

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO.26048 OF 2019**

Punjab National Bank

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Mr. Soheli E. Kazi, Advocate for the Petitioner.

Ms. Nisha Mehra, AGP for the Respondent No.1 - State.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 12th DECEMBER, 2019

P.C.

1] The Writ Petitioner proceeded under Section 13 of the SARFAESI Act, 2002 by issuing a notice on 05.07.2017. As per the Petitioner in spite of service, the Respondents did not respond to the notice. The Petitioner took resort to Section 14 of the SARFAESI Act, 2002 and moved an application before the District Magistrate, Thane who appointed the Tahsildar, Thane vide order Exh.A to take charge of the secured asset being Shop No.5, Plot No.11, Girirajdham CHS Ltd., Sector-10, Koparkhairane, Navi Mumbai-400 709. On 30.01.2018 the Tahsildar issued a notice to Respondent Nos.2 and 3 directing them to hand over vacant physical possession of the shop within 15 days. Possession not being handed over, the Tahsildar delegated his power to the Circle Officer who sought police assistance vide letter dated 18.01.2019.

2] One Mr. Pandurang Atmaram Desai and another filed a suit against one Mr. Mohan D. Choudhary. The suit has been

registered as Regular Civil Suit No.12 of 2019 in the Court of Civil Judge, Vashi at CBD-Belapur. An order dated 21.01.2019 has been passed in the suit restraining Mr. Mohan D. Choudhary from interfering with the possession of the Plaintiffs in the shop in question. In light of the order dated 21.01.2019 coming to the knowledge of the Circle Officer, vide communication dated 05.03.2019 he sought necessary direction from the Tahsildar. The Tahsildar responded vide communication dated 14.05.2019 informing the Circle Officer that he should take possession of the shop in question and hand over possession to an authorised officer of the Bank.

3] Grievance in the Writ Petition is to the order Exh.A passed by the District Magistrate not being complied with.

4] From the facts noted herein-above highlighting that the order dated 21.01.2019 passed in Suit No.12 of 2019 has not been issued against the Bank or the Tahsildar, we dispose of the Petition directing the Tahsildar, Thane who has been appointed by the District Magistrate, Thane vide Exh.A to take possession of the secured asset. We direct the Tahsildar not to delegate said function to the Circle Officer because in law he himself is a delegatee and cannot further delegate the authorisation. The Tahsildar, District Thane is directed to comply with the direction issued by us today within two weeks of receipt of an authenticated copy of the present order.

**Balaji G.
Panchal**

Digitally signed by
Balaji G. Panchal
Date: 2019.12.12
17:26:32 +0530

SMT. BHARATI DANGRE, J

CHIEF JUSTICE