



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE JOYMALYA BAGCHI
THE HONOURABLE SRI JUSTICE A V SSHA SAI
WRIT PETITION NO: 17949 OF 2020

Between:

1. M/S MARUTHI MINERALS PVT LTD Rep., by its Mg Director Gudi Maruthi House No.1-92/124/A/17 First Floor Ram and Ram Exclusives Madha Bhuveswari Layout, Madhapur Near Hitech City, Hyderabad R/at G-6 Anurag Apartments Layola College , Road No.3 Vijayawada -7,

...PETITIONER(S)

AND:

1. UNION OF INDIA Rep., by its Ministry of Finance Sastry Bhavan, New Delhi.
2. Bank of India Rep., by its Chief Manager Tirupathi Branch, Chittor District.
3. Sri Dasari Ramanjaneyulu S/o D. Bheemappa Aged 58 yrs Chief Manager Bank of India , Tirupathi .
4. K.V.S. Ramesh Authorised Officer Bank of India, Tirupathi.
5. Subhan Bande Advocate (Advocate Commissioner appointed by C.J.M at Kadapa)
6. Station House Officer Sambepalli , Rayachoty Chittor Road, YSR Kadapa District.

...RESPONDENTS

Counsel for the Petitioner(s): R SIVA SAI SWARUP

Counsel for the Respondents:

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE JOYMALYA BAGCHI
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI

Writ Petition No.17949 of 2020
[Taken up through video conferencing]

ORDER: (Per Hon'ble Sri Justice Joymalya Bagchi)

This writ petition is filed seeking the following relief:

“.....declaring the action of the respondents 2 to 5 seized the Petitioner Firm Properties Immovable as well as Movables Etc., covered in S.No.270/2B in an extent of Ac.3.00 cents Guttpalli Village, Sambepalli Mandal within the limits of 6th respondent in connection with Order passed in Crl.M.P.No.93/2019 dt.22.04.2019 on the file of Chief Judicial Magistrate-cum-Prl. Assistant Sessions Judge, Kadapa by invoking Section 14 of SARFAESI Act even without informing nor given any notice to the petitioner nor filing any Seizure Report before the concerned Chief Judicial Magistrate Kadapa, Continuing with Seizure, Lock & Key of the Petitioner Properties it is nothing but illegal, unauthorisedly, unlawfully even though the Case in Crl.M.P.93/2019 of Chief Judicial Magistrate is dismissed dt.4.3.2020 all are illegal, unlawful, arbitrary as against the Law and Procedure, Violation of Article 14, 19, 300A of the Constitution of India. Consequently, to direct the respondents 2 to 5 to handover the entire seized properties after breaking open lock and key of the petitioner firm milk Chilling Unit in the interest of the justice and pass such other order or orders may deem fit and proper in the circumstances of the case”.

2. Factual matrix of the case is to the effect that the petitioner had taken a loan from the respondent-Bank against the secured asset which came to be the subject matter of proceeding under Section 14 of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short, '2002 Act') being Crl.M.P.No.93 of 2019 pending before the Chief Judicial Magistrate, Kadapa.



3. On 20.03.2019 the following order was passed:

“In the above circumstances, Sri B.Shuban, Advocate is appointed as Advocate Commissioner to take possession of the petition schedule properties and deliver the same to the petitioner after making an inventory of articles, if any, found in the petition schedule property by conducting panchanama. The learned Advocate Commissioner is also directed to break open the lock (locks) if necessary and the Station House Officer of the concerned Police Station is directed to assist the learned Advocate Commissioner in executing the warrant.....”

Thereafter, the matter was adjourned on number of dates for filing report of the Advocate Commissioner. On 04.03.2020 the proceeding was closed observing that the respondent-Bank was not showing interest to proceed further. At this stage, petitioner has approached this Court assailing the legality of the proceedings and the action of the respondent-Bank in taking possession of the secured asset in question without notice to it and on reference to the aforesaid proceeding.

4. Counter has been filed on behalf of the bank wherein it is pleaded that the secured asset was taken possession of by the Advocate Commissioner on 04.12.2019 pursuant to the direction issued by the Magistrate on 20.03.2019. Inadvertently, report of the Advocate Commissioner was not placed before the learned Magistrate and the proceeding came to be closed. Subsequently, the error was noticed and prayer was made to reopen the proceeding so that the report of the Advocate Commissioner could be placed on record. On 07.12.2020 the learned Magistrate reopened the proceeding and took the commissioner's report on record.

5. Sri R.Siva Sai Swarup, learned counsel appearing for the petitioner submits that the proceeding under Section 14 of 2002 Act was conducted in an illegal manner. No steps were taken by the Advocate Commissioner to submit



his report and the proceedings came to be dropped on 04.03.2020. Thereafter, without jurisdiction, the learned Magistrate recalled the order and accepted the report in an arbitrary and illegal manner. Conduct of the respondent-Bank in taking possession of the secured asset without notice or reference to the aforesaid proceeding was without jurisdiction and the petitioner is entitled to restoration of the secured asset. Referring to Section 362 of the Code of Criminal Procedure, 1973, he argues that the Chief Judicial Magistrate (CJM) did not have power to recall his earlier order and reopen the proceeding and accept the advocate commissioner's report. He also refers to decision of the Hon'ble Apex Court in **Vareed Jacob v. Sosamma Geevarghese**¹ to emphasize the fact that restoration of a *lis* does not automatically amount to restoration of interim orders passed therein.

6. In reply, *Smt. V.Dyumani*, learned Standing Counsel appearing for respondent-Bank, submits that the learned Magistrate while exercising powers under Section 14 of the 2002 Act is not governed by the provisions of the Code of Criminal Procedure, 1973. The Magistrate was not adjudicating an offence nor was investigating or showing an offence but was merely extending administrative assistance to the secured creditor to recover the secured asset. Provisions of the 2002 Act have overriding effect in view of Section 35, over all laws including Code of Criminal Procedure, 1973. Possession of the secured asset has been taken during the currency of the proceeding before the Magistrate and therefore, it cannot be said that recovery of possession was without authority of law. Submission of the advocate commissioner's report is a ministerial act and would not affect the legality of the proceeding under Section 14 or the steps taken to recover the asset.

7. In the light of the rival submissions, the following issues arise for consideration:

¹ 2004 (6) SCC 378



(a) Whether the Chief Judicial Magistrate was barred by operation of Section 362 of the Code of Criminal Procedure, 1973 to reopen the proceeding and accept the report of the Advocate Commissioner?

(b) Whether acceptance of such report vitiated the recovery of the secured asset in terms of order dated 20.03.2019, passed by the Chief Judicial Magistrate under Section 14 of the Act aforesaid?

8. Section 14 of the 2002 Act was enacted empowering the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, to assist the secured creditor to take possession of secured asset and/or documents in respect thereof and forward them over to the said creditor.

9. Procedure for invoking such jurisdiction as laid down in the said provision is as follows:

(1) On an application made by the secured creditor accompanied by an affidavit duly verified by its authorized officer declaring various particulars as set out in the proviso to Sub-Section (1) of Section 14 of the 2002 Act.

(2) On satisfaction of the learned Magistrate that the necessary particulars as set out in Section 14 (1) of the 2002 Act are disclosed in the affidavit furnished by secured creditor,

the learned Magistrate is empowered to pass appropriate orders for taking possession of the secured asset.

10. It is not disputed that the aforesaid conditions, namely, filing of the requisite affidavit and the satisfaction thereon had been arrived at by the learned Magistrate before passing the order dated 20.03.2019, directing the Advocate Commissioner to take possession of the secured asset were fulfilled in the present case. The secured asset was taken possession of by the Advocate Commissioner on 04.12.2019. However, report of the Advocate Commissioner was not filed and no steps were taken by the respondent-Bank before the Magistrate. Hence, the Magistrate closed the proceeding on 04.03.2020. At this stage, the petitioner approached this Court primarily challenging the entire



proceeding and recovery of secured asset on the ground that the report of the Advocate Commissioner had not been filed before the Magistrate. During the pendency of this petition, on the prayer of the respondent-Bank, learned Magistrate by order dated 07.12.2020, reopened the proceeding and received the Commissioner's report. It is argued on behalf of the petitioner that in view of bar under Section 362 of the Code of Criminal Procedure, the learned Magistrate could not have recalled his earlier order, reopened the proceeding and accepted the Advocate Commissioner's report. He submits that the powers and jurisdiction of the Chief Metropolitan Magistrate/Chief Judicial Magistrate are derived from the Code and Section 362 of the Code of Criminal Procedure operates as a bar upon the Magistrate to recal his own order.

11. In **Authorised Officer, Indian Bank v. D.Visalakshi and Another**², the Apex Court was called upon to decide whether Chief Judicial Magistrate in non-metropolitan areas could exercise the powers under Section 14 of the Act of 2002. Holding in the affirmative, the Court referred to Sections 35 and 37 of the Act of 2002 and held as follows:

46. The borrowers or the persons claiming through borrowers had placed emphasis on Section 35 of the 2002 Act. The same reads thus:

35. The provisions of this Act to override other laws.-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

47. The construction of this provision plainly indicates that the provisions of the Act will override any other law for the time being in force. The question is: do the provisions of 2002 Act override the provisions of the CrPC, whereunder the functions to be discharged by CMM are similar to that of CJM. Further, the expressions "CMM and CJM" are used interchangeably in CrPC and are considered as synonymous to

² (2019) 20 Supreme Court Cases 47



each other. Section 14, even if read literally, in no manner denotes that allocation of jurisdictions and powers to CMM and CJM under the Code of Criminal Procedure are modified by the 2002 Act. Thus understood, Section 14 of the 2002 Act, stricto sensu, cannot be construed as being inconsistent with the provisions of the Code of Criminal Procedure or vice-versa in that regard. If so, the stipulation in Section 35 of the 2002 Act will have no impact on the expansive construction of Section 14 of the 2002 Act. Whereas, there is force in the submission canvassed by the secured creditors (Banks), that Section 37 of the 2002 Act answers the issue under consideration. The same reads thus:

37-Application of other laws not barred.-The provisions of this Act or the Rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

The bare text of this provision predicates that the provisions of the 2002 Act or the Rules made thereunder shall be in addition to the stated enactments or "any other law for the time being in force". Having said that the provisions of the Section 14 of the 2002 Act are in no way inconsistent with the provisions of Code of Criminal Procedure, it must then follow that the provisions of the 2002 Act are in addition to, and not in derogation of the Code."

Accordingly, the Court invoked the provisions of the Code of Criminal Procedure with regard to definition and jurisdiction of the Chief Judicial Magistrate and held as follows:

".....it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of Code of Criminal Procedure, would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard



to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.”

12. It is settled law that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it, *vide State of Orissa vs. Sudhansu Sekhar Misra and Ors.*³. Hence, the aforesaid decision cannot be said to be an authority for the proposition that the Chief Judicial Magistrate while exercising powers under Section 14 of the 2002 Act would be governed by the procedure laid down in the Code of Criminal Procedure, 1973 or limitations contained therein.

13. On the contrary, the report describes the 2002 Act as a self-contained Code and holds that the power of Section 14 encapsulates ‘States coercive powers’ for obtaining possession of the secured asset, which is essentially administrative or executive in nature. Merely for the purpose of verification of compliance referred to under the first proviso of Section 14, it may partake the quasi judicial character. However, the Chief Judicial Magistrate does not exercise a judicial process of adjudication of *inter se* rights either in respect of the subject matter or the nature of transaction. Any one affected by the action may seek statutory remedy before the Tribunal or judicial review under Article 226 of the Constitution of India. The report enunciated the aforesaid propositions as follows:

35. *It is also well established by now that the 2002 Act, is a self-contained code. Concededly, the nature of inquiry to be conducted by the designated authorities under the 2002 Act, is spelt out in Section 14 of the 2002 Act. The same is circumscribed and is limited to matters specified in Clauses*

³ AIR 1968 SC 647



(i) to (ix) of the first proviso in sub-section (1) of Section 14 of the 2002 Act, inserted in 2013. Prior to the insertion of that proviso, it was always understood that in such inquiry, it is not open to adjudicate upon contentious pleas regarding the rights of the parties in any manner. The stated authorities could only do verification of the genuineness of the plea and upon being satisfied that it is genuine, the adjudication thereof could then be left to the Court of competent jurisdiction.

36. Suffice it to observe that an inquiry conducted by the stated authority Under Section 14 of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied upon documents filed by the parties. That inquiry is required to be concluded within the stipulated time frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That pre-supposes that it is a quasi-judicial inquiry though, a non-judicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise.

It further held:

'44. Be it noted that Section 14 of the 2002 Act is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to take assistance of the authorised officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorised officer essentially exercises administrative or executive functions, to provide assistance to the secured creditor in terms of State's coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorised officer may partake the colour of quasi-judicial function, which can be discharged even by the Executive



Magistrate. The authorised officer is not expected to adjudicate the contentious issues raised by the concerned parties but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf, proceed to pass an order to facilitate taking over possession of the secured assets.”

In respect of remedies available against action taken under Section 14 of the Act of 2002, the Court held as follows:

37.Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy Under Section 17 of the 2002 Act and/or judicial review Under Article 226 of the Constitution of India.....”

14. The aforesaid observations of the Apex Court make it amply clear that proceeding before the Chief Metropolitan Magistrate/Chief Judicial Magistrate is essentially administrative or executive in nature and the Magistrate for the purposes of the 2002 Act cannot be treated as a Criminal Court exercising judicial functions in respect of investigation/inquiry or trial of an offence. Hence, the provisions of the Code including Section 362 of the Criminal Procedure Code, 1973 do not circumscribe the powers of the Chief Judicial Magistrate while it exercises jurisdiction under 2002 Act, which is a self-contained Code.

15. Section 362 of the Code reads as follows:-

362. Court not to alter judgment: Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

The provision operates as a bar on a Criminal Court to alter or review a judgment or final order disposing of a case except to correct a clerical or arithmetical error.



16. While dealing with an application under Section 14 of the 2002 Act, the Magistrate is not disposing of a case under the Code. Moreover, there is nothing in the 2002 Act, which provides an application under Section 14 is to be dealt with under the provisions of the Code of Criminal Procedure, 1973. Hence, we are of the opinion that the aforesaid bar does not restrict the powers of the Magistrate while exercising its powers under Section 14 of the 2002 Act.

17. In the present case, the Magistrate exercised the power to reopen the case to permit the Advocate Commissioner to perform a ministerial act, namely, submission of its report relating to recovery of possession. Receipt of the report by the Magistrate was purely an administrative/executive function and in doing so, the Magistrate did not exercise judicial function of adjudication of *inter se* rights in respect of the subject matter of secured asset or the nature of transaction. Any dispute with regard thereto was remediable before the Tribunal or by invocation of the powers of judicial review under Article 226 of the Constitution of India. Judged from this perspective, the action of the Magistrate in accepting the report of the Advocate Commissioner being a ministerial act, it was open to him to reopen the proceeding for the limited purpose of receiving of the report.

18. In this regard, reference may be made to Section 21 of the General Clauses Act, 1897 which reads as follows:

21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.— Where by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.



19. We are not unmindful of the fact that the aforesaid provision would not apply to an authority exercising judicial/quasi judicial functions under the statute. The Magistrate while exercising powers under Section 14 of the 2002 Act essentially performs administrative or executive functions save the limited verification of compliance of proviso to Section 14(1) of the 2002 Act prior to issuance of warrant of possession. Receipt of Advocate Commissioner's report, therefore, wholly partakes an executive/ministerial act. As the act of the Magistrate in recalling or modifying its earlier order to enable the Advocate Commissioner to submit his report was essentially ministerial in nature, source of such power may be traced to Section 21 of the General Clauses Act, 1897. Hence, we hold that there was no error of law on the part of the learned Magistrate to permit the ministerial act of filing the report of the Advocate Commissioner notwithstanding its earlier order of closing the proceeding.

20. With regard to the impact of reopening the case to enable submission of the Advocate Commissioner's report on the legality of the recovery of the secured asset, we note that the proceedings were alive at the time when the Advocate Commissioner had taken possession of the secured asset in December, 2019. Hence, it cannot be said that recovery of possession by the Advocate Commissioner was without jurisdiction or had infringed the constitutional rights of the petitioner under Section 300A of the Constitution of India. Subsequent filing of the Advocate Commissioner's report after closure of the proceeding, in our considered opinion, does not affect any legal right of the petitioner so as to render recovery of possession in the present case without jurisdiction. Reference to the decision in **Vareed Jacob** (1 supra) is misplaced. In the present case, recovery of possession by the Advocate Commissioner was prior to the dropping of the proceeding and therefore, it cannot be said that the direction upon the advocate commissioner was not subsisting at the time when he had taken possession.



21. Finally, it has been argued that the subsequent order of enabling the Advocate Commissioner to submit his report has also been challenged in a criminal revision proceeding. We are of the opinion that such challenge is wholly unmerited in view of sub-Section (3) of Section 14 of the 2002 Act which debars any act of the Magistrate being brought into question before any Court or authority except the tribunal or under judicial review under Article 226 of the Constitution of India.

22. In light of the aforesaid discussion, we are of the opinion that there is no merit in the Writ Petition and the same is accordingly dismissed.

There shall be no order as to costs.

As a sequel, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

JOYMALYA BAGCHI, J

A.V.SESHA SAI, J

Date: 09.02.2021

Note: (i) L.R copy to be marked;
(ii) Issue CC in three days
(B/o)
RAR