IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10701 OF 2017

L & T Housing Finance Limited .. Petitioner
Versus
The State of Maharashtra through
Addl.Govt.Pleader & ors .. Respondents

WITH

WRIT PETITION NO. 7851 OF 2017

Citizen Credit Co-op Bank Ltd .. Petitioner
Versus
The State of Maharashtra through
Addl.Govt.Pleader & Anr .. Respondents

WITH

WRIT PETITION NO. 7870 OF 2017

Abhyudaya Co-operative Bank Ltd .. Petitioner
Versus
The State of Maharashtra through
Addl.Govt.Pleader & Anr .. Respondents

WITH

WRIT PETITION NO. 12396 OF 2017

Asset Reconstruction Co. (I) Ltd. .. Petitioner
Versus
The State of Maharashtra through
Addl.Govt.Pleader & ors .. Respondents

WITH

WRIT PETITION NO. 1343 OF 2018

Punjab National Bank through its
Authorized Officer .. Petitioner
Versus
The State of Maharashtra through
Addl.Govt.Pleader & Anr .. Respondents

WITH

WRIT PETITION ST NO. 4161 OF 2019

Sundaram BNP Paribas Home
Finance Ltd through Mr.Prashant
R. Wankhede .. Petitioner
Versus
The State of Maharashtra through
Addl.Govt.Pleader & Anr .. Respondents

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Mr. Darpan Bhatia I/b Indus Law for the petitioner in WP 10701/2017.
Ms.Priyanka Fadia I/b Shashank Fadia for the petitioner in WP 12396/2017.
Mr.Prakash Shinde with Ms.Niyati Merchant I/b MDP Partners in WP 1343/2018.
Mr.Siddharth Samantray with Dimple Tejani I/b Sanjay Anabhawane for the petitioner in WP St 4161/2019.
Mr.Y.S. Khochare, AGP for the State in all the matters.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 9th JANUARY, 2020.

<u>P.C</u>:-

1 Heard learned counsel for the parties.

2 The common question of law which arises for consideration in all above captioned writ petitions is : Whether Section 243 of the Maharashtra Land Revenue Code, 1966 permits Collector or an Officer under the jurisdiction of the Collector appointed by the Collector as the authorized Officer under Section 14 of the SARFAESI Act, 2002 to take physical possession of a secured asset can demand processing fee/ administrative costs/Setu fee to take possession of the secured asset mortgaged to a Bank or a financial institution which is entitled to take action under SARFAESI Act, 2002.

3 An additional question to be answered in Writ Petition St.No.4161/2019 is whether the Collector can demand production of revenue entries when an application is filed before the Collector to appoint an officer to take physical possession of flats/buildings offered by way of mortgage.

4 Section 243 of the Maharashtra Land Revenue Code, 1966 reads as :-

> *A revenue or survey officer may give and apportion costs incurred in any case or proceeding arising under this Code or any other law for the time being in force in such manner and to such extent as he thinks fit:*

> ***Provided that****, the fees of a legal practitioner shall not be allowed as costs in any case or proceedings, unless such officer considers otherwise for reasons to be recorded by him in writing.*

5 A bare reading of the statutory provision reveals that the power of the Revenue or Survey Officer to direct apportioned costs incurred is in cases of proceedings arising under the Code or any other law for time being in force.

6 A proceeding by its very nature envisages a decision after hearing parties.

7 Under SARFAESI Act, 2002, if an application is filed under Section 14, the Collector has not to conduct any proceedings. The Collector has simply to ensure that the applicant informs and *prima facie* establishes that a notice under sub-section 2 of Section 13 has been issued and if responded to, an order passed under sub-section (3A) of Section 13 of SARFAESI Act followed by a demand under sub-section (4) of Section 13 of the SARFAESI Act.

8 On 21st March 2018, the following order was passed in the writ petitions.

> *"1 In all these Petitions the grievance is regarding the levying of process fee/charges by the District Magistrate and Collector relying upon Section 243 of the*

Maharashtra Land Revenue Code, 1966 for Applications made under Section 14 of the SARFAESI Act seeking assistance of the District Magistrate and Collector for taking physical possession of the secured assets. We are informed that some of the District Magistrates and Collectors have issued Notifications in that regard while some are levying such process fee without Notification.

2 On an earlier occasion the learned Advocate General had appeared in the matter and produced a copy of the letter dated 25.08.2017 of the Additional Secretary, Ministry of Finance, Government of India calling upon the Chief Secretary, Government of Maharashtra to direct the District Magistrate and Collector not to charge processing fees under the SARFAESI Act. The letter dated 11.09.2017 of the Revenue and Forest Department, State of Maharashtra addressed to the District Magistrate and Collector of Pune and Solapur is also placed on record, which directs them not to levy process fee. The Petitioners contend that despite the assurance before the Court, process fees are being levied and that Section 243 of the Maharashtra Land Revenue Code has no application in the facts of the present cases.

3 In the facts and circumstances of the case, by way of ad-interim relief, we stay the implementation and execution of the Notifications and direct that no process fee shall be levied until the next date. It is expected of the State Government to issue necessary directions in this regard to all the District Magistrate and Collector in the State.

4 Stand over to 11.04.2018.

9 In spite thereof, learned counsel for the petitioners

inform that either the Collectors who act as the District Magistrates or Tahsildars appointed by the Collectors are demanding a processing fee.

10 It is the duty of the government servants to ensure that lawful orders are complied with. It is the duty of Government servants to discharge powers and duty cast upon them under different statutes and for which they cannot demand any user charges.

11 Thus, as regards the first question which arises for consideration we answer the same by holding that in discharge of duty under Section 14 of the SARFAESI Act, neither the Collector nor an Officer authorized by the Collector to take possession of his secured asset, can require the applicant to deposit any processing fee/administrative fee/Setu fee/costs.

12 As regards the second question which arises for consideration in WP St.No. 4161/2019, suffice it to state that no inquiry is contemplated under Section 14 of the SARFAESI Act, 2002 qua who is the recorded owner of the land. If the secured interest is in a flat or an immovable propertyassigned a municipal number, the District Magistrate/Collector has only to satisfy himself that the applicant has prima facie justified that the flat/immovable property has been mortgaged by either deposit of

title deed of the immovable property or a registered mortgage deed and compliance has been made under Section 13. Thus, we hold that in proceedings under Section 14 of the SARFAESI Act, the Collectors cannot call upon the applicant to produce revenue entry mutation records in the 7/12 extracts.

13 The Petitions are disposed of directing the District Magistrates to pass orders on applications received under Section 14 of the SARFAESI Act guided by the directions issued hereinabove and the two questions of law framed and answered as above.

SMT. BHARATI DANGRE, J CHIEF JUSTICE

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