
(2012) 03 GUJ CK 0008

In the Gujarat High Court

Case No : Civil Application No. 1829 with 1635 of 2012

Mansa Synthetic Pvt. Ltd. and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Constitution of India, 1950 — Article 12, 14, 19, 226, 227
Transfer of Property Act, 1882 — Section 69, 69A

Citation : AIR 2012 Guj 90 : (2012) 3 BC 857 : (2012) 111 CLA 84 : (2012) 2 GLH 752

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Vishwas K. Shah, for the Appellant; P.S. Champaneri, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—By way of this writ-petition under Article 226 of the Constitution of India, the writ-petitioner has prayed for declaration that the provisions contained in Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") are ultra vires the Constitution of India and has also" prayed for quashing and setting aside the order dated January 30, 2012 passed by the District Magistrate, Surat in exercise of powers u/s 14 of the Act. The facts relevant for the purpose of deciding this petition can be summarized as under.

1.1 The petitioner No. 1 is a private limited company and the petitioner Nos. 2 to 4 are its Directors. The petitioners availed of loan facility from respondent No. 2-Bank and as they failed to repay the loan amount, they were declared as defaulters. As the petitioners defaulted in repayment of the loan amount, the Bank decided to proceed against them under the Act. The Bank issued a notice u/

s 13(2) of the Act and called upon the petitioners to make good the payment failing which the Bank would proceed to take over the possession of the secured assets u/s 13(4) of the Act. It appears from record that the petitioners being aggrieved by the measures taken by the Bank under the Act preferred an application u/s 17 of the Act in the form of an appeal. The appeal is still pending before the Debts Recovery Tribunal-2 at Ahmedabad. Record reveals that the Debts Recovery Tribunal, Ahmedabad refused to grant any interim relief in favour of the petitioners vide order dated October 10, 2011. Against the said order passed by the Debts Recovery Tribunal-2, Ahmedabad, refusing to grant any relief, the petitioners have preferred an appeal being No. 65 of 2012 before the Debts Recovery Tribunal, Mumbai u/s 18 of the Act. The appeal is still pending before the Debts Recovery Tribunal, Mumbai. It appears that in the meantime, the Bank preferred an application u/s 14 of the Act before the District Magistrate, Surat, requesting to provide for police protection for the purpose of taking over of the actual possession of the secured assets. The District Magistrate, Surat vide order dated January 30, 2012 directed the Police Inspector of the concerned Police Station to provide for necessary assistance for the purpose of taking over of the possession of the secured assets.

2. The petitioners as original borrowers-defaulters are aggrieved by the order passed by the District Magistrate, Surat in exercise of powers u/s 14 of the Act directing that necessary police protection and force be provided to the authorities of the Bank for the purpose of taking over of the actual physical possession of the secured assets, which were mortgaged by the petitioners at the time of availing of the, loan facility.

3. The petitioners have challenged the legality and validity of Section 14 of the Act on the ground that the same is violative of Articles 14, 19 and 300A of the Constitution of India.

4. We, therefore, first propose to deal with the contention of the writ-petitioners that the provision of Section 14 of the Act is violative of any of the provisions of the Constitution of India.

5. We have heard the learned advocate Mr. Vishvas K. Shah appearing on behalf of the petitioners at length. We have also perused the materials on record.

6. CONTENTIONS OF THE PETITIONERS :

6.1 The learned advocate appearing on behalf of the writ- petitioners has strenuously contended before us that the said provision is ultra vires the Constitution of India, more particularly, Articles 14, 19 and 300A of the Constitution of India as no appeal is provided against the order passed u/s 14 of the Act. The Learned Counsel has vociferously contended that the provisions of Section 14 of the Act are harsh, oppressive, arbitrary, unreasonable and no procedure as such has been prescribed by the legislature for its exercise. He, therefore, submitted that in such a case, the absence of appeal against an order passed in exercise of powers under the provisions of Section 14 of the Act, will

render Section 14 unconstitutional. According to the learned advocate, as no appeal has been provided against the order passed by the District Magistrate or a Chief Metropolitan Magistrate, as the case may be, it causes lot of hardship.

6.2 The learned advocate further submitted that in the Act there is a provision for appeal u/s 17 of the Act, if any person (including a borrower) is aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Act, taken by the Secured Creditor. However, against the order passed u/s 14 of the Act, no appeal has been provided. He also submitted that the right to appeal is recognized in the Act for other provisions, but when harsh powers are exercised under the provisions of Section 14 of the Act, wherein a person is being deprived of his property, the legislature has thought fit not to provide for any appeal.

7. To put it briefly, the sum and substance of the contentions as raised by the learned advocate for the petitioners, are two fold :

i. Section 14 of the Act confers unfettered and unbridled powers to the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, and when the legislature has thought fit to confer such powers, then absence of an appeal against such an order would render the provision ultra vires, and

ii. As no appeal has been provided under the Act against the order passed u/s 14 of the Act, it causes immense hardship to the person who is being deprived of his property by taking over the possession of the same.

8. It would not be out of place to state at this stage that the constitutional validity of Section 14 of the Act was a subject-matter of challenge before this Court in the case of Rameshwaram Cotton Industries (Gujarat) Pvt. Ltd. v. District Magistrate and others in Letters Patent Appeal No. 165 of 2010 in Special Civil Application No. 712 of 2010, decided on February 04, 2010. The Division Bench while upholding the constitutional validity of Section 14 of the Act dismissed the appeal observing as under :

5. Though banking industry in India progressively complying with international prudential norms and accounting practices, there were certain areas in which banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There was no legal provision for facilitating securitization of financial assets of banks and financial institutions. Unlike international banks, banks and financial institutions in India had no power to take possession of securities and sell them. Taking into account the aforesaid fact and with a view to empower banks and financial institutions to facilitate securitization of financial assets, Central Government decided to promulgate an Act empowering the banks and financial institutions to take possession of the securities and to sell them. In this background, Securitization Act was enacted as evident from the Statement of Objects and Reasons of the said Act. Under the aforesaid Act, banks and financial institutions have been empowered to enforce their security interests under sub-section (2) to Sec. 13 where the borrower, under a liability to a secured creditor under the agreement,

makes any default in repayment of the secured debt classified by the secured creditor as a non-performing asset, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor. Under sub-section (3) to Sec. 13 secured creditor shall give in such notice the details of amount payable by the borrower and the secured assets intended to be enforced in the event of non-payment of secured debts by the borrower. This is the stage the borrower is given a notice that if he fails to pay the debt within the time prescribed, the secured creditor may enforce for recovery of its debts by selling the secured asset. At that stage, the borrower has a right to make a representation or raise any objection under sub-section (3A) to Sec. 13 and the secured creditor in such case is bound to consider the representation or objection, but if on consideration the secured creditor comes to a conclusion that such representation or objection is not acceptable or tenable, such decision is required to be communicated to the borrower. It is only after following the aforesaid provisions, the secured creditor may take recourse to sub-section (4) to Sec. 13 for taking one or other measures as mentioned therein, including measures to take possession of the secured asset of the borrower and right to transfer by way of lease, assignment or sale for releasing the secured asset. Thus, it will be evident that before taking possession the secured creditor is required to give notice and after taking into consideration the representation and objections, the secured creditor can take direct possession of the secured assets or may take any action as stipulated under sub-section (4) to Sec.13.

6. In the case of *Bharatbhai Ramniklal Sata Vs. Collector and District Magistrate and Another*, this Court by its unreported judgment dated 03.02.2010 held that a, secured creditor cannot take possession of the secured asset except in accordance with the prescribed procedure. For taking such, pos-session, procedure is prescribed u/Sec.14, in accordance with which the secured creditor has to request the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, to assist the secured creditor in taking possession of the secured asset. In such case, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, takes possession of the secured asset and documents on behalf of the secured creditor and hands over the same.

7. Any action on the part of the secured creditor in taking possession of secured as set, if not in accordance with the Act or the Rules framed thereunder, such measures as deemed to be taken under sub-section (4) of Sec. 13, one can challenge such action or measures taken by filing petition u/Sec. 17 of the Securitization Act, but such illegal action, if any, will not render Sec. 14 bad in law. We, therefore, upheld Sec. 14. of the Securitization Act being the procedure prescribed to take possession, which is followed only after notice under sub-section :(2) to Sec. 13 and deciding the objections, if, any, preferred by the borrower under sub-section (3A) to Sec. 13 and when action is taken under sub-section (4) to Sec. 13.

8. So far as individual case of the appellant is concerned, we are not discussing

the same on merit as action of secured creditor in taking possession which amounts to action under sub-section (4) to Sec. 13 can be challenged before the Debt Recovery Tribunal u/Sec. 17. If in one or other case notice under sub-section (2) to Sec. 13 is not given or details as required under sub-section (3) to Sec. 13 are not supplied and the secured creditor has taken steps to take possession, a measure under sub-section (4) to Sec. 13, by following procedure u/Sec. 14. the aggrieved person may challenge the same before the Debt Recovery Tribunal under Sec. 17. but such action will not render Sec. 14. illegal.

(Emphasis supplied)

9. Thus, it can be seen that the Division Bench of this Court has held in clear terms that if any action of the secured creditor is not in accordance with the Act or Rules, then one can challenge such action or measures by filing an appeal u/s 17 of the Act, but such illegal action, if any, will not render Section 14 of the Act bad in law.

10. When we confronted the learned advocate of the petitioners with this particular judgment of the Division Bench, the learned advocate submitted that he is conscious about the judgment delivered by the Division Bench, but according to the learned advocate, the same can be termed as per incurium because the Division Bench did not consider the validity of Section 14 of the Act from the point of view that no appeal has been provided against an order passed u/s 14 of the Act. According to him, the right to property is a constitutional right and also a human right and no one can be deprived of his or her property arbitrarily. According to him, Section 14 of the Act can be termed as a very harsh provision and there should have been an appellate authority to examine the legality and validity of any orders passed u/s 14 of the Act.

11. We could have concluded at this very stage holding that as the Division Bench of this Court has already upheld the validity of Section 14 of the Act, no further adjudication would be necessary relying on the judgment rendered in the case of Rameshvaram (supra). However, we are of the view that there are some important issues arising in this petition which we would like to look into and express our opinion on the same.

12. We have, therefore, decided look into the issues as regards the constitutional validity of Section 14 of the Act independently and more particularly, in context of the contention that no appeal has been provided against such an order passed u/s 14 of the Act.

13. It is well settled position of law that a Statute can be invalidated or held unconstitutional-

- i. if it is ultra vires the Parent Act;
- ii. if it is contrary to the statutory provisions other than those contained in the Parent Act;

- iii. if law making power has been exercised in bad faith;
- iv. if it is not reasonable and it goes against the legislative policy; and
- v. if it does not fulfill the object and purpose of the enabling Act.

14. ANALYSIS :

14.1 Section 14 of the Securitization 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 asset is required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 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 done in pursuance of this section shall be called in question in any court or before any authority.

14.2 On a plain reading it is apparent that the said provision is a procedural provision whereunder the Chief Metropolitan Magistrate or the District Magistrate, (the Authority) as the case may be, shall, on a request being made to him - (a) take possession of such asset and documents relating to the as sets; AND (b) forward such assets and documents to the secured creditor. Under sub-section (2) of Section 14 of the Securitization Act the authority is empowered to take such steps and use such force as may be necessary for taking possession of the secured assets and the documents relatable thereto. Under sub-section (3) of Section 14 of the Securitization Act, such act of the authority is protected and the action shall not be questioned in any Court or before any authority. Thus, it is apparent that the role envisaged by the legislature insofar as the Authority is concerned, is a ministerial role in the form of rendering assistance and exercising powers by virtue of the authority vested in the District Magistrate or the Chief Metropolitan Magistrate including use of force as may be necessary. The said Authority, namely, the Chief Metropolitan Magistrate or the District Magistrate is

not vested with any adjudicatory powers. There is no other provision under the Securitization Act in exercise of which the said Authority, who is approached by a secured creditor, can undertake adjudication of any dispute between the secured creditor and the debtor or the person whose property is the secured asset of which possession is to be taken. If such adjudicatory powers were to be vested in the Authority, the Securitization Act would have made a specific provision in this regard.

14.3 Section 13(4) of the Securitization Act provides for various measures a secured creditor may take to recover the secured debt; one of such measures is to take possession of the secured asset. A person aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Securitization Act is granted a right to make an application to the Debts Recovery Tribunal (the Tribunal) within the prescribed period u/s 17(1) of the Securitization Act. Under sub-sections (2), (3) and (4) of Section 17 of the Securitization Act the Statute has provided complete Code, including the powers to the Tribunal to declare any of the measures taken by the secured creditor u/s 13(4) of the Securitization Act invalid and consequential restoration of possession to the person from whom the possession was taken. A person aggrieved by any order made by the Tribunal u/s 17 of the Securitization Act has a statutory right of appeal under Sec. 18 of the Securitization Act. Therefore, under the guise of acting u/s 14 of the Securitization Act the Authority cannot be permitted to usurp statutory powers vested in the Tribunal.

14.4 Under Sec. 34 of the Securitization Act jurisdiction of any Civil Court to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered by or under the Securitization Act to determine is specifically divested; furthermore, no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under the Securitization Act. Thus the legislative scheme is clear: Sections 17 and 18 provide for a statutory remedy before the Tribunal and the Appellate Tribunal, while simultaneously Civil Court and any other authority are prohibited from dealing with the subject-matter which can be exclusively determined by the Tribunal.

14.5 Hence, the Authority who is called upon to act u/s 14 of the Securitization Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. Any dispute between the parties regarding the secured asset raised before the Authority cannot be gone into by the Authority.

14.6 In this connection, we refer to section 13 of the Securitization Act which 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 the

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 installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor 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).

(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.

(3 A) 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 one week 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 u/s 17 or the Court of District Judge u/s 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-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 realizing the secured asset;" (rest not relevant for this case)

14.7 u/s 14 of the Securitization Act, Chief Metropolitan Magistrate or District Magistrate is only executing that power and assisting the secured creditor to take possession of the secured assets. No appeal or any other proceedings will lie against the orders passed u/s 14. Of course right of judicial review under Articles 226 and 227 of the Constitution of India cannot be taken away. But, that power can be exercised only in cases where the concerned Magistrate or the Commissioner, as the case may be, exceeds his power or refuses to exercise his jurisdiction vested in him under the law.

14.8 The rights given to the borrower under the Securitization. Act are summarized by the Hon"ble Supreme Court in the case of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., at paragraphs 80 and 81. We quote the same as follows:

80. Under the Act in consideration, we find that before taking action a notice of

60 days is required to be given and after the measures u/s 13(4) of the Act have been taken, a mechanism has been provided u/s 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows:-

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal u/s 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/ auction of the property it would be open for the borrower to file an appeal (petition) u/s 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) u/s 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the Court.

81. In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debt Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would subserve the public

interest.

14.9 Section 17 of the Securitization Act provides a right of appeal. If any person is aggrieved by any of the measures, referred to in sub-section (4) of section 13, taken by the secured creditor or his authorized officer, he may make an application to the Debts Recovery Tribunal within 45 days from the date on which such measures had been taken. The Debts Recovery Tribunal/the appellate forum is also given power to restore possession. Section 17(1) to (4) of the Securitization Act are quoted below:

17. Right to appeal.- (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer under this Chapter, (may make an application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

(Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.)

(Explanation.- For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.)

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub- section (4) of section 13, is in accordance with the provisions

of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under subsection (4) of section 13 to recover his secured debt.

14.10 Therefore, u/s 14 of the Securitization Act, Chief Metropolitan Magistrate or District Magistrate, as the case may be, is only rendering assistance to the secured creditor in exercising the right given to the creditor u/s 13(4) and remedy of the aggrieved party is to file an appeal before the Debts Recovery Tribunal u/s 17. It is clear that under sub-sections (2), (3) and (4) of section 17 of the Securitization Act, the statute has provided a complete code, including the powers to the Tribunal to declare any of the measures taken by the secured creditor u/s 13(4) of the Securitization Act invalid and consequential restoration of possession to the person from whom the possession was taken. In the absence of any adjudicatory power vested in the Magistrate u/s 14, the above authority cannot exercise statutory powers vested in the Tribunal. From orders of the Tribunal a further appeal will lie to Appellate Tribunal u/s 18 of the Securitization Act. u/s 34 of the Securitization Act, jurisdiction of Civil Courts to entertain any suit or proceeding is barred. Therefore, aggrieved person has to approach the Tribunal or Appellate Tribunal, as the case may be under sections 17 and 18 and if possession is taken u/s 14, other authorities are prohibited from dealing with the subject matter which can be exclusively determined by the Tribunal. Hence, the authority who is called upon to act u/s 14 of the Securitization Act can only assist the secured creditor in taking possession of the secured assets. The disputes raised between the parties before the authority cannot be adjudicated by it. It is for the borrower to move for stay of the sale or confirmation of sale of the property put in possession of the secured creditor. Possession handed over may be symbolic or physical. If physical possession is handed over, the creditor is entitled to put back the borrower in possession if borrower succeeds before the Tribunal. Before the secured creditor approaching the Magistrate u/s 14, notice u/s 13(2) must be issued. The Hon'ble Supreme Court has in Transcore Vs. Union of India (UOI) and Another, held as follows :

56. Keeping the above conceptual aspect in mind, we find that Section 13(4) of the NPA Act proceeds on the basis that the borrower, who is under a liability, has failed to discharge his liability within the period prescribed u/s 13(2), which enables the secured creditor to take recourse to one of the measures, namely, taking possession of the secured assets including the right to transfer by way of lease, assignment or sale for realizing the secured assets. Section 13(4-A) refers to the word "possession" simpliciter. There is no dichotomy in sub-section (4-A) as pleaded on behalf of the borrowers. Under Rule 8 of the 2002 Rules, the authorized officer is empowered to take possession by delivering the possession notice prepared as nearly as possible in Appendix IV to the 2002 Rules. That notice is required to be affixed on the property. Rule 8 deals with sale of immovable secured assets. Appendix IV prescribes the form of possession notice. It inter alia states that notice is given to the borrower who has failed to repay

the amount informing him and the public that the bank/FI has taken possession of the property u/s 13(4) read with Rule 9 of the 2002 Rules. Rule 9 relates to time of sale, issue of sale certificate and delivery of possession. Rule 9(6) states that on confirmation of sale, if the terms of payment are complied with, the authorized officer shall issue a sale certificate in favour of the purchaser in the form given in Appendix V of the 2002 Rules. Rule 9(9) states that the authorized officer shall deliver the property to the buyer free from all encumbrances known to the secured creditor or not known to the secured creditor. (Emphasis supplied). Section 14 of the NPA Act states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred, the secured creditor may, for the purpose of taking possession, request in writing to the District Magistrate to take possession thereof. Section 17(1) of NPA Act refers to right of appeal. Section 17(3) states that if the DRT as an appellate authority after examining the facts and circumstances of the case comes to the conclusion that any of the measures u/s 13(4) taken by the secured creditor are not in accordance with the provisions of the Act, it may by order declare that the recourse taken to any one or more measures is invalid, and consequently, restore possession to the borrower and can also restore management of the business of the borrower. Therefore, the scheme of Section 13(4) read with Section 17(3) shows that if the borrower is dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorized officer taking possession. As stated above, the NPA Act provides for recovery of possession by non-adjudicatory process, therefore, to say that the rights of the borrower would be defeated without adjudication would be erroneous. Rule 8, undoubtedly, refers to sale of immovable secured asset. However, Rule 8(4) indicates that where possession is taken by the authorized officer before issuance of sale certificate under Rule 9, the authorized officer shall take steps for preservation and protection of secured assets till they are sold or otherwise disposed of. u/s 13(8), if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the creditor before the date fixed for sale or transfer, the asset shall not be sold or transferred, The costs, charges and expenses referred to in Section 13(8) will include costs, charges and expenses which the authorized officer incurs for preserving and protecting the secured assets till they are sold or disposed of in terms of Rule 8(4). Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorized officer is like a court receiver under Order XL, Rule 1, CPC. The court receiver can take symbolic possession and in appropriate cases where the court receiver finds that a third party interest is likely to be created overnight, he can take actual possession even prior to the decree. The authorized officer under Rule 8 has greater powers than even a court receiver as security interest in the property is already created in favour of the banks/FIs.

That interest needs to be protected. Therefore, Rule 8 provides that till issuance of the sale certificate under Rule 9, the authorized officer shall take such steps as he deems fit to preserve the secured asset. It is well settled that third party interests are created overnight and in very many cases those third parties take up the defense of being a bona fide purchaser for value without notice. It is these types of disputes which are sought to be avoided by Rule 8 read with Rule 9 of the 2002 Rules. In the circumstances, the drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the NPA Act read with the 2002 Rules.

14.11 A reading of the statutory provisions would show that u/s 14 of the Act, the Magistrate is only rendering assistance to the secured creditor in taking possession of the secured assets as provided u/s 13(4) of the Act. After 60 days' notice as prescribed u/s 13(2), secured creditor can approach the Magistrate for taking possession of the land. Reading Section 13(4) and Section 14 of the Act in conjunction with each other makes it clear that the source of power to take possession of the secured assets of the borrower can be traced in Section 13(4) of the Act and not u/s 14 of the Act, which has been indicated as an aid for execution of the decision taken by the secured creditor to take possession of the secured assets or documents. In other words, the substantive provision entitling the secured creditor to take possession of the secured assets is contained in Section 13(4) of the Act and Section 14 of the Act merely contains a provision to facilitate the secured creditor for taking over possession without any impediment. It is very clear that if a person feels aggrieved by the action of the secured creditor to take possession of the secured assets, then he can file an application u/s 17(1) of the Act before the Tribunal and the Tribunal can after examining facts and circumstances of the case and evidence adduced by the parties declare that the action taken by the secured creditor is not in consonance with Section 13(4) of the Act. The Tribunal can also direct the secured creditor to restore the possession of the secured assets of the borrower. At this stage, we may only state that it does not make any difference as to whether possession has been taken over by the secured creditor itself or with the aid of Section 14 of the Act. The object of Section 14 of the Act is to be invoked only in case the secured creditor faces obstruction and not as a matter of course, bypassing the provision of Section 13(4) of the Act. It is for the secured creditor to decide as to whether he wants any aid or help from the authority concerned u/s 14 of the Act depending upon the situation. In short, what we want to convey is that if a person is aggrieved by any of the steps undertaken by the secured creditor u/s 13(4) of the Act, then it is always open for him to point out to the Tribunal u/s 17 of the Act the illegalities, if any, committed by the secured creditor. Thus, if the secured creditor decides to seek help of the District Magistrate or the Commissioner of Police, as the case may be, by invoking the provision of Section 14 of the Act, then in such a case, the authority u/s 14 has no power to refuse the request.

14.12 We shall now proceed to consider the main contention of the learned

advocate for the petitioner that absence of appeal against the order passed by the authority concerned in exercise of powers u/s 14 of the Act renders Section 14 violative of the provisions of the Constitution of India and should be declared ultra vires. In the earlier part of our judgment, we have exhaustively considered the scope and ambit of adjudication by the authority concerned u/s 14 of the Act. We have said in clear terms that the authority who is called upon to act u/s 14 of the Act can only assist and is duty bound to assist the secured creditor in taking possession of the secured assets. The authority concerned is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor u/s 13(4) of Act, but only to the limited extent of considering as to whether the secured property is identifiable and whether 60 days" notice was issued u/s 13(2) of the Act or not. Taken into consideration the limited role of the authority u/s 14 of the Act and also taking into consideration the fact that the appeal u/s 17 of the Act has been provided for redressal of grievance insofar as steps which are taken by secured creditor u/s 13(4) of the Act is concerned, the legislation in its wisdom may have thought fit not to provide for an appeal against an order passed by the authority concerned u/s 14 of the Act. The word "appeal" has not been defined any where. An appeal in legal parlance is held to mean the renewal of a cause from an inferior or subordinate to a superior tribunal or forum in order to test and scrutinize the correctness of the impugned decision. It amounts in essence and pith to a complaint to a higher forum that the decision of the subordinate tribunal is erroneous and, therefore, liable to be rectified or set right. The right of appeal is a creature of the statute. In no one it adheres as a right unless it is positively created by a legislative device. Be it the parent legislation or subordinate legislation. The right of appeal is a statutory right and if it is not so provided in the statute then a litigant cannot claim that right or plead that on that ground alone the provision is unconstitutional. We shall deal with this issue hereinafter in detail as to whether absence of appeal will render the provision of Section 14 of the Act unconditional or not. We may only say that the legislature designedly did not provide an appeal against an order passed u/s 14 of the Act because u/s 14 of the Act the authority does not adjudicate any of the rights of the respective parties or determines any lis between the parties. What can be appealed before the high forum is a decision which would decide some rights between the parties and if there is any error in the same, the superior forum may scrutinize the correctness of the impugned decision. u/s 14 of the Act, as we have discussed in the earlier part of our judgment, the authority concerned is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor u/s 13(4) of the Act.

14.13 Thus, the only question for our consideration is as to whether absence of appeal will render the provision of Section 14 of the Act unconstitutional on the ground that the provision as such is harsh, oppressive and the authority under the provision has been conferred with unbridled and uncontrolled power.

14.14 We are of the view that the fact that a right of appeal is not available

against the order passed u/s 14 of the Act does not render the said provision unconstitutional and void as being violative of Articles 14 and 19 of the Constitution of India on the ground of arbitrariness and reasonableness. In this regard, we would like to rely upon few decisions of the Supreme Court wherein the Supreme Court has considered the effect of absence of appeal in connection with different statutes.

14.15 In the case of *Munnial and another v. Town Rationing Officer, Gorakhpur and another*, (1995) 4 SCC 641, the Supreme Court was considering the powers u/s 9(A) conferred on the District Magistrate under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. In the case before the Supreme Court, the contention was that Section 9(A) of the U.P. Act, 1972 suffers from the vice of arbitrariness and unreasonableness as no appeal has been provided against such an order passed by the District Magistrate in exercise of powers u/s 9(A) of the Act. u/s 9(A) powers have been conferred on the District Magistrate for revision of rent of commercial buildings let out by public religious institutions. Repelling this contention, the Supreme Court held in paragraphs 3 and 4 as under :

3. The fact that a right of appeal is not available against the order passed u/s 9A of the Act does not render the said provision unconstitutional and void as being violative of Articles 14 and 19 of the Constitution on the ground of arbitrariness and reasonableness. Provision of a corrective machinery by way of appeal or revision to a superior authority to rectify an adverse order passed by an authority or body is only one of the several ways in which the power could be checked or controlled and its absence will be one of the factors to be considered along with others before coming to the conclusion that the power so conferred is unreasonable or arbitrary. The factors which have a bearing are : the status of the person on whom the power is conferred, the nature of the power, i.e., whether the exercise of the power depends upon the subjective satisfaction of the authority or body or is to be exercised objectively by reference to some existing facts or tests; is it a quasi-judicial power requiring observance of the principles of natural justice and making of a speaking order etc. in which event the order would be subject to judicial review under Article 226 of the Constitution on the grounds of perversity, extraneous and irrelevant considerations, mala fides and other infirmities (See : *Organo Chemical Industries v. Union of India*, (AIR 1979 SC 1803); *Babubhai and Co. and Others Vs. State of Gujarat and Others*, and *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, .

4. The power u/s 9-A is conferred on the District Magistrate or an officer authorized by the District Magistrate to exercise the power. The power is to be exercised objectively after observing the principles of natural justice. The order passed u/s 9-A is subject to judicial review by the High Court under Article 226 of the Constitution. The finality attached to the order by Section 37 of the Act does not preclude an aggrieved person to challenge the said order by moving the

High Court under Article 226 of the Constitution of India and the High Court can grant appropriate relief in such proceedings. We are, therefore, unable to accept the contention urged by Shri Yogeshwar Prasad that Section 9-A suffers from the vice of arbitrariness and unreasonableness.

14.16 In the case of Prakash Amichand Shah Vs. State of Gujarat and Others, , the Supreme Court was dealing with an issue as regards conferment of uncanalised and arbitrary power u/s 32 of the Bombay Town Planning Act, 1954 on the Town Planning Officer and the effect of the denial of right of appeal against such exercise of power by the Town Planning Officer u/s 32 of the Act, 1954. u/s 32(1) of the Bombay Town Planning Act, 1954, the Town Planning Officer has been invested with powers to make variation from the Draft Scheme. The contention before the Supreme Court in this regard was that the Act does not provide for an appeal from some of the decisions of the Town Planning Officer taken u/s 32 of the Act, while it has provided appeal to the Board of Appeal against some other decisions taken under the very same section, was discriminatory. Repelling this contention, the Supreme Court in paragraph 32 held as under :

32. Then it is contended that the Act which does not provide for an appeal from some of the decisions of the Town Planning Officer taken u/s 32 of the Act, while it has provided appeal to the Board of Appeal against some other decisions taken under the very same section was discriminatory. There is no rule that every decision of every officer under a statute should be made appealable and it is not so made appealable the statute should be struck down. It may be salutary if an appeal is provided against decisions on questions which are of great importance either to private parties or to the members of the general public, but ordinarily on such matters the legislature is the best judge. Unless the court finds that the absence of an appeal is likely to make the whole procedure oppressive and arbitrary, the court does not condemn it as unconstitutional.....

14.17 In Chinta Lingam and Others Vs. Government of India and Others, , a Five Judge Constitution Bench of the Supreme Court was dealing with a question as regards the powers of District Collector and the Deputy Commissioner of Civil Supplies under the Essential Commodities Act, 1955 so far as Control Orders issued u/s 3(2)(d) of the Essential Commodities Act, 1955 imposing restrictions on movement of rice and paddy were concerned. In the case before the Supreme Court, the contention was that uncanalised and unbridled powers had been invested in District Collector or Deputy Commissioner of Civil Supplies without any provision of appeal or revision leading to an inference that the power is arbitrary. Repelling this contention, the Supreme Court held in paragraph 6 as under :

6...It is common ground that the officers authorized by the State Government are the District Collector and the Deputy Commissioner of Civil Supplies. These officers cannot but be regarded as fairly high in rank who" are expected to discharge their duties in a responsible and reasonable manner. In Dwarka Prasad

Laxmi Narain Vs. The State of Uttar Pradesh and Others, in which the provisions of cl. 4(3) of the U.P. Coal Control Order 1953 which gave the licensing authority absolute power to grant or refuse to grant any-license were struck down on the ground that a law which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities must be held to be unreasonable. There the power could be exercised by any person to whom the State Coal Controller might choose to delegate the same. The matter which has been stressed before us relates generally to the absence of any provision relating to appeal or revision in the Control Orders if the District Collector or the Deputy Commissioner of Civil Supplies refuses to grant a permit under clause 3 of the Order. In Dwarka Prasad's(1) case the delegation could be made to any one which was certainly a relevant factor in judging the reasonableness of the impugned provision. But in the cases before us the permit is to be granted either by the State Government or by responsible officers of the rank of the District Collector or the Deputy Commissioner of Civil Supplies. Indeed, Mrs. Pappu quite properly agreed that if the State Government alone had the power to issue the permits the challenge on the ground of unreasonableness of the restrictions-would not be available. We consider that there is no bar to any of the aggrieved parties approaching the State Government by means of a representation for a final decision even if the matter has been dealt with by the District Collector or the Deputy Commissioner of Civil Supplies in the first instance and the permit has been refused or wrongly withheld by these officers. In these circumstances the absence of a provision for appeal or revision can be of no consequence. At any rate it has been pointed out in more than one decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment: (See K.L. Gupta and Others Vs. The Bombay Municipal Corporation and Others, at p.316). It may also be remembered that emphasis was laid in Pannalal Binjraj v. Union of India (2) on the power being vested not in any minor official but in top-ranking authority. It was said that though: the power was discretionary but it was not necessarily discriminatory and abuse of power could not be easily assumed. There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law.

(Emphasis supplied)

14.18 In yet another Five Judge Constitution Bench decision of the Supreme Court in the case of K.L. Gupta and Others Vs. The Bombay Municipal Corporation and Others, , the Supreme Court dealt with an issue that Section 19 of the Bombay Town Planning Act, 1955 gave an unbridled and uncanalised powers to the legal authority to refuse a commencement certificate arbitrarily and the fact that no appeal from the decision u/s 13 was provided. The Supreme Court dealt with this issue by holding in paragraph 34 as under:

34. The second argument that S. 13 of the Act gave an uncontrolled and

uncanalised power to the local authority to refuse a commencement certificate arbitrarily cannot also be accepted. As already noted, the development of an area like Greater Bombay has to be guided and channeled in a particular manner following well-defined plans. Public amenities have to be provided, for, lands set apart for public purposes to be acquired by local authority to be considered; industrialization of the areas to be guided in the view of the industries already existing, their probable demands in future spacing out and such like objects. The help of various associations was taken and suggestions of the public received and discussed by an Advisory Committee. Before the finalization of the development plan, there was already a tentative plan by which the local authority had to guide itself. After a development plan was prepared, the question was a simple one as to whether the commencement certificate could be given without doing any violation to the development plan. The fact that no appeal from the decision under S. 13 was provided for is a matter of no moment for the authority under S. 13 is no less than the Municipal Commissioner himself or the Chief Officer of the Municipal Borough or a person exercising the power of an Executive Officer of any local authority. When the power had to be exercised by one of the highest officers of the local, authority intimately connected with the preparation of the development plan in all its stages, it is difficult to envisage what other authority could be entrusted with the work of appeal or revision. The preparation of the tentative plan or the final development plan was not something which was left to the pleasure or discretion of the local authority. Immense pains were taken by a vast number of people and it was their combined effort and skill which went to the making of the development plan preceded by the tentative plan. S. 13 prescribes that the local authority should make an inquiry before granting or refusing a commencement certificate. The Authority must therefore look into all material available to it including the tentative plans and the final development plan and then make up its mind as to whether a commencement certificate should be granted or not. If the provisions of the Act are borne in mind and the rules framed thereunder complied with, as appears to have been done in these cases, there was little or no scope for the local authority acting arbitrarily under S. 13 of the Act.

(Emphasis supplied)

15. The principles discernible from the above referred authoritative pronouncements are thus very clear. The fact that a right of an appeal is not available against an order by itself will not render a particular provision unconditional and void as being violative of Articles 14 and 19 of the Constitution on the ground of arbitrariness and reasonableness. As held by the Supreme Court the factors which have a bearing are :

- (a) The status of the person on whom the power is conferred;
- (b) The nature of the power which has been conferred;
- (c) Whether the exercise of power depends upon subjective satisfaction of the

authority or body or is to be exercised objectively by reference to some existing facts or tests;

(d) is the power quasi-judicial requiring observance of the principles of natural justice and passing of a speaking order, in which event, the order would be subject to judicial review under Article 226 of the Constitution. The Supreme Court in clear terms has observed that when the power has to be exercised by one of the highest officers, the fact that no appeal has been provided for, is a matter of no moment.

16. Thus, in view of the authoritative pronouncements of the Supreme Court referred to above, the contention of the learned advocate for the petitioner that Section 14 is ultra vires the constitutional provisions, cannot be accepted.

17. In *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, , the contention before the Supreme Court was with regard to the validity of the Act on the ground that no adjudicatory mechanism is available to the borrower to ventilate his grievance through an independent adjudicatory authority. The contention before the Supreme Court was that access to the justice is hallmark of our system. It was also pointed out that Section 34 of the Act bars the jurisdiction of the Civil Courts to entertain a suit in the matters of recovery of loans. It was also pointed out that the remedy of appeal available under the Act as contained in Section 14 of the Act can be availed only after measures have already been taken by the secured creditor u/s 13(4) of the Act, which includes sale of the secured assets, taking over its management and by all transferable rights thereto. It was also contended that virtually it has no remedy at all in view of the onerous condition of depositing of 75% of the claim of the secured creditor. It was also argued that before filing an appeal u/s 17 of the Act, the decision has to be taken in respect of matters by the bank or the financial institution itself which can hardly be said to be an independent agency rather they are a party to a transaction having unilateral power to initiate action u/s 13(4) of the Act. It was also argued that so far remedy u/s 226 of the Constitution of India is concerned, may not always be available since the dispute may be between two private parties, the Banking Companies, Corporate Banks or Financial Institutions, Foreign Banks, some of them may not be authorities within the meaning of Article 12 of the Constitution of India, against whom a writ petition could be maintainable. Lastly, it was submitted that a borrower is virtually left with no remedy and as access to the Court is prohibited and no proper adjudicatory mechanism is provided, the Act is unconstitutional and cannot survive.

The Supreme Court negated all the contentions referred to above and held in paragraph 74 as under:

74. A reference has also been made for similar observations to the cases reported in 1980 (4) SCC p.507 at 513-514. (AIR 1981 SC 506) *Srinivas Enterprises v. Union of India* and 1967 (1) SCR p.15 at p.36, *Jalan Trading Co.*

(Private Ltd.) Vs. Mill Mazdoor Union, . While referring to the observations made in a case reported in 1962 (3) SCR p.786 at p.829-30, The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, , it is submitted that the intent of the Parliament shall not be defeated merely for the reason that it may operate a bit harshly on a small section of public where it may be necessary to make such provisions of achieving the desired objectives to ensure that the nefarious activities of smuggling etc. had to be necessarily curbed. In Fatehchand Himmatlal (supra) where debts of the agriculturists were wiped of, this Court observed:

Every cause claims its martyr and if the law, necessitated by practical considerations, makes generalizations which hurt a few, it cannot be helped by the Court. Otherwise, the enforcement of the Debt Relief Act will turn into an enquiry into scrupulous and unscrupulous creditors, frustrating through endless litigation, the instant relief to the indebted which is the promise of the legislature." [See p.689 para 44]

Yet in another decision referred to reported in Kishan Chand Arora Vs. Commissioner of Police, Calcutta, , it has been held that absence of appeal does not necessarily render the legislation unreasonable. Provision for appeal is not an absolute necessity. For same propositions a reference has also been made to Chinta Lingam and Others Vs. Government of India and Others, where it has been observed that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided is not material. In respect of appellate provision once again our attention has been drawn to the observations made by this Court in Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, paras 15 & 16, Organo Chemical Industries & Ann v. Union of India & Ors., to the effect that an appeal is a desirable corrective but not an indispensable imperative. It is, however, further observed in this decision that it may all depend upon the nature of the subject matter, other available correctives and the possible harm flowing from the wrong orders.

18. Even the contention of the learned advocate for the writ petitioners that the provision of Section 14 of the Act causes undue hardship and, therefore, is unconstitutional, does not merit any consideration. The position of law so far as this aspect is concerned, is very clear. A five Judge Bench decision of the Supreme Court in the case of Prafulla Kumar Das and Others Vs. State of Orissa and Others, , considered the aspect of hardship. In paragraph 45, it has been held as under :

45. In this case, the petitioners seek benefit to which they are not otherwise entitled. The legislature, in our opinion, has the requisite jurisdiction to pass an appropriate legislation which would do justice to its employees. Even otherwise a presumption to that effect has to be drawn. If a balance is sought to be struck by reason of the impugned legislation, it would not be permissible for this Court to declare it ultra vires only because it may cause some hardship to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it

is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise. We do not think that in this case, Article 14 of the Constitution is attracted.

19. Our final conclusions are summarized thus :

- i. Section 14 of the Act is a valid piece of legislation and is declared intra vires.
- ii. The District Magistrate or Chief Metropolitan Magistrate, as the case may be, is bound to assist the secured creditor in taking possession of the secured assets and is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor u/s 13(4) of the Act.
- iii. Though Section 14 of the Act provides that no act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any Court or before any authority, the right of judicial review under Articles 226 and 227 of the Constitution of India cannot be taken away, but that power can be exercised only in cases where the concerned Magistrate or the Commissioner, as the case may be, exceeds his power or refuses to exercise his jurisdiction vested in him under the law.
- iv. Absence of an appeal does not necessarily render the legislation unreasonable as only because no appeal is provided under the Act-against the order passed u/s 14 of the Act will not render Section 14 ultra vires the provisions of the Constitution of India.

In view of aforesaid, present petition fails and is, accordingly, dismissed. There shall be, however, no order as to costs.

In view of the fact that the main petition has been dismissed, the connected Civil Application has become infructuous and is, accordingly, disposed of.