

(2014) 07 CAL CK 0078

Calcutta High Court

Case No: W.P. No. 379(W) of 2013

Swastyayan Agro Industries

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 24, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13(2), 13(4), 14, 17

Citation: (2014) 4 CALLT 474 : (2014) 5 CHN 256

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Dilip Kumar Samanta, A.K. Paul and Biswajit Hazra, Advocate for the Appellant;
P.K. Roy and S. Banerjee, Advocate for the Respondent

Final Decision: Allowed

Judgement

Debangsu Basak, J.

The challenges in the writ petition are the actions of the District Magistrate and the Additional District Magistrate in their exercise of powers u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

2. The Respondent No. 4 passed an Order on December 19, 2012 in presence of the parties directing physical possession of the mortgaged property of the petitioner to be taken and providing police assistance for taking over of physical possession. The petitioner claimed that, an Additional District Magistrate was not the District Magistrate contemplated u/s 14 of the SARFAESI Act, 2002. A District Magistrate cannot delegate his powers. The petitioner contrasted the unamended Section 14 with that of the amended Section 14 particularly Sub-Section (1A) thereof introduced subsequently to submit that, it was never the intention of the legislature to allow a

District Magistrate to delegate his powers of Section 14 of the SARFAESI Act, 2002 to any other authority in its unamended version. If that was the intention, the subsequent addition of Sub-Section (1A) to Section 14 of the SARFAESI Act, 2002 was not necessary. That the legislature amended Section 14 to introduce Sub-Section (1A) to Section 14 amply demonstrated, according to the petitioner, the fact that, in the unamended version an Additional District Magistrate could not exercise power u/s 14 of the SARFAESI Act, 2002 and the District Magistrate could not have delegated any of his powers.

3. That apart, the petitioner relied on [Ajaib Singh Vs. State of Punjab](#), and submitted that, an Additional District Magistrate cannot be a District Magistrate.

4. The petitioner relied upon a judgment of the High Court dated February 24, 2014 passed in W.P. No. 2545 (W) of 2014 (Pratima Roy & Anr. v. Union of India & Ors.) where it was held that, the District Magistrate in terms of the statutory mandate of Section 14 must himself take possession of the secured assets and documents relating thereto.

5. The bank opposed the writ petition. It was submitted on behalf of the bank that, the bank having taken a measure u/s 13(4) and having applied u/s 14 of the SARFAESI Act, 2002 in view of the pronouncement of the Hon"ble Supreme Court in [United Bank of India Vs. Satyawati Tondon and Others](#), and [Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others](#), the remedy of the petitioner was by way of an appeal u/s 17 of the SARFAESI Act, 2002. An appeal u/s 17 of the SARFAESI Act, 2002 was a statutory remedy and must be exhausted by the petitioner before moving this Court under Article 226 of the Constitution of India. The bank also relied upon [Harun Ali Mallick Vs. State of West Bengal and Others](#), and submitted that, a District Magistrate u/s 14 of the SARFAESI Act, 2002 included an Additional District Magistrate and that, the order of the Respondent No. 4 did not suffer any infirmity on such accord.

6. The bank also relied upon [Puran Maharashtra Automobiles and Satyam Automobiles Vs. The Sub Divisional Magistrate, The Naib-Tahasildar \(Revenue-1\) and The Janata Sahakari Bank Ltd.](#), for the proposition that, the District Magistrate could delegate powers to the Additional District Magistrate.

7. In course of hearing of the writ petition the bank handed over its request for police help dated February 15, 2002 addressed to the District Magistrate.

8. The authorized officer of the bank approached the District Magistrate, Bankura by a letter dated February 15, 2012 requesting the District Magistrate, Bankura for order to secure possession of the secured assets. Paragraphs 9 and 10 of the letter dated February 15, 2012 of the bank in this regard were relevant.

9. That therefore, the petitioner prays that necessary steps be taken/order passed for securing possession of the assets specified in Para 2, above and documents

relating thereto and forward such assets and documents to the petitioner in exercise of powers of this Hon"ble Magistrate u/s 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002.

10. That we have engaged M/s. Kumar Associates (Resolution Agent) of 26B, Seven Tanks Lane, Kolkata-700030 to assist us in the matter. You may kindly provide necessary administrative/police assistance to enable them to accomplish the job peacefully.

9. Reading paragraphs 9 and 10 of the letter dated February 15, 2012 it appeared that, the bank requested the District Magistrate to take possession of the properties specified in paragraph 2 of such letter. Paragraph 2 of such letter described four immovable properties. Paragraph 10 of such letter spoke of administrative/police assistance to be given to a Resolution Agent for the purpose of taking possession of the properties mentioned in paragraph 2 of the letter dated February 15, 2012.

10. Section 14 of the SARFAESI Act, 2002 was as follows:-

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-(1) 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 by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made on him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

11. Sub-Section (1A) of Section 14 of the SARFAESI Act, 2002 was introduced with effect from January 15, 2013. Sub-Section (1A) of Section 14 read as follows:-

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

20. (ii) to forward such assets and documents to the secured creditor.

12. The letter requesting assistance of the District Magistrate of the bank was dated February 15, 2012, the order of the respondent No. 4 was dated December 19, 2012 and the memo of the District Magistrate was dated December 31, 2012. Sub-Section (1A) of Section 14 of the SARFAESI Act, 2002 was introduced with effect from January 15, 2013. Therefore, the parties will be guided by Section 14 of the SARFAESI Act,

2002 prior to the introduction of Sub-Section (1A) thereto on and from January 15, 2013.

13. In Harun Ali Mallick (supra) the question was whether the Additional District Magistrate could exercise the same powers as that of the District Magistrate u/s 14 of the SARFAESI Act, 2002. Harun Ali Mallick (supra) was decided prior to the introduction of Sub-Section (1A) to Section 14 of the SARFAESI Act, 2002. The ratio laid down in that judgment was not relevant for the present case as will appear hereafter.

14. In Pratima Roy & Anr. (supra) the High Court was of the view that, Section 14 of the SARFAESI Act, 2002 mandated the District Magistrate to take possession of the secured assets and after taking such possession forward such assets to the secured creditor. In the instant case, the bank by its letter dated February 15, 2012 approached the District Magistrate, Bankura for administrative/police assistance to enable the Resolution Agent of the bank to take possession. Based on such request the Additional District Magistrate passed an Order dated December 19, 2012 by which the Additional District Magistrate, Bankura directed the Superintendent of Police and the Block Land and Land Reforms Officer, Patrasayer to render all possible help to the bank authorities in taking physical possession of the mortgage property within the jurisdiction of the Bankura district only.

15. It appeared from the Memo No. 3019/1(9)/R.M. dated December 31, 2012 that the District Magistrate, Bankura enclosing the copy of the Order dated December 31, 2012 passed by the Additional District Magistrate (General), Bankura directed the Branch Manager of the bank to take over physical possession of the mortgage property of the borrower, fix up the date and time for taking over the physical possession in consultation with the police authority and the Block Land and Land Reforms Officer, Patrasayer and intimate the same to the District Magistrate.

16. In my view, the District Magistrate acted in excess of jurisdiction vested upon him in law by Section 14 of the SARFAESI Act, 2002. Section 14 of the SARFAESI Act, 2002 before the introduction Sub-Section (1A) thereto required the District Magistrate on a request of a secured creditor for assistance to:

(a) take possession of the secured assets and documents and

(b) forward such secured assets and documents to the secured creditor.

17. In the instant case, the District Magistrate, Bankura did not do so. The District Magistrate took no steps to take possession of the secured assets and documents and, thereafter, forward such secured assets and documents to the secured creditor by himself. The entire proceedings of the District Magistrate culminating into the Memo bearing No. 3019/1(9)/R.M. dated December 31, 2012 emanated from the request dated February 15, 2012 of the bank. The entire proceedings in my view were vitiated. The request of the bank to the District Magistrate contained in the

bank's letter dated February 15, 2012, was beyond the power granted to a District Magistrate u/s 14 of the SARFAESI Act, 2002. By the Memo No. 3019/1(9)/R.M. dated December 31, 2012 the District Magistrate proceeded to permit Branch Manager of the bank to take possession with the assistance of the police and the Block Land and Land Reforms Officer, Patrasayer. This was again beyond the mandate of Section 14 of the SARFAESI Act, 2002. Section 14 of the SARFAESI Act, 2002 permitted a District Magistrate to take possession of the secured assets and documents by himself. He could not, purporting to act u/s 14 of the SARFAESI Act, 2002 direct police assistance to the Branch Manager to take possession thereof. The memo was, therefore, in excess of the powers vested in the District Magistrate u/s 14 of the SARFAESI Act, 2002.

18. Prior to introduction of Sub-Section (1A) of the SARFAESI Act, 2002, Section 14 did not allow takeover of possession of a secured assets by any person other than the District Magistrate. An apparent conflict of views between the Pratima Roy & Anr. (supra) and Harun Ali Mallick (supra) was highlighted on behalf of the bank to suggest that, in view of such conflict the issue should be referred to a larger Bench for decision. Pratima Roy & Anr. (supra) set aside the Memo dated December 27, 2013 issued by the District Magistrate to the Superintendent of Police. By such memo the District Magistrate requested the Superintendent of Police to provide necessary police force to the Authorized Officer, Chief Manager, State Bank of India, Memari Branch for the purpose of taking possession of the secured assets of the defaulting borrower. In such context Pratima Roy & Anr. (supra) held that, the District Magistrate in terms of the statutory mandate contained in Sub-Section (1A) to Section 14 must himself take possession of the secured assets and documents relating thereto or in terms of Sub-Section (1A)(introduced with effect from January 15, 2013), authorize any officer subordinate to him to take possession of the secured assets and documents relating thereto. In such view the memo of the District Magistrate dated December 27, 2013 was set aside. In Harun Ali Mallick (supra) the High Court was of the view that the Additional District Magistrate was empowered to exercise the powers of the District Magistrate u/s 14 of the SARFAESI Act, 2002. In the instant case, the facts scenario was more akin to Pratima Roy & Anr. (supra) since in this case also the District Magistrate asked rendering of police help to the Branch Manager for the purpose of taking over possession of the secured assets. One of the issue in the instant case was whether the District Magistrate could have allowed police assistance to the Branch Manager for the purpose of taking over possession in terms of Section 14 of the SARFAESI Act, 2002 or not. Harun Ali Mallick (supra), in my reading did not say, that a District Magistrate could authorize a Branch Manager to take possession of secured assets in terms of Section 14 of the SARFAESI Act, 2002. Applying the ratio laid down in Pratima Roy & Anr. (supra) the impugned action of the State authority could not be sustained.

19. The maintainability of the writ petition also required consideration. The bank submitted that, in view of Satyawati Tondon & Ors. (supra) and Kanaiyalal Lalchand

Sachdev (supra) once the bank had taken a measure u/s 13(4) of the SARFAESI Act, 2002 the only remedy available to a borrower was an appeal u/s 17 of the SARFAESI Act, 2002.

20. In *Satyawati Tondon & Ors.* (supra) the writ petitioner therein filed a writ petition seeking a restraint on the bank from taking any coercive action in pursuance to the notices issued u/s 13(2) and 13(4) and the order passed by the District Magistrate u/s 14. In such context it was held that, in the event the writ petitioner was aggrieved by an action taken u/s 14 such writ petitioner could avail of a remedy u/s 17 of the SARFAESI Act, 2002. In the facts of that case the Supreme Court was of the view that, the petitioner had an efficacious remedy by way of a statutory appeal. While making such observation the Supreme Court expressed the view that, the powers conferred upon the High Court under Article 226 of the Constitution of India were very wide and that, there was no express limitation on the exercise of that power save the rules of self-imposed restraint evolved by the Supreme Court. It went on to say that, the rule of exhaustion remedy was a rule of discretion and not one of compulsion.

21. In *Kanaiyalal Lalchand Sachdev* (supra) it was held that, the action u/s 14 of the SARFAESI Act, 2002 constituted action taken after the stage of Section 13(4), therefore, fell within the ambit of Section 17. In the facts of that case it was held that, the high Court rightly dismissed the writ petition under Article 226 of the Constitution of India refusing to intervene on the ground that, an efficacious remedy was available to a writ petitioner therein.

22. These two authorities were relied upon by the bank to suggest that the order passed by the Additional District Magistrate dated December 19, 2012 and the subsequent order of the District Magistrate dated December 31, 2012 were appealable u/s 17 and, therefore, the petitioner should be asked to avail of his statutory remedy instead of the writ petition being entertained.

23. Section 14 of the SARFAESI Act, 2002 required the District Magistrate to take possession of the secured assets and documents and to make it over to the secured creditor. In the instant case, the District Magistrate did not adhere to Section 14. He proceeded to consider an application for grant of administrative/police assistance to a Resolution Agent appointed by the bank for the purpose of taking possession of the secured assets. The District Magistrate could not have granted the prayer made in such an application at all acting u/s 14 of the SARFAESI Act, 2002. The District Magistrate, however, proceeded to entertain such an application. The Additional District Magistrate proceeded to direct the Superintendent of Police to grant police assistance to the bank for the purpose of physical possession of the mortgage property. This also was *de hors* the powers u/s 14 of the SARFAESI Act, 2002.

24. Next was the action of the District Magistrate contained in the impugned Memo dated December 31, 2012 directing physical possession of the mortgage property to

be taken by the Branch Manager of the bank. This also was de hors the powers u/s 14 of the SARFAESI Act, 2002.

25. The State authority had acted beyond its jurisdiction. To say that a person aggrieved by an exercise of power by a State authority beyond its jurisdiction must avail of a statutory remedy would be harsh in the fact and circumstances of the instant case. Existence of a statutory remedy was not an absolute bar in exercise of jurisdiction under Article 226 of the Constitution of India as held by Satyawati Tondon (supra). It was on the rule of self-restraint that the Courts did not intervene although being entitled to do so.

26. Facts and circumstances of the instant case demonstrated utter lack of adherence to the provisions of Section 14 of the SARFAESI Act, 2002 both at the end of the bank as well as at the District Magistrate level. The invocation of the jurisdiction of the District Magistrate by the bank was improper in the sense that, the bank by its letter dated February 15, 2012 requested the District Magistrate to render police assistance for the purpose of taking possession of the secured assets through a Resolution Agent. This request could not be entertained within the ambit of Section 14 of the SARFAESI Act, 2002 at all. On the basis of such request the District Magistrate ultimately permitted the Branch Manager to take physical possession through the police authorities again beyond the powers u/s 14 of the SARFAESI Act, 2002.

27. In such circumstances the writ petition is allowed. The impugned Memo of the District Magistrate and the Order dated December 19, 2012 of the Additional District Magistrate are quashed. In the event the Respondent Nos. 3 and 4 acting in terms of the impugned memo took possession of any asset or facilitated takeover of possession of any asset, they should take immediate steps for return of such assets to the persons from whom possession was taken. There will be no order as to costs.

28. Later:

Prayer for stay made on behalf of the bank is considered and refused.