

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO.16248 OF 2018

Padma Subhash Chandak and Ors. .. Petitioner

V/s.

The State of Maharashtra and Ors. .. Respondents

Mr.R.M. Haridas for the Petitioner

Ms.Sushama S. Bhende, A.G.P. for the Respondent nos.1 to 4

Mr.R.S.Ghadge i/b Mr.A.S.Desai for the Respondent nos.5 and 6

Mr.Vinod Sangvikar i/b Mr.Nilesh M. Wable for the Respondent
no.8

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : OCTOBER 30, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 By this petition under Article 226 and 227 of the Constitution of India the Petitioner challenges the order dated 24.08.2017 issued by The Tahsildar - Kalyan calling upon them to hand over vacant and peaceful possession of the suit property i.e. plot no.RP-2 & Plot No.RP-15, Residential Zone, Near Medical College, MIDC, Dombivali (East), Taluka Kalyan, Dist. Thane

along with Furniture, Fixture and other material in the said premises.

3 The learned counsel for the Petitioner submits that in the present proceedings, Respondent no.5 bank moved before the learned District Magistrate, Thane by way of Application No.18 of 2017 under Rule 107(11)(D-1)(VIi)(A) of the Maharashtra Co-operative Societies Rules, 1961 for taking forcible possession of the suit premises for recovery of sum of Rs.3,76,20,124/- as per the award/recovery certificate dated 21.02.2014.

4 The main contention of the learned counsel for the petitioner is that though the order was passed by the learned District Magistrate under the Maharashtra Cooperative Societies Rules, 1961, learned Tahsildar issued notice for taking possession dated 24.08.2017 under Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. Hence, same is required to be set aside.

5 At this stage, the learned counsel for the Respondent nos.5 and 6 after taking instruction from his client makes a statement that they have no objection if notice issued by learned Tahsildar dated 24.08.2017 is set aside with liberty to the Respondent nos.5 and 6 to approach the Tahsildar to take appropriate steps to comply the order dated 15.6.2017 passed by learned District Magistrate, Thane in Application No.18 of 2017.

6 At this stage, the learned A.G.P. for the State also submits that she will inform the Learned Tahsildar to take appropriate

steps as per order dated 15.06.2017 passed by District Magistrate in Application No.18 of 2017. Hence, by consent of both the parties, Petitioner and Respondent nos. 5 and 6, following order is passed:

- a) Notice dated 24.08.2017 issued by learned Tahsildar, Kalyan to the Petitioner for taking forcible possession of the suit premises i.e. plot no.RP-2 & Plot No.RP-15, Residential Zone, Near Medical College, MIDC, Dombivali (East), Taluka Kalyan, Dist. Thane is set aside.
- b) Liberty granted to the Respondent nos.5 and 6 to move before the learned Tahsildar, Kalyan by separate Application for execution of the order dated 15.06.2017 passed by learned District Magistrate, Thane in Application no.18 of 2017 according to law.
- c) If such Application is made learned Tahsildar, Kalyan is directed to act according to law.
- d) Learned Tahsildar is directed to issue seven days notice to the Petitioner before taking possession of the suit premises according to law.
- e) Learned A.G.P. is directed to inform learned Tahsildar about this order in writing
- f) All contention of both the parties are kept open.

g) Writ Petition stands disposed of accordingly.

(N. J. JAMADAR, J)

(K.K. TATED, J.)