Kumkum Tentiwal vs State Of U.P. And 3 Others on 11 December, 2018

Equivalent citations: AIR 2020 (NOC) 133 (ALL), 2019 (2) ALJ 332, (2019) 134 ALL LR 103, (2019) 144 REVDEC 251, (2019) 2 ADJ 125 (ALL), AIRONLINE 2018 ALL 5354

Bench: Pankaj Mithal, Pankaj Bhatia

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 29

Case :- WRIT - C No. - 38578 of 2018

Petitioner :- Kumkum Tentiwal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pramod Shukla

Counsel for Respondent :- C.S.C.,Abhishek Mishra

Hon'ble Pankaj Mithal,J.

Hon'ble Pankaj Bhatia,J.

(Delivered by Hon'ble Pankaj Bhatia,J.) Heard Sri Aniruddha Pandey, holding brief of Sri Pramod Shukla, learned counsel appearing for the petitioner and Sri Abhishek Mishra, learned counsel appearing for the respondent-Bank.

The present writ petition has been filed challenging the orders dated 31.12.2016 and the order dated

28.9.2016 both passed by Additional District Magistrate (Finance & Revenue) Mathura, (respondent no. 3) whereby the Additional District Magistrate has directed the taking of the possession of the property situate at Plot No. 45, Jagannathpuri, Ward/Taluk Janambhumi, Tehsil and District Mathura and measuring 232.24 square meters, which is in the name of the petitioner, Smt. Kumkum Tentiwal. The other order dated 28.9.2016 pertains the directions issued for taking the possession of industrial property situate at Khasra No. 387, Khata No. 61, Kota Tehsil, District Mathura.

Learned Counsel for the petitioner has stated at the bar that he is not pressing his challenge order dated 28.9.2016 inasmuch as the possession directed in the said order dated 28.9.2016, has already been taken over, he limits the challenge in the present petition to the order dated 31.12.2016. The brief grounds for challenge are that the impugned order passed under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to 'SARFAESI Act') is in violation of principles of natural justice inasmuch as no notice/opportunity of hearing was granted to the petitioner prior to passing of the said order dated 31.12.2016. The petitioner further alleges that the application filed by the Bank before the Additional District Magistrate under Section 14 of the Act did not contain the requisite particulars and, thus, the said application ought to have been dismissed. When the writ petition was filed the Court passed an order on 27.11.2018 to the following effect:

> "The petitioner has come up in this petition against the order passed by the Additional District Magistrate (Finance and Revenue), Mathura on 28.9.2016 purported to be under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002.
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> Sri Abhishek Mishra, learned counsel, appearing for the respondent no. 4, wants to consider, if a writ petition would lie against the said order in the light of the decision of the Supreme Court in Harsh Govardhan Sondagar v. International Assets Reconstruction Company Ltd., (2014) 6 SCC 1. He may also find out as to the present status of the property in question.
>
> Put up this matter on 4.12.2018 in the additional cause list."

In response thereto to the said directions, the counsel for the respondent-Bank has stated that the present writ petition is not maintainable inasmuch as the petitioner has remedy of an appeal under Section 17 of the SARFAESI Act against the order passed under Section 14 and further prays that the writ petition deserves to be dismissed, as the petitioner has not disclosed material facts that the Company of which the petitioner is a Director had approached the Debt Recovery Tribunal, Lucknow. According to the counsel for the respondents, the said fact was material fact and non-disclosure thereof would entail the dismissal of the writ petition. It was further argued that the SARFAESI Act has been amended by Act 44 of 2016 with effect from 1.9.2016 whereby Section 4-A to Section 17 has been inserted which can take care of the rights of the lessees. Section 17(4-A) of the SARFAESI Act is as under:

"(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,--

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act;

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.".

With regard to the maintainability of an appeal, the counsel for the respondents has relied upon the judgement of the Hon'ble Supreme Court in the case of Standard Chartered Bank vs. V. Noble Kumar and others, (2013) 9 Supreme Court Cases 620 and submits that the action of section 13(4) and 14 of the Act is a coupled action and, thus, an appeal would lie against the said order. The counsel for the respondent has argued that the only requirements to be fulfilled prior to an order being passed under Section 14 are laid down in Sections 23, 24 and 25 of the said judgement and no other requirement is to be observed by the District Magistrate while exercising his power under Section 14 of the SARFAESI Act. Learned counsel for the respondent-bank further relied upon para 27 of the said judgement, which is quoted as under:

"The "appeal" under Section 17 is available to the borrower against any measure taken under section 1394). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured

> creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available."

The second judgement relied upon by the counsel for the respondents is rendered in the case of Writ - C No. 11706 of 2018 (Dheerendra Kumar and another vs. Authorised Officer Aadhar Housing Finance Ltd. and another), decided on 02.04.2018, wherein this Court after relying upon various judgements of the Apex Court held that against the order passed under Section 13 sub-section 4, an appeal is provided under Section 17 of the Act. This Court held that the remedy to the borrower against the order passed under Section 13(4) is available under Section 17 of the Act. The Court did not consider the scope of procedure to be adopted while passing orders under Section 14 of the SARFAESI Act as well as the remedy available against the order passed under Section 14 of the SARFAESI Act. It is relevant to state that this judgement does not take into account the judgement of the Hon'ble Supreme Court in case of Harsh Govardhan Sondagar v. International Assets Reconstruction Company Ltd., (2014) 6 SCC 1.

The third judgement relied upon by counsel for the respondents is a decision dated 31.12.2018 delivered in the High Court of Karnataka at Bengaluru in case of HDB Financial Services Limited vs. M/s Remo Software Pvt. Ltd and another, decided on 30.11.2018, wherein the Hon'ble Court noted the judgement in the case of Harsh Govardhan Sondagar (supra) related to the rights of the lessee to be heard and further held that since no opportunity is emphasized in relation to the borrower under Section 14 of the SARFAESI Act. With regard to the judgement of the Hon'ble Supreme Court in case of Harsh Govardhan Sondagar (supra) learned counsel for the respondents submits that the said judgement deals only with the rights of the lessee and there is no finding with regard to the rights of the borrower or any other to be heard prior to the passing of the orders under Section 14 of the SARFAESI Act by the District Magistrate or by his authorized by him. Although the submissions made by learned counsel for the respondents are correct to the extent that the view of the Hon'ble Supreme Court expressed in the case of Harsh Govardhan Sondagar (supra) relate or emanate from the rights of the validly create lessees, the said judgement recorded categorical findings in case of Harsh Govardhan Sondagar (supra). The Hon'ble Supreme Court has relied the scope of powers conferred on the District Magistrate under Section 14 of the SARFAESI Act. The Hon'ble Apex Court in para 28 after analysing the scope of Section 14 has clearly observed as under:

> "When such an application is filed, the Chief Metropolitan Magistrate or the District Magistrate will have to give a notice and give an opportunity of hearing to the person claiming to be the lessee as well as to the secured creditor, consistent with the principles of natural justice, and then take a decision. If the Chief Metropolitan magistrate or the District Magistrate is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the mortgage in accordance with the requirements of Section 65-A of the Transfer of Property Act and that the lease has not been determined in accordance with the provisions of Section 111 of the Transfer of Property Act, he cannot pass an order for delivering possession of the

> secured asset to the secured creditor. But in case he comes to the conclusion that there is in fact no valid lease made either before creation of the mortgage or after creation of the mortgage satisfying the requirements of Section 65-A of the Transfer of Property Act or that even though there was a valid lease, the lease stands determined in accordance with Section 111 of the Transfer of Property Act, he can pass an order for delivering possession of the secured asset to the secured creditor."

The Hon'ble Supreme Court further while dealing with the remedies available to the aggrieved party against any action/order passed under Section 14 of the SARFAESI Act held as under:

> Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Che-if Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in Columbia Sportswear Co. v. Director of Income Tax. (SCC p, 234, para 17) "17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245-S of the Act insofar as it makes the advance ruling of the authority binding on the applicant, in respect of the transaction and on the Commissioner and Income Tax Authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the authority.

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law.

Now considering whether a borrower is also entitled to right of hearing prior to any order have been passed by the District Magistrate while exercising powers under section 14. From perusal of the provisions of Section 14, it is clear that while seeking an order under Section 14, the secured creditor is bound to file an affidavit 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 authorized 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;

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.

From the plain reading of the said provision, it is clear that these assertions are a must before any order can be passed under Section 14 coupled with the fact that the said averments made in the affidavit are to be recorded while recording satisfaction with regard to contents of the affidavits. It is inconceivable as to how the District Magistrate can record a satisfaction ex parte with regard to the averments to be made in the affidavit by the secured creditor when he files an application for taking possession by use of force. There is yet another angle, Section 14 sub section 2 authorises the

District Magistrate to "take or caused to be taken such steps and use or caused to be used such force as matter, in his opinion, be necessary." The import of the said power is that the District Magistrate can use coercive measures for taking the possession, the right of the occupier whether it is secured creditor or otherwise to resist or object to the use of force or to point out any deficiencies in the affidavit that has been filed by the secured creditor, can be exercised by the persons sought to be dispossessed only where a notice is given and an opportunity of hearing is afforded to such person, who may be in occupation. Thus, it is essential that principles of natural justice are followed even while exercising the powers under Section 14 which include the right to be heard. In view of law discussed hereinabove, this Court is constrained to hold that the District Magistrates or his authorised officer are bound to observe the natural of justice and pass the orders only after hearing the affected parties.

As regards the insertion of Section 17 sub-section 4-A with effect from 1.9.2016, it is no doubt true that the rights of the lessees can be gone into before the Debt Recovery Tribunal in an appeal filed under Section 17 of the SARFAESI Act, however, there being no consequent amendment in Section 14. It cannot be said that an appeal lies against an order passed under Section 14 of the SARFAESI Act or that the necessity of hearing can be dispensed with under Section 14 by the District Magistrate.

From the scheme of the Act, it is implicit that the procedure of Sections 13(2) and 13(4) is mandatory before initiating action under Section 14 of the Act. The borrower on initiation of action under section 14 of the Act, may at times plead that he was not provided any opportunity of hearing as envisaged under Section 13(2) of the Act entitling him to payment of the dues within 60 days and therefore the action under section 14 is illegal and misconceived. Thus, notice or opportunity of hearing is also necessary to the borrower or guarantor although it may be as a formality at times, before initiating action under Section 14 of the Act.

The Hon'ble Supreme Court further analysed the provisions of Section 17 while holding that the only recourse available against an order passed under Section 14 of the SARFAESI Act is under Articles 226 and 227 of the Constitution of India. The Hon'ble Supreme Court in catena of decisions have held that principles of natural justice are engrained and and have read into every statute even if not specifically provided for. Reliance is placed upon the judgement of the Supreme Court in the case of M/s. Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise, Gauhati & Ors, 2015 (8) SCC 519. Para 20, 21, 25, 28, 29, 35 and 42 of the said judgement are quoted as under:

> 20. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's 'Arthashastra'. This Court in the case of Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.[4] explained the Indian origin of these principles in the following words:
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> "Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law

> excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam - and of Kautilya's Arthashastra - the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system".

21. Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth Centuries A.D. called it 'jura naturalia', i.e. natural law.

25. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

De Smith [8] captures the essence thus - "Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice".

Wade [9] also emphasizes that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. In Cooper v. Sandworth Board of Works [10] the Court laid down that: '...although there is no positive word in the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature". Exhaustive commentary explaining the varied contours of this principle can be traced to the judgment of this Court in Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.[11], wherein the Court discussed plenty of previous case law in restating the aforesaid principle, a glimpse whereof can be found in the following passages:

> "20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A. K. Kraipak v. Union of India, (1969) 2 SCC 262 : (1970) 1 SCR 457, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy

to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In Chairman, Board of Mining Examination v. Ramjee, (1977) 2 SCC 256, the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In Institute of Chartered Accountants of India v. L. K. Ratna, (1986) 4 SCC 537, Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 (Bhopal Gas Leak Disaster Case) and C. B. Gautam v. Union of India, (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated."

In his separate opinion, concurring on this fundamental issue, Justice K. Ramaswamy echoed the aforesaid sentiments in the following words:

"61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure

offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice."

28. In the case of East India Commercial Company Ltd., Calcutta & Anr. v. The Collector of Customs, Calcutta [15], this Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principle of natural justice are violated. To the same effect are the following judgments:

a) U.O.I. & Ors. v. Madhumilan Syntex Pvt. Ltd. & Anr.[16]

b) Morarji Goculdas B & W Co. Ltd. & Anr. v. U.O.I. & Ors.[17]

c) Metal Forgings & Anr. v. U.O.I. & Ors.[18]

d) U.O.I. & Ors. v. Tata Yodogawa Ltd. & Anr.[19]

29. Therefore, we are inclined to hold that there was a requirement of issuance of show-cause notice by the Deputy Commissioner before passing the order of recovery, irrespective of the fact whether Section 11A of the Act is attracted in the instant case or not.

35. At the same time, it cannot be denied that as far as Courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in the case of Managing Director, ECIL (supra) itself in the following words:

"Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/ Tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/ Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as it regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of

punishment."

Section 14 on bare perusal does not provide for any opportunity of hearing. However, it is also clear that the order passed under Section 14 is a coercive measure for taking possession and thus the officer is bound to observe the principles of natural justice while passing the order under Section 14 of the SARFAESI Act. The District Magistrates have in passing orders under Section 14 without hearing or affording any opportunity to the affected parties have relied upon a letter issued by izeq[k lfpo moizo 'kklu] laLFkkxr foRr dj ,oa fucU/ku vuqHkkx&6] y[kum i= lao 300¼ch½@dofu0&6&2010 fnukad 17&2&2010 We are unable to understand as to under what powers the Chief Secretary has issued such instructions to the District Magistrates. The said instructions are prima facie illegal as the Act to be enforced is Central Act and no amendments/changes can be brought about or suggested by the State authorities and, secondly, the said letter dated 17.2.2010 is in the teeth of judgement of the Hon'ble Supreme Court in the case of Harsh Govardhan Sondagar (supra) as well as in the teeth of principles of natural justice which are ingrained in every statutory enactment while exercising the powers which have the effect of depriving any affected person of his valuable rights. The Hon'ble Suprem Court further in the case of M/s. Dharampal Satyapal Ltd. (supra) has clearly held that the authority exercising the powers cannot even take a ground to the effect that no useful purpose would be served in hearing the affected parties prior to passing of the order.

The Court also issues directions holding that i= lao 300¼ch½@dofu0&6&2010 fnukad 17&2&2010 will be treated to be ignored by all the competent officers while exercising powers under Section 14 of the SARFAESI Act.

In view of the findings and on the analysis of the judgements, the Court is of view that the order dated 31.12.2016 deserves to be quashed. We are making it clear that we have gone into the merits of the matter which shall be done to be considered by the authority concerned while deciding the matter in the light of the directions given above. Let a copy of the judgement be sent to the Chief Secretary State of U.P for withdrawal of the letter dated 17.2.2010.

The said order is hereby quashed and the petitioner is directed to appear before the Additional Collector/Additional District Magistrate (Finance & Revenue) Mathura (respondent no. 3) on 26.12.2018 and he may file whatever objections he desires to file against the application of the Bank seeking the possession and, on filing of the said objections, the Collector/District Magistrate, Mathura will hear and decide the matter afresh after following the principles of natural justice and giving a due hearing to the parties.

The writ petition is allowed insofar as it relates against the order dated 31.12.2016.

No order as to costs.

Order Date :- 11.12.2018 Puspendra