

Court No. - 03

Case :- WRIT - C No. - 6529 of 2022

Petitioner :- Asset Reconstruction Company India Ltd.

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Krishna Mohan Asthana

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Sri K.M. Asthana, learned counsel for the petitioner and Sri B.P. Singh Kachhwah, learned standing counsel for the State-respondents.

2. On 31.03.2022, this Court passed the following order:

“Heard Shri Krishna Mohan Asthana, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

This writ petition has been filed praying for the following relief:

"i) issue an appropriate writ order or direction of suitable nature, commanding the respondent Authority, the Additional District Magistrate (Fin and Rev), Gautam Budh Nagar and the Sub Divisional Magistrate Sadar, Gautam Budh Nagar to complete the process of physical possession of the immovable secured asset to the petitioner situated at House No. C-50, Sector 20, Noida, District Gautam Budh Nagar UP 201001 as per the provisions under Section 14(2) of the SARFAESI Act 2002 in compliance of the order dated 07.10.2016 passed under Section 14(1) of the Act, 2002 by the Competent Authority under the Act 2002.

ii) Issue an appropriate writ order or direction of suitable nature, commanding the respondent no. 2, 3 & 4 to ensure actual physical possession of the immovable mortgaged property/secured asset to the petitioner under the provisions of Section 14(2) of the SARFAESI Act, 2002 without requiring to deposit amount for providing police force within a period to be specified by this Hon'ble Court.

iii) Issue a writ order or direction of suitable nature commanding the respondent authorities to extent all administrative/police assistance in completing the process of physical possession of the immovable property/ secured assets to the petitioner under Section 14 of the SARFAESI Act, 2002."

Learned counsel for the petitioner submits that more than five years have been passed since the order under Section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was passed yet the respondent nos. 1 to 4 have not yet given physical possession of the mortgaged property.

Learned Standing Counsel prays for and is granted 10 days' time to a counter affidavit.

Petitioner shall have three days, thereafter, to file a rejoinder affidavit.

Put up as a fresh case before the appropriate Bench on 15.4.2022.”

3. Undisputed facts of the present case are that the petitioner is the secured creditor. An order dated 07.10.2016 under Section 14(1) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (hereinafter referred to as ‘SARFAESI Act, 2002’) was passed by the respondent No.2. Despite repeated request of the petitioner, the State-respondents have not given physical possession of the secured asset in question to the petitioner. A counter affidavit has been filed on behalf of the respondent Nos.2 and 3. In paragraphs 12 and 17 of the counter affidavit, the **respondents No.2 and 3, i.e. the Additional District Magistrate and the Sub-Divisional Magistrate**, have stated as under:

*“12. That in reply to the contents of paragraph Nos. 22 and 23 of the writ petition it is stated that the **Respondent No. 5 challenged the order dated 07.10.2016 before the Debt Recovery Tribunal in SA No. 662 of 2016. The aforesaid SA was dismissed by the Debt Recovery Tribunal vide order dated 03.01.2022. It is further submitted that the necessary action for handing over the possession has to be taken at the level of the Respondent no.4. It is respectfully submitted that as per the procedure the petitioner had to coordinate with the Respondent No. 4 for the compliance of order dated 07.10.2016 passed by the answering Respondent No. 2. From the pleading it is evident that the petitioner at no point of time informed the answering respondents that the order dated 07.10.2016 has not been complied with. It is also relevant to state that as per the pleading itself, the matter remained pending before DRT till 03.01.2022, hence, therefore, the possession could not have been handed over to the petitioner till the decision of the Debt Recovery Tribunal.***

17. That in reply to the contents of paragraph Nos. 31, 32 and 33 of the writ petition it is stated that the answering respondents have already passed the order for handing over the physical possession of the mortgaged property to the petitioner and further action has to be taken by the police department.”

4. From the aforequoted paragraphs No.2 and 3 of the counter affidavit filed by the respondents No.2 and 3, it is evident that the order dated 07.10.2016 passed by the respondent No.2 under Section 14 of the SARFAESI Act, 2002, was not complied with even after the S.A. No.662 of 2016 filed by the respondent No.5/ borrower was dismissed by the DRT on 03.01.2022. From the aforequoted paragraphs of the counter affidavit, it is also evident that the respondent Nos.2 and 3 have attempted to shift their responsibility upon the respondent No.4, i.e. the Police Commissioner, Varanasi Zone, Varanasi, who is not taking any action despite the Government Order dated 14.02.2022.

5. In the judgment dated 18.02.2022 passed in Writ-C No.1755 of 2022 (Bank of Baroda vs. District Magistrate Maharajganj and 4 others), this Court quoted the Government Order dated 13.09.2021 whereby the State Government has issued certain directions to all the District Magistrate of the State of Uttar Pradesh. In the aforesaid judgment in the case of Bank of

Baroda (supra), this Court observed in paragraphs-7 to 12, as under:-

“7. The enclosures to the personal affidavit of the Chief Secretary reveal that a Government Order dated 13.09.2021 was issued by the Secretary, Government of Uttar Pradesh directing all the District Magistrates of Uttar Pradesh to decide all the pending cases under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') within 30 days (in case there is no legal impediment to the same) pursuant to the judgment dated 24.08.2021 passed by this Court. Further, the second enclosure is another Government Order issued by the Special Secretary to the Government of U.P. dated 11.02.2022 to all the District Magistrates directing strict compliance of the Government Order dated 13.09.2021 issued pursuant to the judgment and order dated 24.08.2021 passed in Writ-C No.7126 of 2021.

*8. The judgment of this Court dated 24.08.2021 has already been quoted above. A specific direction has been issued to all the District Magistrates of the State **to keep a record/register of all the pending applications filed under Section 14 of the SARFAESI Act that may clearly disclose to the District Magistrate (on a fortnightly basis) details of all institutions of such applications made in that district and their disposal within time.** Further directions in the judgment are as follows:-*

"The said register may be duly inspected by the District Magistrate from time to time and also countersigned by him. Based on the entries recorded in such register, a quarterly report of all institution of applications filed under Section 14 of the Act together with the length of pendency of each application be sent to the Registrar General of this Court in the tabular form that may indicate the requirement of the Act is being fulfilled, in letter and spirit, who shall place the same before the appropriate Committee dealing with the functioning of the Debt Recovery Tribunals and Debt Recovery Appellate Tribunals."

9. There is nothing on record to demonstrate that the District Magistrates are maintaining record/registers and are monitoring the disposal of applications filed under Section 14 of the SARFAESI Act. The counter affidavit filed on behalf of the District Magistrate in the case in hand reflects that by an order dated 22.05.2017, this Court in Writ-C No.22486 of 2017 directed further proceedings against the respondent no.2 to be kept in abeyance with liberty to deposit the demanded amount with up-to-date interest with four equal installments with the last installment to be paid by 30.06.2018. It has nowhere been stated in the counter affidavit that the application under Section 14 of the SARFAESI Act could not be disposed of by the authority concerned for want of information regarding non-compliance of the aforesaid judgment and order dated 22.05.2017 passed by this Court in Writ- C No.22486 of 2017. Rather, it has been stated that due to COVID-19, the judicial work was suspended in the last years.

10. Such a conduct by the authority, charged with deciding/disposing of the applications filed under Section 14 of the SARFAESI Act, cannot but be said to be action taken pursuant to the order dated 10.02.2022 passed by this Court in the present writ petition. It is evident that the Government Order dated 13.09.2021, that has been enclosed as Annexure-1 to the personal affidavit filed by the Chief Secretary has been neglected by the respondent-authority/the authority seized of the case under Section 14 of the SARFAESI Act.

11. This Court is dealing with several writ petitions every week being filed by secured creditors seeking directions to the District Magistrate for deciding applications under Section 14 of the SARFAESI Act.

12. Under the circumstances, it is for the Chief Secretary of the State to take a serious look at the state of affairs and ensure compliance of the judgment and order dated 24.08.2021 passed by this Court as well as the Government Orders issued by the Government itself and take suitable action for violation of the same. We also direct the Chief Secretary of State of Uttar Pradesh to also ensure compliance of those directions in the judgment dated 24.08.2021 which are highlighted in bold letters above.”

6. Legislative Mandate of Section 14 of the SARFAESI Act, 2002 is to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction the secured asset or other documents relating thereto may be situated or found, and the aforesaid two officers are statutorily bound to take

possession thereof, and even the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, on the request being made to him, are statutorily bound to take possession of such asset and documents relating thereto and to forward the such asset and documents to the secured creditors provided an application is submitted by the secured creditor accompanied by an affidavit containing averments as provided in Section 14 of the Act.

7. In the case of **C.Bright vs. The District Collector & Ors. AIR 2020 SC 5747** (para-20), Hon'ble Supreme Court held as under:-

"20. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemical, Transcore and Hindon Forge Private Limited has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true intention of the Legislature is a determining factor herein. Keeping the objective of the Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time limit does not render the District Magistrate Functus Officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time limit is to instill a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest."

8. Thus, the law stands settled that the SARFAESI Act, 2002 has been enacted to provide a machinery for empowering banks, financial institutions and reconstruction company, so that they may have the power to take possession of secured assets and to sell or manage it. The purpose of the SARFAESI Act, 2002 pertains to the speedy recovery of dues by banks, financial institutions and reconstruction company. The second proviso to Section 14(1) of the SARFAESI Act, 2002 itself mandates that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying with the contents of the affidavit, **pass suitable orders for the purpose of taking**

possession of the secured asset within a period of thirty days from the date of application and if no order is passed within the said stipulated period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass order within such further period but not exceeding in aggregate sixty days. However, inability to take possession within the prescribed time-limit does not render the District Magistrate Functus Officio. The District Magistrate or the Chief Metropolitan Magistrate, as the case may be, is under statutory obligation. Section 14 of the SARFAESI Act, 2002 itself creates statutory obligation upon the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, for public good to facilitate recovery of public dues, to instil a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as imposes a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within the prescribed time. Even if the prescribed time limit has passed over and the District Magistrate could not handover possession of the secured asset, still the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, will be enjoined upon the duty to facilitate the delivery of possession at the earliest. In the light of the these settled position and a clear statutory mandate, the stand taken by the respondents in the counter affidavit is nothing but prima facie a disobedience of the legislative mandate of the Government Orders as well the judgments of Hon'ble Supreme Court and this Court.

9. That apart, it appears that pursuant to order dated 24.08.2021 passed in Writ-C No.7126 of 2021, the State Government has issued a Government Order No.117रिट/6-पु0-11-22-15रिट/2022 dated 14.02.2022, which is reproduced below:

“ई- मेल/ कोर्टकेस/ अत्यन्त महत्वपूर्ण

संख्या- 117 रिट/ 6 – पु० – 11 – 22 – 15 रिट/2022

प्रेषक,

अवनीश कुमार अवस्थी,
अपर मुख्य सचिव,

उत्तर प्रदेश शासन।
सेवा में,

1- पुलिस आयुक्त,
लखनऊ/ कानपुर/ वाराणसी/ गौतमबुद्धनगर।

2- समस्त वरिष्ठ पुलिस अधीक्ष / पुलिस अधीक्षक,
उत्तर प्रदेश।

गृह (पुलिस) अनुभाग-11

लखनऊ: दिनांक 14 फरवरी, 2022

विषय:- सिक्वोरिटाइजेशन एंड रिकन्स्ट्रक्शन आफ फाइनेंशियल एसेट्स एंड एनफोर्समेंट आफ सिक्वोरिटी इंटरैस्ट एक्ट (सरफेसी अधिनियम- 2002) की धारा - 14 के अन्तर्गत कार्यवाही किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक श्री बीपी सिंह कछवाह, स्थायी अधिवक्ता मा० उच्च न्यायालय, इलाहाबाद के पत्र दिनांक 13.01.2022 (छायाप्रति संलग्न) का कृपया संदर्भ ग्रहण करने का कष्ट करें।

2- उल्लेखनीय है कि सिक्वोरिटाइजेशन एंड रिकन्स्ट्रक्शन आफ फाइनेंशियल एसेट्स एंड एनफोर्समेंट आफ सिक्वोरिटी इंटरैस्ट एक्ट (सरफेसी अधिनियम- 2002) की धारा -14 के अन्तर्गत दायर सभी लम्बित प्रकरणों को निस्तारित करने के दौरान जिलाधिकारियों द्वारा यथावश्यकता मांग करने पर नियमानुसार आवश्यक पुलिस बल (यदि किसी प्रकार की कोई कानूनी/ विधिक बाधा न हो तो) उपलब्ध कराये जाने का प्राविधान है।

3- इस सम्बन्ध में वित्त विभाग के वित्त (संस्थागत) अनुभाग- 35 के शासनादेश संख्या- 533 बी/ वि० (सं०) अनु०- 35- 2021, दिनांक 13.09.2021 की प्रति संलग्न कर प्रेषित करते हुये मुझे यह कहने का निदेश हुआ है कि उपरोक्त निर्देशों का कड़ाई के साथ अनुपालन सुनिश्चित किया जाय। यदि इन निर्देशों के अनुपालन में शिथिलता हेतु किसी अधिकारी/ कर्मचारी को उत्तरदायी पाया जाता है, तो उसके विरुद्ध संगत नियमों के अन्तर्गत दण्डात्मक कार्यवाही की जायेगी।

संलग्नक: यथोपरि।

भवदीय,

(अवनीश कुमार अवस्थी)

अपर मुख्य सचिव।

संख्य एवं दिनांक तदैव।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1- पुलिस महानिदेशक, उत्तर प्रदेश, लखनऊ।
- 2- अपर पुलिस महानिदेशक (कानून एवं व्यवस्था), उत्तर प्रदेश, लखनऊ।
- 3- अपर पुलिस महानिदेशक, प्रयागराज जोन, प्रयागराज।
- 4- गार्ड फाइल।

आज्ञा से,

(राकेश कुमार मालपाणी)

विशेष सचिव।"

10. Counter affidavit filed by the respondent Nos.2 and 3 is apparently in defiance of judgments of this Court as well as the direction issued by the State Government from time to time particularly the aforequoted G.O. dated 14.02.2022. Thus, the facts as stated leaves no manner of doubt that there is failure on the part of the respondent Nos.1 to 4 to discharge their duty under Section 14 of the SARFAESI Act, 2002.

11. For all the reasons aforesaid, **the writ petition is allowed.** The respondent Nos.1 and 4 are directed to give physical possession of the secured asset in question to the petitioner-bank within one month, if there is no legal impediment.

12. We also direct the Chief Secretary of the State of Uttar Pradesh to issue clear directions to all the concerned authorities in the State of Uttar Pradesh to comply strictly the provisions of Section 14 of the SARFAESI Act, 2002 and handover physical possession of the secured asset to the concerned bank/ financial institutions/ reconstruction company within the prescribed time, if there is no legal impediment. Such direction shall be issued by the Chief Secretary within two weeks from today.

13. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary of the Government of Uttar Pradesh within three days, for compliance.

Order Date :- 25.05.2022
NLY