IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
BENCH AT AURANGABAD

WRIT PETITION NO. 6769 OF 2022

Incred Financial Service Ltd.
Through its Authorized Officer **....Petitioner**

Versus

The State of Maharashtra
and others **....Respondents**

Mr. Shailendra S. Gangakhedkar, Advocate for petitioner.

Mr. D. R. Kale, G. P. for respondent nos. 1 to 4.

CORAM : DIPANKAR DATTA, C.J. &
RAVINDRA V. GHUGE, J.

DATED : JULY 04, 2022.

PER COURT :

1. Petitioner is a financial institution which, as a secured creditor within the meaning of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter 'Securitisation Act'), had extended financial assistance to one Balasaheb Madhukar Khomare (hereafter 'borrower'). The borrower having failed to liquidate his dues, the petitioner invoked the provisions of section 13 of the Securitisation Act. To take over possession of the secured assets, the petitioner had subsequently invoked section 14 of the Securitisation Act by presenting an application

before the District Magistrate, Ahmednagar. The district magistrate passed an order dated January 12, 2022 granting the prayer of the petitioner. The Tahsildar cum Taluka Executive Magistrate, Ahmednagar (hereafter 'tahsildar') was authorized by the district magistrate, in terms of provisions contained in section 14(1-A) of the Securitisation Act to take possession of the secured assets and forward the same to the petitioner. It appears from Exhibit C being a communication signed by the tahsildar on March 29, 2022 that he had further authorized the Talathi, Bhingar (hereafter 'talathi') to take possession of the secured assets on May 04, 2022 at 11.00 a.m. The talathi, allegedly, did not comply with the order dated March 29, 2022 of the tahsildar for which the petitioner had lodged a complaint before the tahsildar on May 20, 2022. Even such complaint did not invoke any response, which has triggered this writ petition dated June 28, 2022.

2. Mr. Gangakhedkar, learned advocate appearing for the petitioner submits that the tahsildar having been authorized by the district magistrate to take possession in terms of the provisions contained in section 14(1-A) of the Securitisation Act, such tahsildar could not direct the talathi to take such possession. In support of such contention, reliance has been

placed by Mr. Gangakhedkar on an order dated December 12, 2019 passed by a coordinate Bench of this Court while disposing of Writ Petition Stamp No. 26048 of 2019. Accordingly, a prayer is made for direction to the tahsildar to take possession of the secured assets and to hand over the same to the petitioner.

3. Mr. Kale, learned Government Pleader for the respondents submits that if an appropriate order is made by the Court, the same shall be complied with by the tahsildar.

4. We, accordingly, fix July 11, 2022 at 12.00 noon as the date and time, when the tahsildar shall remain present personally at the site, take possession of the secured assets and forward the same to the petitioner.

5. It is made clear that the tahsildar may not hand over the secured assets to the petitioner, if prior to the scheduled date and time mentioned hereinabove, the borrower places before him an order from the relevant Debts Recovery Tribunal or the High Court restraining the tahsildar from taking over possession of the secured assets or if the order under section 14 of the Securitisation Act is stayed by either of the above two fora.

6. The writ petition is disposed of with the aforesaid directions. There shall be no order as to costs.

[RAVINDRA V. GHUGE, J.] **[CHIEF JUSTICE]**