HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 291 of 2021

- R. Murgesh S/o Late Raju Acharya Aged About 57 Years R/o Subham Vihar Mungeli Road Bilaspur, Tahsil And District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Authorized Officer / Reginoal Manager Of The Union Bank Of Inida Bilaspur Branch, District Bilaspur, Chhattisgarh
2. Branch Manager (Main Branch), Union Bank Of India, Near Old High Court Building, Bilaspur, District Bilaspur, Chhattisgarh
3. Tahsildar Bilaspur District Bilaspur, Chhattisgarh
4. Station Housse Officer Civil Line, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri N.K. Chatterjee, Advocate
For Respondent	:	Ms. Shriya Mishra, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27.01.2021

Heard.

1. The instant petition is filed for following reliefs:-

> 10.1 That this Hon'ble Court be pleased to issue allow the writ petition filed by the petitioner and pleased to direct the Tahsildar Bilaspur not to take the possession of the property of the Petitioner situated at Shubham Vihar, Bilaspur till the disposal of the matter pending before the Arbitration Tribunal, Raipur where the matter is pending on account of an order passed by the Hon'ble High Court of C.G. where the Hon'ble Court had directed to both the

> parties to be remained present on 02-11-2020 and also to direct the Station House Officer of P.S. Civil Line Bilaspur not to assist Tahsildar Bilaspur with respect to the recovery by taking the possession of the property situated at Shubham Vihar, Bilaspur.
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> 10.2 Any other relief as may deem fit and proper by this Hon'ble Court in the facts and circumstances of the petition may kindly be passed.

2. Learned counsel for the petitioner has challenged Annexure P-1 dated 29.12.2020, wherein the Station House Officer, Bilaspur has been directed to provide assistance to get possession of a mortgage property for which measures have been taken under Section 13 & 14 of SARFAESI Act.

3. The Supreme Court in **K. Virupaksha Versus State of Karnataka (2020) 4 SCC 440** has observed as under:

> 15. The SARFAESI Act is a complete Code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act. This view is fortified by the decision of this Court in Indian Overseas Bank v. Ashok Saw Mill (2009) 8 SCC 366 wherein it is held as under :

34. The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to takeover the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (b) of sub-section (4) of Section 13.

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is,therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority and conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section necessarily implies that the

> DRT is entitled to question the action taken by the secured ceditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr. Gopalan and Mr. Atlaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4)situation, cannot be accepted."
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> (Emphasis supplied)

4. In view of the law laid down by the Supreme Court and the fact that Annexure P-1 is only execution proceeding and a order of compliance which has been ordered under Section 14 of SARFAESI Act no relief can be granted by this Court.

5. In view of this, the petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti