

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.5133of 2023

TATA Capital Housing Finance Limited, a Housing Finance Company having its registered office at 11th Floor, Tower A, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, P.O. & P.S. Lower Parel, District Mumbai, Maharashtra and having one of its branch offices at 1st Floor, Gayathri Enclave, K – Road, P.O. & P.S. Bistupur, Jamshedpur – 831001, Jharkhand represented through its Authorized Officer, Abhirup Ghosh.

... .. **Petitioner**

Versus

1. The State of Jharkhand, through the Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District Ranchi, Jharkhand.
2. The Deputy Commissioner, East Singhbhum.
3. Kamlesh Kumar Singh, son of Banke Prasad Singh, R/o Flat No.02, 6th Floor, Hemkunj Apartment, MouzaKitadih, Thana No.1167, P.S. & P.O. Parsudih, Khata No.131, Plot No.314 & 315, Jamshedpur, District East Singhbhum, Jharkhand.

... .. **Respondents**

For the Petitioner (s) : Mr. RishuRanjan, Advocate.
For the Respondent(s) : Mr. Raunak Sahay, AC to GP-V

CORAM:SRI ANANDA SEN, J.

05/04.07.2024

By way of filing this writ petition, the petitioner has sought for following reliefs:-

- a. *“For issuance of an appropriate writ/writs, order/orders, direction/directions or writ in the nature of mandamus commanding upon the respondents especially respondent no. 2 to show cause as to how and under what circumstances the application dated 08.07.2022 preferred under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter SARFAESI Act) is pending since 08.07.2022.*
- b. *For issuance of an appropriate writ/writs, order/orders, direction/directions or writ in the nature of mandamus commanding upon the respondent no. 2 to immediately and forthwith dispose of the application dated 08.07.2022 preferred by the petitioner strictly within the time frame as contained in section 14 of the SARFAESI Act.”*

2. It is the grievance of the petitioner that the application of the petitioner under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been kept pending by the Deputy Commissioner/ District Magistrate, East Singhbhum, since 08.07.2022.

3. The time is the essence of Section 14. Section 14 of the SARFAESI Act, reads as hereunder:-

“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 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 assets¹[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.]

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.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate 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.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.”

4. It is the duty of the District Magistrate to assist the secured creditor in taking possession of the secured assets. The timeframe has been mentioned which is 30 days. Any delay at the instance of the District Magistrate will frustrate the provision of this Act. Further, the District Magistrate is not the Adjudicating Authority under the aforesaid Act. His duty is only to assist the secured creditor in taking possession of the property i.e. giving assistance so that the possession can be taken peacefully and if someone obstructs, appropriate action can be taken against him.

5. By delaying the disposal of this application, the District Magistrate is frustrating the intent of law, which should not be.

6. Thus, I direct the Deputy Commissioner/ District Magistrate, East Singhbhum, to immediately within two weeks take appropriate steps and dispose of the application of the petitioner in terms of Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

7. With the aforesaid direction, this writ petition is disposed of.

(ANANDA SEN, J.)