(2018) 09 UK CK 0106

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 173 of 2018

M/s Naveen Kishan Rice Mill APPELLANT

Vs

State of Uttarakhand and others RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(2), 13(3A), 13(4), 14, 14(1), 29
Code of Criminal Procedure, 1973 — Section 3
Security Interest (Enforcement) Rules, 2002 — Rule 8
Constitution of India, 1950 — Article 19I1)(f)

Citation : (2018) 09 UK CK 0106

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Atul Kumar, Yogesh Pandey, S.R. Joshi, K.H. Gupta

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.

1. The only issue before this Court is whether Additional District Magistrate can exercise powers under Section 14 of the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or whether the statute gives this power specifically to the District

Magistrate, not to be delegated to any other official.

2. The petitioner before this Court had taken a financial assistance from a bank, namely, the Nainital Bank Ltd., Branch Jaspur, District Udham Singh

Nagar. Admittedly, the bank is defined as a â??secured creditorâ? in terms of Section 2 (zd), of which there is no dispute. The financial assistance

taken by the petitioner over a period of time since was not repaid and the account of the borrower was classified as Non Performing Asset (NPA), and consequently proceedings were initiated by the bank under the provisions of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (from hereinafter referred to as the â??Actâ??). The initial notice under sub-section (2) of Section 13

was given by the bank to the petitioner on 18.11.2016, to which the petitioner replied on 20.02.2017 and thereafter the reply given by the petitioner in

pursuance to the notice dated 18.11.2016 was considered by the bank under Section 13(3A) of the Act and order was passed on 04.03.2017. It is also

an admitted fact that even prior to the decision taken by the bank on the representation of the petitioner, a notional possession of the property, on

which secured interest was created, was taken under sub-section (4) of Section 13 read with sub-rule (1) of Rule 8 of the Security Interest

(Enforcement) Rules, 2002 (from hereinafter referred to as the â??Rulesâ??). Thereafter an application was moved by the bank to the District

Magistrate on 5.5.2017. The petitioner, on the other hand, received a notice dated 09.10.2017 by the Additional District Magistrate (Finance &

Revenue) under Section 14 of the Act. The petitioner immediately challenged the jurisdiction of the Additional District Magistrate (Finance &

Revenue), and filed the present writ petition before this Court. During pendency of the writ petition, the Additional District Magistrate (Finance &

Revenue) has passed another order dated 15.01.2018 handing over the possession of the mortgaged property to the bank, by force. Thereafter, on

13.07.2018, according to the bank, the property was also auctioned, but due to the stay order dated 19.07.2018, as of now nothing further has

happened and the sale deed has not been executed in favour of the auction purchaser.

3. The only question, as already referred above, before this Court is as to whether the order handing over possession of the secured assets to the bank

was passed in accordance with law, i.e. whether Additional District Magistrate has powers under Section 14 of the Act to pass such order, and if not

what are the consequences?

4. The short question before this Court hence would be whether the District Magistrate is a persona designata under Section 14 of the Act and has a

discretion vested upon him under law to pass orders regarding possession of the property on an application moved by the secured creditor or whether he can delegate these powers to any other officer or to his subordinate officer. On this question the fate of the present petitioner has.

5. Section 14 of the Act reads as under:-

Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. (1) Where the possession of any secured assets is

required to be taken by the secured creditor or if any of the secured 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 assets, request, in writing, the

Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be

situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such

request being made to him--

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

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

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the autorised officer of the secured

creditor, declaring that â?

(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 financial assistance granted aggregating the specified amount;

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

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of Section 13, demanding payment of the defaulted

financial assistance has been served on the borrower;

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

acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled

to take possession of the secured assets under the provisions of sub-section (4) of Section 13 read with Section 14 of the principal Act;

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

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case

may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a

period of thirty days from the date of application]:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before the District Magistrate or

the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.] [provided further that if no order is passed by the

Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording

reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

[(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him, -

(i) to take possession of such assets and documents relating thereto; and

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

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

take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District

Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.â??

(emphasis provided)

6. The case of the petitioner before this Court is that powers have been given under Section 14 of the Act to take possession of assets and documents

only to the Chief Metropolitan Magistrate or the District Magistrate, as the case might be. The statute (i.e. sub-section (1) of Section 14 of the Act),

particularly after the amendment incorporated therein by Act No. 01 of 2013, whereby four provisos have been inserted in sub-section (1) of Section

14 and certain directions have been given, laying down a procedure to be followed wherein certain essential facts have to be ascertained, in this case

first by the District Magistrate, before he proceeds further in the matter. It is the District Magistrate who has to pass an order of possession, which

would mean that such powers can only be exercised by the District Magistrate, as a discretion is vested on him alone.

7. Admittedly the entire process of sending a notice, hearing the secured creditor and the borrower, has not been done by the District Magistrate here

but by the Additional District Magistrate (Finance & Revenue).

8. The State Government in its supplementary counter affidavit has annexed a letter dated 29.04.2017 passed by the District Magistrate, who has

delegated these powers under Section 14 of the Act to the Additional District Magistrate (Finance & Revenue), District Udham Singh Nagar. The

question in any case would be whether such powers can be delegated?

9. Arguments have been made by the rival counsels, who were heard at length. The learned counsel for the bank as well as the learned State Counsel,

would argue that by now it has been settled that the functions which a District Magistrate* has to perform under Section 14 of the Act are purely

administrative in nature.

10. Learned counsel for the bank as well as learned State Counsel have relied upon observations of the Honâ??ble Apex Court in para 25 of the

judgment in the case of Standard Chartered Bank vs. V. Noble Kumar and others reported in (2013) 9 SCC 620, wherein it has been observed that

what the District Magistrate is required to do under Section 14(1) is only to see the factual correctness of the assertions made in such affidavit and he

is not to see the legal niceties of the transaction. Para 25 of the judgment passed by the Honâ??ble Apex Court in the case of Standard Chartered

Bank (supra), reads as under:

â??25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the

factual correctness of the assertions made in such affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the

Magistrate can pass appropriate orders regarding taking of possession of the secured asset.â??

* as in this case the authority is District Magistrate and not the Chief Metropolitan Magistrate, and therefore the reference of Chief Metropolitan

Magistrate has not been made.

11. Apart from this, the learned counsel for the bank has also cited a decision of Division Bench of Allahabad High Court in the case of M/s Lakshya

Concosts Pvt. Ltd. and another vs. Bank of Baroda and others reported in [2018(139) RD 217], wherein the Division Bench of Allahabad High Court

while examining this issue, has come to the conclusion that the powers which the District Magistrate has to perform under Section 14 of the Act, are

merely executive powers, and there is absolutely no anomaly if these executive functions are performed by the Additional District Magistrate and this

does not amount to a delegation. Para 18, 19 and 20 of the judgment in the case of M/s Lakshya Concosts Pvt. Ltd. (supra) read as under :

â??18. Thus, both the District Magistrate and Additional District Magistrate are executive Magistrates and an Additional District Magistrate is

empowered to exercise all such powers of District Magistrate under the Criminal Procedure Code or any other law in force, if authorised for the

same.

19. Similarly section 3 of the Cr.P.C. provides for construction of references to a Magistrate in the Code. Sub-section 4(b) of Section 3 of the Code

prescribes that where, under any law, other than this Code, functions exercisable by a Magistrate, which are administrative or executive in nature,

shall be exercisable by an Executive Magistrate. Additional District Magistrate is also an executive Magistrate.

20. Once it is settled legal proposition that power exercised under section 14 of the Act by the District Magistrate is only an administrative power and

not adjudicatory in nature and, thus, authorising Additional District Magistrate, who is also an Executive Magistrate will not amount to any delegation

of power and there exists no illegality in exercise of powers of the said section by an Additional District Magistrate.â??

12. Learned counsel for the bank has thereafter relied upon two decisions of Bombay High Court i.e.Capital First Ltd. v. the State of Maharashtra

and another reported in AIR 2018 Bom 76 and Puran Maharashtra Automobiles, Aurangabad v. Sub Divisional Magistrate, Aurangabad reported in

2009 (6) Mh.L.J. 977, wherein it has been held that the powers exercised by the District Magistrate or the Chief Metropolitan Magistrate, as the case

might be, are purely executionary in nature and neither the District Magistrate nor the Chief Metropolitan Magistrate is persona designata, and the

Additional District Magistrate can perform the same functions as required by the District Magistrate under Section 14 of the Act.

13. Learned counsel for the bank as well as the learned State Counsel have further relied upon an unreported decision of Madhya Pradesh High Court

in the case of Prafulla Kumar Maheshwari v. Authorized Officer & Chief Manager and others (Writ Petition No. 10649 of 2017), where under similar

circumstances it has been held that the Additional District Magistrate is empowered to exercise the powers under the Act, if he is authorised to do so

by the District Magistrate, and if it is done there would be no anomaly. It says as under:-

â??Thus, in light of the aforesaid discussion, the powers exercise under Section 14 of the Act of 2002 by the District Magistrate is only an

administrative power and not adjudicatory in nature and, thus, authorizing Additional District Magistrate or Executive Magistrate will not amount to any

delegation of power and, there exists no illegality in exercise of powers under the said section by an Additional District Magistrate. In view of

aforesaid discussion, there is no error of jurisdiction in entertaining the application under Section 14 of the Act of 2002 by Additional District

Magistrate and the order passed by him cannot be said illegal or without jurisdiction.â??

14. Learned counsel for the petitioner Sri Atul Kumar Bansal, however, in reply to the said submissions, would argue that even assuming for the sake

of argument that the functions required to be performed by the District Magistrate or the Chief Metropolitan Magistrate under sub-section (1) of

Section 14 are purely administrative in nature, yet merely because it is executive or administrative in nature would not mean that it is permissible in law to delegate such functions to a subordinate officer or to any other officer. Even assuming that the Additional District Magistrate has the same powers

and duties as a District Magistrate, and assuming he is not subordinate to the District Magistrate and he performs the same functions as the District

Magistrate, yet he cannot perform the functions which have been specifically designated to the District Magistrate, particularly considering the nature

of these functions, where a discretion is given to the District Magistrate alone.

15. The learned counsel for the petitioner has relied upon the decision of Calcutta High Court in the case of The Teacher-in-Charge of Calcutta

Airport English High School v. West Bengal Board of Secondary Education & Ors reported in AIR 2014 (NOC) 573 (Cal.), wherein it has been held

that the Additional District Magistrate was not specifically empowered either in the statute or by the State Government and therefore the exercise of

powers by the Additional District Magistrate as such have been given to the District Magistrate would be totally without jurisdiction.

16. Learned counsel for the petitioner has also relied upon the decision of Calcutta High Court in the case of Arupeswar Chatterjee and others v.

Bank of Baroda and others reported in AIR 2015 Calcutta 282, wherein adjudicating the same controversy, as is presently before this Court, the

learned Single Judge of Calcutta High Court after taking notice of recent amendment incorporated in sub-section (1) of Section 14 of the Act has

come to the conclusion that the powers under Section 14 have to be performed only by the District Magistrate and cannot be given to the Additional

District Magistrate or any other officer. The learned Single Judge of Calcutta High Court has said as follows:

â??3. On my reading of Section 14 and various sub-sections and sub-paragraphs thereunder, the substantive decision to take possession under Section

14 has to be taken by the District Magistrate. This view is fortified by the second proviso to sub-section (1) which says that after receipt of an

affidavit from an authorised officer and after satisfying himself regarding the contents, the District Magistrate will â??pass suitable orders for the

purpose of taking possession of the secured assets.â? Therefore after the District Magistrate issues an order for taking possession of the secured

assets he can authorize an officer subordinate to him to take possession under sub-section (1A).

6. This judgment was made before the recent amendments to the said Act. The amendment discussed above and the insertion of sub-section (1A)

after Section 14 clarifying that the District Magistrate can delegate his powers to take possession to his subordinates, makes the intendment of the

legislature absolutely clear that the decision to take possession cannot be delegated by the District Magistrate. Furthermore, it is now shown that the

State Government had entrusted the Additional District Magistrate with powers of the District Magistrate under Section 14.

7. Exercising the same functions and enjoying the same post are two different things. The first appointment of an Indian Administrative Officer is

usually to the post of an Additional District Magistrate. Thereafter, he is promoted to the rank of District Magistrate. Therefore, the rank of a District

Magistrate and Additional District Magistrate is not the same. If the legislature had intended an officer of a lower rank to perform the functions under

Section 14, it would have specified the same. Therefore, in my understanding of the Act the function of the District Magistrate under the first sub-

section of Section 14 has to be performed by him personally and by nobody else, unless this particular power of the District Magistrate is given to the

Additional District Magistrate or any other officer by the State Government.â??

17. Learned counsel for the petitioner then relies upon two decision of Kerala High Court in the cases of Aseena v. Sub Divisional Magistrate

reported in III (2009) BC 145 (DB) and Sundaram BNP Paribas Home Finance Ltd. v. State of Kerala reported in III (2009) BC 360, wherein it has

been held by the Kerala High Court that Section 14 of the Act mandates that bank can approach only the District Magistrate or the Chief

Metropolitan Magistrate for assistance and the District Magistrate is not authorised to delegate the function and he cannot make over the matter to the

Sub-Divisional Magistrate for passing orders.

18. As we have seen therefore, there are contrary views of different High Court on this aspect.

19. In the case of Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata and others reported in (2014) 16 SCC 248ngi 2014, a distinction has

been drawn by the Honâ??ble Apex Court where delegation is of legislative or quasi judicial powers as distinct to administrative powers. As far as

legislative powers are concerned, the same cannot be delegated. Quasi judicial powers are also normally not to be delegated. Delegation is permissible

only regarding administrative powers. The Honâ??ble Apex Court had this to say regarding delegation of non-legislative/administrative powers :-

â??5. Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to

perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the

same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision

taken in the process, is a matter of procedure. The Legislature may, after laying down the legislative policy, confer discretion on an administrative

agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy. So long as the essential

functions of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the

primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the

implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by

authorized officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have

made it necessary that the Legislature gives wide powers to various authorities when the situation requires it. Todayâ??s governmental functions are

a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative

body performs each and every task himself.â??

20. Thereafter in para 9 of the said judgment, it was stated as under:

â??9. The Constitution confers power and imposes duty on the Legislature to make laws and the said functions cannot be delegated by the

Legislature to the executive. The Legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the

determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the

Legislature and laying the guiding policy, the Legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference

between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential

functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the

authority and supervision of the delegate.â??

21. Merely because the functions which have been assigned to a particular designated person are executive in nature would not ipso facto mean that it

is legally permissible to delegate these powers.

22. The Court must arrive at a finding as to what is the proper meaning of a statute and the proper purpose behind incorporating these provisions in the

statute.

23. Undoubtedly prior to the Securitisation Act enacted in the year 2002, the avenues which were available to banks and other financial institutions to

take possession of a property secured in favour of the bank, was a difficult, tedious and cumbersome process.

24. In order to do away with this process, the Act of 2002 was enacted which definitely had some very strong and harsh measures. The very

declaration of the account of a person, as non-performing asset, involves a series of harsh measures, which the bank or the secured creditor was now

lawfully entitled to was taken under the Act, of which harshest is to take physical possession of the mortgaged property. A mortgaged property can

also be a dwelling house, in some cases the only dwelling house of the borrower. Initially this could be done merely by an application done by the bank

or financial institution before the District Magistrate or the Chief Metropolitan Magistrate, as the case might be, where there was no provision for

even giving a notice to the borrower and straightway orders for possession were to be passed.

25. It was only in the year 2013, that this procedure was rather elaborated. After 2013 amendment, four provisos have been incorporated in sub-

section (1) of Section 14. The first proviso mandates that the application of the secured creditor shall be accompanied by an affidavit duly affirmed by

the authorized officer of the secured creditor making declaration as to certain aspects such as â?" (a) the aggregate amount of financial assistance granted and total claim of the bank, (b) the security interest credited over various properties by the borrower, (c) the details of such properties, (d) the

fact as to how the borrower has committed a default in payment of financial assistance and (e) as to who and whether the account of the borrower

has been classified as Non Performing Asset (NPA). The District Magistrate or the Chief Metropolitan Magistrate was also to examine whether sixty

days notice as required by the proviso of sub-section (2) of Section 13 has been complied with and most importantly whether â??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. Apart from these, the District Magistrate has also to examine whether the

borrower had not made any payment of the financial assistance in spite of the above notice and whether the provisions of the Act and the Rules made

therein have been complied with. It was only after satisfying the veracity of these assertions, could the District Magistrate of the Chief Metropolitan

Magistrate could finally pass an order for possession. In short, once an application has been moved by the secured creditor before the District

Magistrate, it was not a routine nor was it a fate accompli that an order of possession has to be passed in such matter. It can only have been passed

after the District Magistrate satisfy himself as to the happening of certain events and the veracity of certain assertions, which means that there was

clearly an application of mind on the part of the designated authority and a discretionary power to the District Magistrate.

26. It may be true that these powers which are discretionary powers may not be quasi judicial in nature, as the District Magistrate has not to see the

legal niceties of these documents, nor he has to pass an order which amounts to any form of adjudication, yet, merely because these are administrative

powers, it would not mean that these become just a routine exercise of powers without any application of mind. It is an important function assigned to

the District Magistrate by the Statute. The Legislature purposely by making further amendment in the year 2013, by way of insertion of sub-section

(1-A) in Section 14 of the Act, where only limited powers have been delegated by the District Magistrate to his subordinate officers, shows the

purpose of the legislation. These powers are given in sub-section (1-A), which is reproduced below:-

â??(1-A) â?" The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him, -

(i) to take possession of such assets and documents relating thereto; and

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

27. Therefore sub-section (1) and the remaining provision of Section 14 splits the function of the District Magistrate into two. The first is where the

District Magistrate has to take the decision in the matter, whether at all an order of possession has to be passed or nor. This decision is based on

appreciation of certain documents and affidavits which have to be furnished by the secured creditor before the bank and can only be passed after a

due notice has been given to the borrower and borrower side story has also been taken into consideration by the District Magistrate.

28. That there is an application of discretion on the part of the designated authority i.e. District Magistrate, is clearly the intention of the Legislature.

What can be delegated by the District Magistrate is the actual taking over of possession of the assets which can be delegated to the subordinate

officers or to the police, but the actual order for possession has to be passed by the District Magistrate and by no other authority. This is also true,

when we examine it in light of the fact where we must see the kind of the order which has to be passed by the District Magistrate.

29. In the case of Hari Chand Aggarwal v. The Batala Engineering Co. Ltd. and others, reported in AIR 1969 SC 483, the question before the

Honâ??ble Apex Court was the examination of an order passed by the Punjab and Haryana High Court, and the question was whether the powers

given to the District Magistrate could be exercised by the Additional District Magistrate. The Honâ??ble Apex Court came to the conclusion that

considering the nature of the duties (to which we shall come shortly), the powers could not have been delegated. The Honâ??ble Apex Court came

to the conclusion that the District Magistrate and the Additional District Magistrate are two different and distinct authorities and even in cases where

the Additional District Magistrate has been authorised to perform the same functions of the District Magistrate, it would not mean that he is the same

as a District Magistrate. The nature of the powers which were delegated to the Additional District Magistrate were then examined by the Honâ??ble

Apex Court. The powers which were to be performed by the District Magistrate under the Defence of India Act, 1962 (in the case before the

Honâ??ble Apex Court), were powers of requisitioning of a property. The powers of requisitioning are of a drastic nature and therefore considering

the drastic nature of powers which were given to the District Magistrate, the Honâ??ble Apex Court came to the conclusion that such powers could

not have been delegated. The Honâ??ble Apex Court had this to say on this :

â??9. It has not been disputed that the powers of requisitioning are of a very drastic nature and involve the fundamental rights in respect of property

guaranteed under Article 19 I1) (f) of the Constitution. The Central Government while making the delegation of its power under Section 29 of the Act

must ordinarily be presumed to be fully conscious of this aspect of the matter and it was for that reason that an officer or authority of the High Status

of a District Magistrate in the district was empowered to exercise that power.

10. Apart from these considerations we see no reason to deviate from the normal rule that expressions or words which have been used in the

notification must be read as such and not in any other manner unless the context requires that the latter course should be followed. In the present case

the words â??District Magistrateâ? could not possibly be read as Additional District Magistrate and it is only by resorting to the notification issued

under Section 10 (2) of the Code that the Additional District Magistrates can be said to have been empowered to exercise the powers of the District

Magistrate. The reasons which prevailed with the Nagpur Court and which have already been summarised adequately meet the contrary view that the

Additional District Magistrate should be held to be competent to act under Section 29 of the Act even though the Nagpur case was one of

detention.â??

30. Similarly, looking at the scheme of the Act, as already referred above, and considering the very nature of the powers, the Legislature in its wisdom

has given these powers to a designated person, which is the District Magistrate, such powers could not have been delegated by the District Magistrate

to the Additional District Magistrate, as these powers have to be exercised with due diligence.

31. Therefore, I have no hesitation to hold that in case such power has been delegated, it has been delegated without any authority of law and has

absolutely no legal basis. Consequently, the net result would be that this Court is in respectful agreement with the judgment of Calcutta High Court and

the Kerala High Court, on this aspect!

32. Consequently, the writ petition succeeds. The notice dated 09.10.2017 (Annexure No. 8 to the writ petition) and the order dated 15.01.2018

(Annexure No.10 to the writ petition) are hereby quashed and set aside. The net result would be that all actions which have been taken by the bank

subsequent to the order dated 15. 01.2018 are nullity. The property be restored to its position as it was before passing of the impugned order dated

15.01.2018. It is, however, made clear that this order shall not restrict the District Magistrate to pass fresh order in accordance with law.

