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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.14875 of 2021

M/s.Magma Housing Finance,
Formerly known as GE Money Housing Finance,
Having its Registered Office at
No.8, Sant Nagar,
East of Kailash, New Delhi - 110 065
and one of its Branch Office at
Navin's Presidium, 7-A, B Block,
New No.17-19, Old No.103, Nelson Manickam Road,
Chennai-29
rep. by it Authorised Officer N.Sabapathy. ..
Petitioner

Vs

1. The District Magistrate Cum District Collector,
Office of the District Collector at Chengalpattu,
Chengalpattu District.
2. The District Magistrate Cum District Collector,
Office of the District Collector at Kancheepuram,
Kancheepuram District.
3. The Tahsildar,
Vandalur-3.
4. The Revenue Divisional Officer,
Vandalur-3. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents 1, 3 and 4 to execute the order passed by the 2nd respondent in Rc.M3/3862/2018 dated 03.04.2019 in petitions filed under Section 14 of the SARFAESI Act, 2002 filed by the petitioner before the 2nd respondent for taking possession and handing over the same to the petitioner.



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For Petitioner : Mr.M.Arunachalam

For Respondents : Mr.P.Muthukumar
Counsel for the State

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Mr.P.Muthukumar, learned counsel, takes notice on behalf of the respondents.

2. The petitioner, claiming to be a secured creditor, refers to an order dated April 3, 2019 passed on the petitioner's request under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. It is clear from the relevant order, particularly the fifth paragraph thereof, that the Tahsildar, Chengalpattu has been directed to obtain adequate police protection from the Deputy Superintendent of Police to take possession of the property clearly described in the relevant order. However, the grievance of the petitioner is that despite such order and several requests, the relevant Tahsildar has not taken any steps.

4. It is absolutely imperative that executive officials be alive to the requirements of Section 14 of the said Act. For a start, the authorities approached with a request under Section 14 of the Act, whether a Chief Judicial Magistrate or a Collector, need to ascertain whether the declarations as required by such provision have been furnished by the petitioning secured creditor. Once the declarations are found to be in order, the concerned authority has to accept the same at face value without seeking to ascertain the veracity thereof, whether by issuing notice to the borrowers or to any other. There is no element of adjudication which is undertaken in course of proceedings under Section 14 of the said Act.

5. Indeed, the Act of 2002 and Section 14 thereof highlight the emphasis on the secured assets being quickly taken possession of and sold so that the blocked funds may be unblocked and made available for further circulation in the economy. It may be recalled that following the Tiwari Committee reports and another comprehensive report by the Narasimham Committee, the Recovery of Debts Due to Banks and Financial Institutions Act of 1993 came to be introduced, carving out a specialised tribunal to deal with claims of banks and financial



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institutions that were specified in a schedule to the Act. However, despite nearly a decade of such Act being in operation, the funds blocked with borrowers could not be speedily unblocked for further circulation in the economy and the said Act of 2002 came to be enacted.

6. In a sense, the said Act of 2002 turned the law on its head and the procedure thereunder recognises, in a manner of speaking, execution before adjudication. Secured creditors are given liberty to obtain the security and put the same up for sale and it is only at such stage that the borrower or any person aggrieved by the measures adopted by a secured creditor get a chance to complain thereagainst by resorting to Section 17 of the Act of 2002 before the jurisdictional Debts Recovery Tribunal. Of course, this was not a completely new feature. The State Financial Corporations Act of 1951 gave similar authority to State Financial Corporations. However, the Act of 2002 extended the same benefit to secured creditors, whether government owned or otherwise.

7. Upon receipt of a request under Section 14 of the Act, executive assistance has to be provided to the secured creditor to the extent reasonable and necessary. The authorities approached need to issue directions to revenue officials or police officials to enable the secured creditor to obtain possession of the secured asset or documents pertaining thereto so that such secured assets may be put up for sale, and the realisation of the sale proceeds would amount to the blocked funds being unblocked. It cannot be over-emphasised that Section 14 of the Act has been insulated and the process of adjudication has been kept out therefrom to ensure the speedy access to the secured assets for the purpose of liquidation thereof.

8. Whether due to the pandemic or otherwise, several requests have been pending over the last couple of years and, as is evident from this case, even when orders are issued on such requests under Section 14 of the Act, the officials downstream attach little or no importance to the same. A level of awareness must be created, so that revenue officials and police officials understand the scope and importance of such provision and the directions issued by the authorities under Section 14 thereof.

9. It is also possible in this case that because of the bifurcation or trifurcation of the districts, the Tahsildar or the relevant police officials may not have given much importance to this matter. However, the Tahsildar has to ensure that the assistance sought, and as directed in the order dated April 3, 2019, is made available to the petitioner herein, with police



assistance as indicated. If the Tahsildar, Vandalur is also discharging the duties of the Tahsildar, Chengalpattu, such official should render the requisite assistance.

10. W.P.No.14875 of 2021 is disposed of by directing the concerned Tahsildar and the Superintendent of Police, Chengalpattu to provide the requisite assistance to the petitioner in terms of the order of the Collector dated April 3, 2019. It is hoped that such assistance will be made available within a fortnight of a copy of this order being placed before the Tahsildar. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

To

1. The District Magistrate Cum District Collector,
Office of the District Collector at Chengalpattu,
Chengalpattu District.
2. The District Magistrate Cum District Collector,
Office of the District Collector at Kancheepuram,
Kancheepuram District.
3. The Tahsildar,
Vandalur-3.
4. The Revenue Divisional Officer,
Vandalur-3.

Copy to :

The Superintendent of Police,
Chengalpattu.

+1cc to Mr.M.Arunachalam, Advocate, S.R.No.34614
+1cc to the Government Pleader, S.R.No.34737

W.P.No.14875 of 2021

SR-II (CO)
HS (26/07/2021)