13th February, 2024
(AK)
23

W.P.A 8006 of 2023

State Bank of India
Vs.
The State of West Bengal and others

Mr. Om Narayan Rai
Ms. Deblina Lahiri
Mr. Mrinmay Chatterjee
...for the petitioner.

Ms. Noelle Banerjee
Ms. Kalpita Paul
...for the State.

Mr. Sudha Satva Banerjee
Mr. Binay Kumar Jain
...for the respondent no.5.

1. The petitioner-Bank has challenged an order dated August 16, 2022 passed by the Chief Metropolitan Magistrate (CMM), Calcutta in connection with an application under Section 14 of the SARFAESI Act, 2002 preferred by the petitioner-Bank.
2. By the said order, the CMM has restrained the Bank from taking possession of the premises-in-question, which was the subject matter of the dispute /secured asset, until pendency of the application filed by the petitioner therein, that is, the private respondent, who claims to be a pre-existing tenant with regard to the property.
3. Learned counsel contends that the CMM acted without jurisdiction, since he was rendered *functus*

officio after having passed the order dated September 21, 2021 directing any padlock to be broken for giving physical possession to the Bank, which again was in pursuance of an order dated December 12, 2014 passed under Section 14(1) of the SARFAESI Act.

4. Learned counsel for the Bank submits that for the purpose of implementation of an order passed under Section 14(1), Sub-Section (2) of the said Section empowers the Magistrate to pass necessary orders, within the contemplation of which the order dated September 21, 2021 was passed.

5. However, it is argued that the order restraining the Bank from taking possession of the premises on the basis of the allegation of the private respondent that the latter was a pre-existing tenant, was beyond the domain of the Magistrate to decide.

6. If any cause of action in that regard was to be raised, the same had to be done under Section 17 of the SARFAESI Act before the concerned tribunal.

7. Learned counsel for the CMM submits that for the purpose of implementation of an application under Section 14 and deciding the same, the CMM has ample jurisdiction to ascertain whether the affidavit filed before it in support of such application discloses correct facts.

8. In the present case, since the Bank suppressed the existence of a pre-existing tenant, it is submitted that the CMM was within his jurisdiction in passing the impugned order.

9. That apart, it is argued that by the same logic by which the CMM was *functus officio* after passing the initial order, the Bank also could not have obtained an order for further breaking open of padlock as done by the Bank on September 21, 2021.

10. Learned counsel for the private respondent submits that the writ petition need not be entertained in view of availability of an equally efficacious alternative remedy by way of an application under Section 17 of the SARFAESI Act.

11. That apart, learned counsel for the private respondent submits that the Bank suppressed the fact that the private respondent is a pre-existing lawful tenant in respect of the property and obtained the order-in-question.

12. Thus, it was well within the jurisdiction of the CMM to implement his own order dated September 21, 2021 which specifically provided that the breaking open of padlock and giving possession to the Bank would be subject to the condition that no lawful tenant or lessee in physical possession shall be evicted, which is precisely what was intended to be done by the Bank in defiance of the order.

13. In all fairness, learned counsel for the private respondent also points out that in a connected challenge under Section 17 emanating from the same loan but at the behest of a different guarantor, mutual settlement is being explored by the parties thereto.

14. Moreover, an order of stay of issuance of sale certificate has also been passed in connection with the said pending application under Section 17 at the behest of such guarantor.

15. Heard learned counsel for the parties.

16. With regard to jurisdiction, learned counsel for the Bank is justified in arguing that a challenge may only lie against an order passed under Section 14 of the SARFAESI Act in the event it is deemed to be an extension of powers/measures under Section 13(4) of the Act.

17. In the present case, however, it is not a measure under Section 13(4) which has been sought to be implemented by the impugned order but rather, the Bank's hands have been sought to be restrained in so implementing.

18. Hence, the matter is not appealable or amenable to a challenge under Section 17 of the SARFAESI Act.

19. With regard to the merits of the matter, the first question which arises for consideration is whether the CMM acted *de hors* jurisdiction, being *functus*

officio even while passing the order dated September 21, 2021 whereby padlock was directed to be broken for giving physical possession to the Bank subject to the condition that no lawful tenant or lessee in physical possession shall be evicted.

20. Here also, the argument made on behalf of the Bank is in consonance with the extant Law.

21. Section 14(2) undoubtedly refers back to Section 14(1) and provides that for the purpose of securing compliance with the provisions of sub-section (1), the CMM 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.

22. The order passed in the year 2014 was under Section 14(1) whereas the order passed on September 21, 2021 was in furtherance of the same, in order to implement the same effectively within the contemplation of sub-section (2) of Section 14.

23. Hence, it cannot be said that the CMM was *functus officio* at the juncture of passing the order dated September 21, 2021.

24. The other interesting question which has arisen here is whether the impugned order dated August 16, 2022 was merely in furtherance of the order dated September 21, 2021 obtained by the Bank itself.

25. In the order dated September 21, 2021, the CMM had clearly observed that the direction of giving physical possession to the Bank by removing of padlock was subject to the rider that no lawful tenant or lessee in physical possession shall be evicted.

26. However, the latter portion of the said order is palpably *de hors* the jurisdiction of the CMM.

27. It is well-settled that while passing an order under Section 14 of the SARFAESI Act, be it under sub-section (1) or sub-section (2), the Magistrate merely functions in ministerial capacity and not as an adjudicating or quasi judicial authority.

28. Rather, Section 17(4A) of the SARFAESI Act, as rightly argued by the Bank, is the appropriate provision for adjudication of rights of pre-existing lawful tenants.

29. Such tenants are amenable to the jurisdiction of the tribunal by way of preferring an application under the contemplation of Section 17(4A) of the SARFAESI Act, if aggrieved on such count.

30. However, the Magistrate, while deciding an application under Section 14 or passing orders in implementation thereof, does not have the authority or jurisdiction to decide such issue at all.

31. The charter of the Magistrate even on September 21, 2021 was merely to pass orders to facilitate the

order of 2014 passed under Section 14(1), for implementation of the same by granting physical possession to the Bank by breaking open any padlock, if necessary.

32. The extraneous rider as to the condition that no lawful tenant or lessee in physical possession shall be evicted was beyond the scope of the authority of the Magistrate to pass.

33. The said portion of the order being a nullity, could not have been implemented subsequently by the Magistrate himself.

34. Even from a different perspective, the mere condition as relied on by the private respondent did not operate as an adjudication of the right of the private respondent as a lawful tenant, which is entirely within the domain of the tribunal under Section 17(4A) of the SARFAESI Act to decide.

35. Hence, the impugned order dated August 16, 2022, not being in furtherance of an order under Section 14(1) as envisaged in sub-section (2) of Section 14, was palpably *de hors* jurisdiction and ought to be set aside.

36. Thus, the writ petition succeeds.

37. Accordingly, WPA 8006 of 2023 is allowed on contest, thereby setting aside the order dated August 16, 2022 and observing that the portion of the order dated September 21, 2021 whereby a

condition was imposed by the CMM that no lawful tenant or lessee in physical possession shall be evicted is declared to be null and void.

38. Needless to say, since no affidavits have been directed, it is deemed that the allegations made by either side against each other are not admitted by their respective opponents.

39. There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)