

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7171 OF 2021

Axis Bank Ltd. Through its
Authorized Officer .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Mrigesh D. Narwadkar, Advocate for the Petitioner.
Shri A. R. Kale, A.G.P. for Respondent Nos. 1 to 3.
Shri N. D. Batule, Advocate for the Respondent No. 4.
Shri N. S. Shah, Advocate for Respondent Nos. 5 to 7.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.
DATE : 05TH OCTOBER, 2021.**

FINAL ORDER :

. The petitioner seeks directions against the respondent No. 4 to remove lock and seal over the property bearing land gut No. 283/3/1(p) admeasuring 5000 square meters situated at village Shevgaon, Tq. Shevgaon, Dist. Ahmednagar.

2. The petitioner is armed with an order passed U/Sec. 14 of the Securitization and Reconstruction of Financial Asses and Enforcement of Security Interest Act, 2002 (for short "Securitization Act"). The said order is passed by the Executive Magistrate on 18th September, 2019. Inspite of order U/Sec. 14 of the Securitization Act passed in September 2019, the physical possession was not handed over to the petitioner. The

respondent No. 4/Municipal council on or about 14.02.2021 put its lock and seal over the property of the respondent/borrower for non payment of property tax amounting to Rs. 4,38,789/-.

3. Mr. Narwadkar, the learned advocate for the petitioner submits that, the charge of the secured creditor is priority charge. The learned counsel to buttress his submissions relies upon Section 26(E) of the Securitization Act. The learned advocate submits that, the notice U/Sec. 13(2) of the Securitization Act was issued on 19th October, 2018.

4. After issuance of notice U/Sec. 13(2) of the Securitization Act, the borrower after receipt of notice is precluded from transfer by way of sale, lease or otherwise any of the secured assets in view of Section 13(6) of the Securitization Act. The petitioner has taken symbolic possession U/Sec. 13(4) of the Securitization Act on 19th January, 2019.

5. The secured creditor will be deemed to have taken the possession. The question of physical possession only would arise for which Section 14 of the Securitization Act provides the manner of taking physical possession.

6. The Municipal Council recently after all the steps were taken by the secured creditor has put its lock and seal. Same is much subsequent to the rights created in favour of the petitioner.

7. In the light of the above, the respondent No. 4 is directed to remove the lock and seal over the property bearing land gut No. 283/3/1(p) situated at village Shevgaon, Tq. Shevgaon, Dist. Ahmednagar within a period of fifteen (15) days from today. Upon removal of the same, the District Magistrate shall proceed further U/Sec. 14 of the Securitization Act for delivery of physical possession to the petitioner. In case the petitioner auctions the property, then in the auction notice the petitioner shall mention the amount of property tax payable to the respondent No. 4.

8. With the aforesaid observations and directions the writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct.21