

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

COMP No. 2 of 2001

(IN REF M/S MAHESHWARI PROTEINS LTD. Vs RECD. FROM BIFR NEW DELHI

Dated: 16/08/2023

Shri Vishal Lashkari, learned counsel for the applicants in I.A. No.3058/2022.

Shri D.S. Panwar, learned counsel for the auction purchaser.

Shri Vaibhav Bhagwat, learned counsel for the State.

Shri H.Y. Mehta, learned counsel for the O.L. along with the Official Liquidator.-

<i>Reserved on</i>	<i>: 19.06.2023</i>
<i>Pronounced on</i>	<i>: 16.08.2023</i>

- 1] Heard on **I.A. No.3058/2022.**
- 2] This application has been filed by the applicants herein seeking the following reliefs:-

- (I) Declaration that the proceeding initiated by the Sub- Divisional Officer, City Ratlam, District Ratlam (M.P) upon the application filed by non-applicant No.6 M/s Saad Trading Company Indore dated 15.03.2022 is unlawful and beyond the scope and jurisdiction of non-applicants No.2 to 5;
- (ii) Issuing the appropriate injunction/ direction/ order for quashing/setting aside the proceeding initiated by Sub-Divisional Officer, City Ratlam, District Ratlam (M.P) against applicants No.1 to 4 upon application dated 15.03.2022 filed by M/s Saad Trading Company for recovery of actual physical possession from the applicants No. | to 4;
- (iii) Issuing direction/order passed for quashing the order passed by the Tehsildar for formulating the team for recovery of actual

physical possession from the applicants No. 1 to 4 and Panchnama prepared by Revenue Authorities dated 28.03.2022;

- (iv) Granting permission for filing the appropriate Civil Suit for declaration and permanent and mandatory injunction against non-applicant No. 1 to 6 against forcible dispossession of applicants No. 1 to 4.
- (v) all other remedies which are appropriate on the facts and in the grounds urged.”

3] The grievance of the applicants is that they are in possession of the land in question since more than 50 years and have also constructed around four rooms. The aforesaid property of the applicants has been directed to be vacated at the instance of Tehsildar as the Tehsildar, vide its order (undated) has formed a team for dispossessing the applicants from the land in question.

4] In brief, the facts of the case are that in the present company petition No.2/2001, which has been filed for liquidation of M/s Maheshwari Proteins Ltd., the auction of the disputed land has been confirmed by this Court vide its order dated 25/07/2017, passed in OLR No.44/2017 wherein, this Court has held as under:-

“Having regard to the aforesaid circumstances of the case, the bid of M/s Saad Trading Company for Rs.7 Lacs in respect of Lot No.1 is approved and accepted. The sale in favour of the aforesaid bidder for Lot No.1 is confirmed subject to deposit of the balance consideration amount within a period of 30 days from today. On deposit of the balance consideration amount, the OL is permitted to execute the sale deed in respect of the assets/properties of Lot No.1 in favour of M/s Saad Trading Company and handover the possession of those assets.”

5] Pursuant to the aforesaid order, the auction purchaser deposited

the amount on 21/08/2017, and the sale deed was also executed. Subsequently, the Official Liquidator also wrote to the Collector, Ratlam on 09/03/2020, to ensure possession of the property to the auction purchaser.

6] Shri Vishal Lashkari, learned counsel for the applicants has submitted that the aforesaid procedure adopted by the Official Liquidator as also the auction purchaser runs contrary to law as the applicants are in long possession of the property and cannot be evicted at the instance of Tehsildar specially when even in the auction notice dated 19/04/2017, the property was sold on as is where is basis and thereafter its symbolic possession was taken on 10/03/2022, specifically mentioning "***as is where is possession and whatsoever there is basis***". Thus, it is submitted that the auction purchaser was well aware of the applicants' possession on the property and had purchased the property on the aforesaid terms only hence, in such circumstances, the purchaser cannot dispossess the applicants without due process of law. Counsel has also submitted that the property in question is actually situated in a colony at ward No.29. In support of his submission, counsel for the applicants has drawn the attention of this Court to various documents *viz.*, photographs, Samagra ID, ration card etc. Shri Lashkari has also relied upon the decision rendered by the High Court of Calcutta in the case of ***Mahendra Mahato Vs. The Central Bank of India*** in WP No.38111(W) of 2013 decided on 29/08/2014.

7] Shri D.S. Panwar, learned counsel appearing for the auction purchaser/non-applicant No.6, on the other hand, has opposed the

prayer and it is submitted that after obtaining the symbolic possession of the property, the auction purchaser also filed the appropriate application before the Sub Divisional Officer, Ratlam on 15/03/2022, and prior thereto, the Official Liquidator had also written to the Collector, Ratlam to ensure the possession of the property to the auction purchaser on the ground that there were some encroachment on the sold assets of the company and in this request by the Official Liquidator, reference to Section 456 of the Companies Act has also been made. Counsel has also drawn the attention of this Court to the title documents of the property filed in reply by the O.L. as also the revenue record of survey No.19/11/1/2 at village Hapurkhedi, Ratlam.

8] Shri Vaibhav Bhagwat, counsel for the State, on the other hand has submitted that the Collector, Ratlam and the other officials have acted upon the request made by the Official Liquidator under the Companies Act, and have no other say in the matter.

9] Shri H.Y. Mehta, learned counsel for the O.L. has submitted that even in the documents filed by the applicants, the name of some colony is mentioned, whereas the land in question is an agricultural land, and there is no possession of any person on the disputed land, and as per the revenue record, it is an open land. Counsel has also drawn the attention of this Court to Khasra entries of 2019-20 and Khatoni B-1 in which in the possession column, there is no entry, and it is blank which only indicates that the possession is of the company under liquidation.

10] Heard learned counsel for the parties and perused the record.

11] From the record, it is found that the auction purchaser has purchased the property on “*as is where is possession and whatsoever there is basis*”. Thus, it is apparent that the auction purchaser was well aware of the tricky nature of transaction in which he was entering into with his eyes wide open. There also appears to be some dispute regarding the revenue entry *vis-à-vis* the actual status of the land in question.

12] So far as s.456 of the Companies Act is concerned, which has been relied upon by the OL, the same reads as under:-

“456. Custody of company’s property—(1) Where a winding up order has been made or where a provisional liquidator has been appointed the liquidator [or the provisional liquidator, as the case may be,] shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

[(1-A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(1-B) For the purpose of securing compliance with the provisions of subsection (1-A), the Chief Presidency 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.]

(2) All the property and effects of the company shall be deemed to be in the custody of the court as from the date of the order for the winding up of the company.”

(emphasis supplied)

13] On perusal of the aforesaid provision as contained in s.456 of the Companies Act, it is apparent that although it is well within the

powers of the District Magistrate to take possession of, “*such property, effects, actionable claims books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator*”, and, “for the purpose of securing compliance with the provisions of sub-section (1-A), the Chief Presidency 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*”, but this court also finds that the aforesaid provision of s.456 of the Act of 1956 is in *pari materia* with s.14 (1-A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter the SARFAESI Act), as under S.14 also, District Magistrate is required to assist the creditor in possession of the secured asset. S.14(1-A) reads as under:-

“[(1-A) 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.”

(emphasis supplied)

A similar question arose before the Calcutta High Court in the case of *Mahendra Mahato (supra)*, in which, Hon’ble Justice

Dipankar Dutta (as His Lordship then was), while extensively relying upon the decision rendered by the Supreme Court in the case of **(2013) 9 SCC 620 : Standard Chartered Bank v. V. Noble Kumar**, has held as under (relevant excerpts only) :-

“1. By filing this writ petition, the petitioners seek orders on the Central Bank of India (the first respondent) and four of its officers, who are the other respondents, to discharge their obligation in terms of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter the SARFAESI Act) of handing over possession of a secured asset to the petitioners which had been put up for sale by auction and has since been purchased by them.

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5. Mr. Roy, learned advocate for the petitioners contended that the respondents cannot be allowed to wash their hands off on the specious ground that the secured asset was sold on as-is-where-is basis and that the sale certificate had been issued in their favour. Referring to the statutory form in which the sale certificate was issued, being Appendix V, it was contended by him that the secured creditor while issuing the same declared that the secured asset was free from all encumbrances known to them and so long possession is not made over to the petitioners, the liability of the respondents does not cease. Relying on several decisions of the Apex Court and the various High Courts of the country, Mr. Roy contended that it is the duty of the respondents to initiate steps for taking physical possession of the secured asset and to put the petitioners in peaceful and vacant possession thereof. The following decisions were cited by Mr. Roy in support of his submissions:

- (i) AIR 2007 SC 712 : M/s. Transcore v. Union of India & ors.;
 - (ii) AIR 2007 Kerala 114 : Business India Builders & Developers Ltd. v. Union Bank of India & ors.;
 - (iii) AIR 2008 Kerala 179 : Kottakkal Co-operative Urban Bank v. T. Balakrishnan & anr.;
 - (iv) Bharatbhai Ramniklal v. Collector and District Magistrate, an unreported decision of the Gujarat High Court dated October 29, 2009;
 - (v) AIR 2010 Madras 24 M/s. Kathikkal Tea Plantations & etc. v. State Bank of India & anr.;
 - (vi) AIR 2006 Punjab & Haryana 107 : M/s. Kalyani Sales Company & anr. v. Union of India & ors.; and
 - (vii) AIR 2011 Gauhati 19 : Smt. Popi Chakraborty & ors. v. Punjab National Bank & ors.
- He, accordingly, prayed for relief as claimed in the writ petition.

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33. I would read the above passage as an exposition of the law that a process of sale cannot be undertaken before possession of the secured asset is either taken over by the secured creditor or handed over to it in exercise

of power conferred by Section 13(4) read with Section 14 of the SARFAESI Act.

34. Two thoughts that come to my mind on reading paragraph 36 of V. Noble Kumar (supra) may be shared. It seems from the above extract that (i) issuance of notice under Rule 8(1) of the 2002 Rules [in Appendix IV] before possession of the secured asset is taken over and (ii) handing over of possession of the secured asset to the secured creditor, have been construed as conditions precedent for taking steps for preservation, valuation and sale thereof under Rule 8(4) thereof and the following sub-rules. According to the Court (see paragraph 36.1), if no resistance is faced after issuance of the notice under Rule 8(1), the secured creditor "will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets ***." Paragraph 36.2 reiterates that the notice under Rule 8(1), if followed by resistance, the secured creditor is free to proceed under Section 14 of the SARFAESI Act for activating the relevant magistrate to take possession of the secured asset through its authorised officer. My reading of Rule 8(1) of the 2002 Rules with Appendix IV was that the said provisions do not make service of a notice prior to taking possession of the secured asset mandatory, since the second paragraph of Appendix IV makes it clear that the notice follows possession of the secured asset being taken. This position has also been noticed in the passage quoted above from M/s. Transcore (supra), which was not placed when V. Noble Kumar (supra) was decided. However, my reading of the law is no longer of any relevance and since the decision in V. Noble Kumar (supra) now rules the field, I am bound to apply the law laid down therein.

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36. The questions are, thus, answered by holding that (i) the respondents do not owe a duty to hand over vacant and peaceful physical possession of the secured asset to the petitioners and (ii) making a direction in this behalf does not arise.

37. Before concluding the hearing, I had enquired from Mr. Roy whether a direction on the respondents to remit the purchase value to the petitioners with such amount of interest the Court may award would satisfy them or not. Mr. Roy upon taking instructions submitted that the Court may decide on the merits, and hence there is no scope to make such direction after the conclusion I have reached that the respondents do not owe any duty of delivering vacant and peaceful possession of the secured asset to the petitioners.

38. The writ petition stands dismissed, without costs.

39. However, the respondents shall take follow up steps to perfect the title of the petitioners. The petitioners shall also be free to take such legal steps for obtaining vacant and peaceful physical possession of the secured asset according to law, as they may be advised."

(emphasis supplied)

14] The aforesaid excerpts of the decision rendered in the case of

Mahendra Mahato(supra) is applicable to the facts of the case at hand as have been noted above, and there is no reason for this court to take a different view than the one which has been taken in the case of *Mahendra Mahato(supra)*, and it is held that the auction purchaser cannot claim possession of the property by resorting to s.456 of the Act of 1956 when he had purchased the property/land on, “*as is where is possession and whatsoever there is basis*”.

15] Resultantly, the application stands partly allowed and it is directed that the applicants herein shall not be dispossessed from the disputed land except in accordance with law, and for this purpose, the auction purchaser can also take such steps to take possession of the disputed land as may be advised. Consequently, the order passed by the SDO, Ratlam on 15.03.2022 is also hereby quashed.

16] Accordingly, *I.A. No.3058/2022 stands partly allowed and closed*, with the directions as above.

17] So far as I.A. No.14998/2017 is concerned, let the same be listed on **28/08/2023** for consideration.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

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