



W.P.No.5180 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.5180 of 2023
and W.M.P.Nos.5182, 5184 and 5185 of 2023

1.Vincent Raju
2.Valsala Raju

.. Petitioners

Vs

1.The Chief Metropolitan Magistrate,
Egmore, Chennai-600 008.

2.The Authorised Officer,
Bank of Baroda,
K.K. Nagar Branch,
No.20, Natesan Salai,
K.K. Nagar,
Chennai-600 083.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the order passed in CrI.M.P.No.36217/2022 in CrI.M.P.No.637/2022 on the file of the Chief Judicial Magistrate, Egmore, Chennai, dated 19.1.2023 and quash the same.



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For the Petitioners : Mr.C.K.M.Appaji

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ORDER

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

W.M.P.No.5182 of 2023 filed to permit the petitioners to file the writ petition jointly is allowed, subject to payment of separate court-fee by the petitioners within two weeks from the date of receipt of a copy of this order. In default of compliance, the order passed in the writ petition shall be applicable only to the first petitioner.

2. Calling into question the order dated 19.1.2023 passed in Crl.M.P.No.36217 of 2022 in Crl.M.P.No.637 of 2022 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, the petitioners have filed this writ petition.

3. Mr.C.K.M.Appaji, learned counsel for the petitioners, would submit that the second respondent/bank approached the learned Chief Metropolitan Magistrate, Egmore/first respondent herein by



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filing an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the Act*"] to appoint an Advocate Commissioner to take physical possession of the property on the ground that the petitioners committed default in repayment of the loan amount. The learned Chief Metropolitan Magistrate, Egmore, vide order dated 23.3.2022, appointed an Advocate Commissioner to take possession. However, the petitioners filed an application before the learned Chief Metropolitan Magistrate, Egmore, to recall the aforesaid order pleading that the loan amount in respect of the house property has been fully discharged. As the said application was dismissed by the learned Chief Metropolitan Magistrate, Egmore, by order dated 19.1.2023, the petitioners have been advised to file this writ petition.

4. Section 14 of the Act elucidates that 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, the secured creditor may, for the purpose of taking possession or control of any such secured assets, make a request in writing to the Chief



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Metropolitan Magistrate or the District Magistrate concerned, to take possession thereof and on receipt of such request, the the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obligated to take possession of the secured asset and documents relating thereto and forward such asset and documents to the secured creditor. It is beyond any cavil there is no statutory prescription under the Act empowering the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, to review, recall or modify his order. In the absence of such power conferred on the learned Chief Metropolitan Magistrate, Chennai, the order dated 19.1.2023 dismissing the application filed by the petitioners to recall the earlier order, in our considered opinion, does not warrant interference.

5. The aforesaid view of this court is fortified by a decision of a Co-ordinate Bench of the Punjab and Haryana High Court in ***Asset Reconstruction Company (India) Ltd. v State of Haryana, [C.W.P.No.16366 of 2016, Order dated 18.8.2017]***, which was upheld by the Apex Court vide ***order dated 15.9.2017 passed in SLP (C) No.24209 of 2017 [Kiran Overseas Exports Ltd v. Asset***



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Reconstruction Company (India) Ltd]. The relevant portion of the order passed by the Punjab and Haryana High Court is quoted hereunder:

"27. The powers exercisable by a District Magistrate under Section 14 are creation of a Statute. Those powers are required to be exercised within the four corners of the said provision. In the case in hand, the then District Magistrate, Sonapat rightly exercised such power and passed the order dated 08.02.2016 thereby directing his subordinate officer, namely, Naib Tehsildar-cum-Executive Magistrate to take possession of the secured assets and hand over the same to ARCIL. It could not be disputed by the learned State counsel or senior counsel for the borrowers that there is no provision under the SARFAESI Act under which the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, can review, recall or modify his order. The successor District Magistrate, therefore, had no jurisdiction whatsoever either to entertain the borrower's application dated 12.06.2016 or to pass the impugned orders dated 14.06.2016 and 24.10.2016. These orders are totally without jurisdiction and void ab initio, for it is well settled that the power to review is not an inherent power and it must



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always be conferred by law either expressly or by necessary implication. The so-called reasons assigned by the successor District Magistrate, even if assumed to be correct, did not and can not clothe him with a non-existent power to review the order passed by him or his predecessor. [Ref. (i) Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji Arjunsinghji (1971) 3 SCC 844; (ii) Kewal Chand Mimani (D) By Lrs. Vs. S.K. Sen & Ors. (2001) 6 SCC 512].”

[emphasis supplied]

6. For the foregoing reasons, we find no infirmity in the order dated 19.1.2023 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

7. In the result, the writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.5184 and 5185 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
22.02.2023

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To:

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THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sasi)

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