

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

960 WRIT PETITION NO. 3385 OF 2022

POOJA ALIAS MAYA VAKILCHAND BAJAJ HEMNANI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Ravibhushan P Adgaonkar
AGP for Respondent Nos. 1 and 2 : Mr. K.N. Lokhande
Advocate for Respondent No. 3 : Mr. A.I. Deshmukh
Advocate for Respondent No. 7 : Mr A.N. Irpatgire

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**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 10th MARCH, 2022

PER COURT :-

1. The petitioner is challenging the order passed by the District Magistrate directing possession of the property. The proceedings appear to be filed under Rule 107 (11)(6)(A) of the Maharashtra Co-operative Societies Rules, 1961.

2. Mr. Adgaonkar, learned counsel for the petitioner submits that the petitioner is tenant on the basis of unregistered lease agreement of the year 2005. She is not party to the proceedings. The directions are given to the petitioner to handover possession. The lease is of the year 2005. Lessee cannot be dispossessed without following due process.

3. We asked the learned Advocate for the petitioner to demonstrate the activities done by the petitioner over the writ premises from the year 2005 to 2010. No such document is placed on record as evidence. The petitioner claims to be in possession of the property on the basis of unregistered lease deed.

4. It is submitted by the learned advocate for respondent that petitioner and borrower are closely related to each other. The petitioner is wife of nephew of the borrower.

5. The auction purchaser has moved for recovery of the property.

6. *Prima facie*, we do not find any document on record to demonstrate that the petitioner was in possession and was occupying it. The writ property is residential premise. The auction was held. The property, it appears, was initially attached. Thereafter, the auction was conducted. The objection seems to have been taken after auction is conducted and the order is passed for delivery of possession. The petitioner is relying upon the Civil Suit filed by the petitioner bearing RCS No. 211 of 2009 for injunction restraining the respondents from taking over possession without due process of law. It is submitted by learned Advocate for auction purchaser that said suit has been withdrawn by the petitioner. Withdrawal of the suit amounts to dismissal of the suit.

7. Be that as it may, the order is passed under Rule 107 of the Maharashtra Co-operative Societies Rule, 1961 and the petitioner also has alternate remedy, we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India. The petitioner may avail alternate remedy, if she so desire, as may be permissible under law.

8. Writ Petition is disposed of. No costs.

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE