought till date.

Hence, the said order dated 7th January, 2020 has reached its finality.

The District Magistrate, South 24 Parganas shall forthwith take possession of the immovable property purchased by the petitioner situated and lying at 49/C, Anath Nath Deb Lane, Kolkata – 700 037 and hand over possession of the same to the writ petitioner on behalf of the Bank.

Any other claim by the writ petitioner against the Punjab National Bank, has not been decided by the Court and is left open for being dealt with in accordance with law.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)