

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 10627 OF 2017

JM Financial Asset Reconstruction Co. Ltd.Petitioner

V/s.

Navi Mumbai Municipal Corporation and anotherRespondents

Mr. Rohit Gupta a/w Ms. Ishita Advani i/b M/s. Desai and Diwanji for the petitioner.

Mr. Sandeep Marne for the respondent no. 1.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : DECEMBER 5, 2017.

P.C.

By this petition, the petitioner seeks a direction against the respondent no. 1-Corporation to restore the possession of immovable property to the petitioner. An injunction is sought against the concerned respondents restraining them from acting in furtherance of the attachment notice dated 24/01/2017, purportedly for the forcible removal of the petitioner from the immovable property.

The concerned property was mortgaged with the Cosmos Co-operative Bank in pursuance of the loan advanced to the respondent no. 2. Since the

respondent no. 2 defaulted in the payment of the loan, a notice under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was served on the respondent no. 2 on 13/09/2013. The respondent no. 2 failed to pay the amount and on 29/11/2013, the Cosmos Bank secured the possession of the property. On 28/03/2014, the debt was assigned by the Cosmos Bank to the petitioner company and in pursuance of the said assignment of debt, the petitioner secured the possession of the property from Cosmos Bank on 27/06/2014. It is the case of the petitioner that though the property was in lawful possession of the petitioner since 27/06/2014, on 24/01/2017, the Municipal Corporation not only attached the concerned property for the dues of Rs. 2 Crore and 11 Lacs but also sealed the property by putting their locks on the same. It is stated by referring to the provisions of the SARFAESI Act that the petitioner has a preferential claim over the respondent-corporation. According to the petitioner, in any case, the respondent-corporation could not have secured the possession of the property from the petitioner without following the due process of law.

It is stated on behalf of the Corporation that though the Corporation had pasted the notice pertaining to the attachment of the property on the concerned property on 24/01/2017 due to non payment of the dues of the Corporation by the respondent no. 2, the Corporation had not locked the property or secured the possession thereof. It is stated that the Municipal Corporation has not secured the possession of the property and the case of the

petitioner that the Corporation has locked the concerned property by taking the possession thereof is false and incorrect. It is stated that if the Municipal Corporation wishes to secure the possession of the property, appropriate steps in accordance with law would be undertaken.

In view of the statements made on behalf of the Corporation that the Corporation has not secured the possession of the concerned property and has not locked the same, the grievance of the petitioner that the Corporation has illegally secured the possession thereof and has locked the same would not survive. It would not be necessary in the aforesaid set of facts to direct the Corporation to restore the possession of the property to the petitioner.

In view of the statements recorded herein above, we dispose of the writ petition by accepting the statements made on behalf of the Corporation that the Corporation has not secured the possession of the concerned property and has not locked the same. The parties would be free to avail the appropriate remedy for seeking the redressal of their other grievances, if any. Order accordingly. No costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]