



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 2ND DAY OF JULY 2024 / 11TH ASHADHA, 1946

WP(C) NO. 21857 OF 2023

PETITIONER:

THE AUTHORIZED OFFICER,
AGED 50 YEARS
THE PEOPLE'S URBAN CO-OPERATIVE BANK LTD NO.51,
HEAD OFFICE AT TRIPUNITHURA, PIN - 682301

BY ADV DEVAPRASANTH.P.J.

RESPONDENTS:

- 1 THE ADDL. CHIEF JUDICIAL MAGISTRATE,
THE ADDL. CHIEF JUDICIAL MAGISTRATE'S COURT,
(SPL. COURT FOR TRIAL AGAINST PRESENT AND
FORMER MP'S & MLA'S, KERALA), DISTRICT COURT,
ERNAKULAM - 682032 (IMPLEADED AS THE STATUTORY
AUTHORITY UNDER SECTION 14 OF THE SARFAESI ACT)
- 2 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO MINISTRY OF
FINANCE, NEW DELHI, PIN - 110001

ADDL.R3 SMT.VIJAYAKUMARI
W/O.RAGESHKUMAR, RESIDING AT KRISHNAMURTHAM
32/3037-D, PONNURUNNI, VYTILLA P.O.,
PONNURUNNI DESOM, POONITHURA VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT 682 019.

ADDL.R4 SRI.RAGESHKUMAR
AGED 62 YEARS
SON OF DHAMODHARAN, RESIDING AT KRISHNAMURTHAM,
32/3037-D, PONNURUNNI, VYTILLA P.O.,
PONNURUNNI DESOM, POONITHURA VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT 682 019



W.P.(C) Nos.21857 & 21963 of 2023

: 2 :

ADDL.R5 SRI.RAJEEV
AGED 54 YEARS
SON OF MADHAVAN, RESIDING AT THEKKUMKARAYIL
HOUSE, PANANGAD P.O., PANANGAD DESOM,
KUMBALAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT - 682 506

(ADDITIONAL RESPONDENTS 3 TO 5 ARE IMPLEADED AS
PER ORDER DATED 02.07.2024 IN IA.NO.1/2024 IN
WPC.21857/2024)

BY ADVS.
SRI.T.C. KRISHNA, SCGC
SRI.S. GOPINATHAN, SR. GOVERNMENT PLEADER
N.K.SHYJU
GIREESH PANKAJAKSHAN(K/692/2009)
ANANYA M. (K/987/2022)
VISHNU MOHAN(K/2129/2022)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.07.2024, ALONG WITH WP(C).21963/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.21857 & 21963 of 2023

: 3 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 2ND DAY OF JULY 2024 / 11TH ASHADHA, 1946

WP(C) NO. 21963 OF 2023

PETITIONER:

THE AUTHORISED OFFICER,
AGED 50 YEARS
THE PEOPLE'S URBAN CO-OPERATIVE BANK LTD NO.51,
HEAD OFFICE AT TRIPUNITHURA,
ERNAKULAM, PIN - 682301

BY ADV DEVAPRASANTH.P.J.

RESPONDENTS:

- 1 THE ADDL. CHIEF JUDICIAL MAGISTRATE,
THE ADDL. CHIEF JUDICIAL MAGISTRATE COURT,
(SPL. COURT FOR TRIAL AGAINST PRESENT AND
FORMER MP'S & MLA'S, KERALA), DISTRICT COURT,
ERNAKULAM 682 032, (IMPLEADED AS THE STATUTORY
AUTHORITY UNDER SECTION 14 OF THE SARFAESI ACT)
- 2 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO MINISTRY OF
FINANCE, NEW DELHI, PIN - 110001

ADDL.R3 SRI.SANTHOSH KUMAR,
AGED 52 YEARS, S/O. C.N. RAJAPPAN,
RESIDING AT 'SREEMANGALAM', CHENNANKULANGARA
TEMPLE ROAD, PONEKKARA, EDAPPALLY P.O.,
EDAPPALLY NORTH VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT - 682 024.

[ADDITIONAL 3RD RESPONDENT IS IMPLEADED AS PER
ORDER DATED 12/9/2023 IN I.A-1/2023 IN WP(C)
21963/2023]



2024:KER:48243

W.P.(C) Nos.21857 & 21963 of 2023

: 4 :

BY ADV M N MANMADAN, CGC
SRI.S.GOPINATHAN, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.07.2024, ALONG WITH WP(C).21857/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.21857 & 21963 of 2023

: 5 :

CR

N. NAGARESH, J.

.....
W.P.(C) Nos.21857 and 21963 of 2023
.....

Dated this the 2nd day of July, 2024

J U D G M E N T

~ ~ ~ ~ ~

Where a secured creditor who bid for the immovable property on its own behalf as permitted under Section 13(5A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and has purchased the property, can resort to Section 14 for taking over physical possession of the secured asset? Whether a secured creditor, who has bid for the secured asset, ceases to be a secured creditor after purchase of the immovable property? These are the legal questions arising for consideration in these writ petitions.



W.P.(C) Nos.21857 & 21963 of 2023

: 6 :

2. These writ petitions have been filed by the Authorised Officer of the People's Urban Co-operative Bank Limited, Thrippunithura. The petitioner filed MC No.188/2021 and MC No.906/2022 before the Additional Chief Judicial Magistrate's Court, Ernakulam invoking Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitions were filed to get assistance to obtain vacant possession of the property mentioned in the Schedule of the petitions.

3. The petitioner states that the properties were purchased by the Bank and the Authorised Officer is bound to give delivery of possession of the property to the Bank. The Authorised Officer is bound to handover delivery of the scheduled property as per Rule 9(6) of the Security Interests (Enforcement) Rules.

4. When the Bank approached the Additional Chief Judicial Magistrate invoking Section 14 of the SARFAESI Act to get assistance to obtain vacant possession of the secured assets, the Additional CJM rejected the petitions filed holding



W.P.(C) Nos.21857 & 21963 of 2023

: 7 :

that the Bank is not a secured creditor any more and therefore the Bank is not entitled to invoke Section 14. The petitions filed by the Bank under Section 14 were dismissed by the Additional Chief Judicial Magistrate, as per Ext.P2 orders.

5. The counsel for the petitioner argued that the Magistrate erred in holding that the sale would be concluded as soon as the secured creditor emerged as a successful bidder. The counsel for the petitioner urged that the Magistrate ought not have attempted to adjudicate a legal issue. In the judgment in ***State Bank of India and another v. Chief Judicial Magistrate, Kollam and others*** [2021 (6) KHC 83], this Court has held that the statute does not contemplate an adjudicatory order to be passed by the Magistrate or to consider the application as in a judicial process. Ext.P2 order of the Magistrate is ultravires, contended the counsel for the petitioner.

6. The counsel for the petitioner also relied on the judgment of the Hon'ble Apex Court in ***Balkrishna Rama***



W.P.(C) Nos.21857 & 21963 of 2023

: 8 :

Tarle Dead through LRs and another v. Phoenix ARC Private Limited and others [2022 SCC Online SC 1299] to contend that a Chief Judicial Magistrate acting under Section 14 of the Act is discharging only ministerial functions (administrative) and should not venture to adjudicate the issues on legal merits. The counsel for the petitioner therefore urged that Ext.P2 order dated 29.03.2023 in W.P.(C) No.21857/2023 and Ext.P2 order dated 29.03.2023 in W.P.(C) No.21963/2023 be quashed.

7. Heard.

8. The counsel for the petitioner argued that while exercising powers under Section 14, a Magistrate is not discharging any judicial or quasi judicial functions and therefore the Magistrate ought not have ventured to adjudicate any legal issue. The counsel for the petitioner relied on the judgment of this Court in ***State Bank of India, TVM and another v. Chief Judicial Magistrate, Kollam and others [2021 (6) KLT 72]***, wherein this Court has held that the SARFAESI Act does not contemplate an adjudicatory



W.P.(C) Nos.21857 & 21963 of 2023

: 9 :

order to be passed by the Magistrate or to consider the application as in a judicial process. The procedure prescribed under Section 14 of the SARFAESI Act is part of a non-judicial process. The counsel for the petitioner also relied on the judgment in ***Roshan Narayanan C.S. v. Authorised Officer, Central Bank of India and another*** [2017 (4) KLT 1172], wherein this Court has held that there is no judicial function discharged by the Magistrate while acting under Section 14.

9. From Section 14, though it is evident that the Magistrate is not exercising a judicial or quasi judicial function while considering applications under Section 14, the provision requires the Magistrate that on receipt of application, the Magistrate shall get satisfied in the contents of the affidavit filed before him. The affidavit necessarily shall provide particulars of the secured asset. Therefore, it would be perfectly within the powers of the Magistrate to decide whether the property sought to be taken physical possession of is a secured asset or not. Exercise by the



W.P.(C) Nos.21857 & 21963 of 2023

: 10 :

Magistrate of powers under Section 14 to satisfy about the contents of the affidavit cannot be treated as a judicial or quasi judicial function. Therefore, the argument of the petitioner that while passing Ext.P2 orders, the Additional Chief Judicial Magistrate has ventured to exercise judicial or quasi judicial function cannot stand the scrutiny of law.

10. The Additional Chief Judicial Magistrate, while rejecting the petitions filed by the secured creditor under Section 14 has held that when the Bank has purchased the property, the Bank ceases to be a secured creditor as defined under Section 2(zd) of the SARFAESI Act and therefore petition filed by the Bank who is not a secured creditor as defined under the SARFAESI Act, is not maintainable.

11. Section 2(zd) of the SARFAESI Act defines the term “secured creditor” as follows:-

"Secured creditor" means-

- (i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (I);
- (ii) debenture trustee appointed by any



W.P.(C) Nos.21857 & 21963 of 2023

: 11 :

bank or financial institution; or

(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with the Board appointed by any company for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created by any borrower for due repayment of any financial assistance.

The term “security asset” means the property on which security interest is created.

12. Section 13 of the SARFAESI Act provides for enforcement of security interest. Section 13 (1) to (8) reads as follows:

13. Enforcement of security interest—

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor



W.P.(C) Nos.21857 & 21963 of 2023

: 12 :

may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4):

PROVIDED that —

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-



W.P.(C) Nos.21857 & 21963 of 2023

: 13 :

section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the



immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for



W.P.(C) Nos.21857 & 21963 of 2023

: 15 :

transfer by way of lease, assignment or sale of the secured assets,—

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

13. Section 13(5A) provides that where the sale of an immovable property for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale. The Bank in this case has bid for the immovable property. The question then arising is whether when the Bank has purchased the property in a bid, whether the Bank then can exercise the right of a secured creditor to approach the Magistrate seeking assistance in taking possession of the property.



14. Section 14(1) of the SARFAESI Act reads 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 assets is required to be taken by the secured creditor or if any of the secured assets 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 assets, 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 to him —

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

(b) forward such asset and documents to the secured creditor:

PROVIDED that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that —

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of



W.P.(C) Nos.21857 & 21963 of 2023

: 17 :

properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

PROVIDED FURTHER 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 the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

PROVIDED ALSO that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.



W.P.(C) Nos.21857 & 21963 of 2023

: 18 :

PROVIDED ALSO that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(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

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

The provision which begins with the words “where the possession of any secured asset is required to be taken by the secured creditor”, would indicate that Section 14 can be invoked only to take physical possession of “secured asset”.

15. In the judgment in ***Balkrishna Rama Tarle Dead through LRs and another*** (supra), the Hon’ble Apex Court was considering whether powers exercised by the Magistrate under Section 14 are ministerial acts or judicial powers. While holding that no element of quasi judicial function or application of mind would require while disposing of a Section 14 application, the Hon’ble Apex Court noted in paragraph 8 of the judgment that considering the scheme of the SARFAESI Act, it is explicit and crystal clear that



W.P.(C) Nos.21857 & 21963 of 2023

: 19 :

possession of a secured asset can be taken by the secured creditor before confirmation of sale of the secured assets as well as post-confirmation of sale.

16. Taking over symbolic possession of property is governed by Section 13(4). Section 13(4)(a) also uses the terminology “secured assets” of the borrower. Going by the reasonings of the learned Magistrate in Ext.P2 order in these writ petitions, it can be contended that after the Bank bidding in auction, the property ceases to be a “secured asset” and therefore the Bank thereafter cannot invoke the provisions of Section 14. However, in ***Balkrishna Rama Tarle Dead through LRs and another*** (supra), the Hon’ble Apex Court has held that the secured asset can be taken by the secured creditor post-confirmation of sale also, which necessarily means that the character of the property as secured asset continues for the purpose of SARFAESI Act.

17. In the judgment in ***ITC Limited v. Blue Coast Hotels Limited and others*** [(2018) 15 SCC 99], the Hon’ble Apex Court noted that the transfer of the secured asset by



W.P.(C) Nos.21857 & 21963 of 2023

: 20 :

the creditor cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act and that the creditor had a right to take actual possession of the secured assets and must be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement. The Hon'ble Apex Court held that the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction purchaser and thus remained a secured creditor in the Act. The judgment of the Apex Court in **ITC Limited** (supra) would necessarily be applicable to a case where the creditor/Bank has purchased the property in bid and the physical possession of the secured asset has not been transferred to the creditor/Bank.

18. This Court in the judgment in **Kottakkal Co-operative Urban Bank v. T. Balakrishnan and another** [2008 (2) KLT 456] has held that a secured creditor, who has not taken *de facto* possession but has proceeded and



W.P.(C) Nos.21857 & 21963 of 2023

: 21 :

completed transfers on the basis of *de jure* possession, is entitled to apply for assistance of Magistrate, for taking over actual physical possession from the secured debtor.

19. For the afore reasons, I find that the Additional Chief Judicial Magistrate has erred in rejecting the petitions filed by the secured creditor on the ground that after purchase of property in bid, the property ceases to be a secured asset. Ext.P2 orders in both the writ petitions are therefore set aside. The Additional Chief Judicial Magistrate is directed to reconsider the applications and pass orders afresh.

The writ petitions are disposed of as above.

Sd/-

N. NAGARESH, JUDGE

aks/28.06.2024



2024:KER:48243

W.P.(C) Nos.21857 & 21963 of 2023

: 22 :

APPENDIX OF WP (C) 21857/2023

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE CJM , ERNAKULAM
Exhibit P2	TRUE COPY OF THE ORDER DATED 29.03.2023 IN MC NO. 188/2021



2024:KER:48243

W.P.(C) Nos.21857 & 21963 of 2023

: 23 :

APPENDIX OF WP (C) 21963/2023

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE PETITION FILED BY
PETITIONER BEFORE BEFORE THE CJM,
ERNAKULAM

Exhibit P2 TRUE COPY OF THE ORDER DATED
29.03.2023