

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.653 OF 2022

**PRIYA
RAJESH
SOPARKAR**

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PRIYA RAJESH
SOPARKAR

Date: 2022.07.30
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Pratibha Milk Industries and anr. ... Petitioners

V/s.

The Collector (Home Branch), Pune and ors. ... Respondents

Mr.Vivek Patil alongwith Mr.Yogesh Shirwadkar, Advocates for the
Petitioners.

Ms.R.A.Salunkhe, AGP for Respondent Nos.1 and 2/State.

CORAM : K.R.SHRIRAM AND

A.S.DOCTOR, JJ.

DATE : JULY 27, 2022.

P.C.:-

1. Mr.Patil states that in view of subsequent developments, post filing the petition, the petition has become infructuous. On 20th January, 2022, the following order came to be passed:-

“1. This writ petition is entertained having regard to the order dated December 16, 2021 passed by the Supreme Court in Special Leave to Appeal (C) No. 10911 of 2021 (State Bar Council of Madhya Pradesh Vs. Union of India).

2. Heard learned counsel for the petitioners. Learned counsel submits that the respondent no. 3 is duly served with an Advocate’s notice. Let an affidavit of service showing service upon the respondent no. 3 be filed during the course of this day.

3. On behalf of the petitioners it is submitted that the possession of the flat being the subject matter of this writ petition is likely to be taken pursuant to the order dated June 8, 2021 passed by the Additional District Magistrate, Pune, which would result in dispossession of the petitioners. Learned counsel relied upon the No Objection Certificate (hereafter “NOC”, for short) dated April 8,

2019 (page 81 of the writ petition) issued by the respondent no. 3 stating that the respondent no. 3 has no claim or right whatsoever against the said flat. Learned counsel submitted that the said NOC might not have been placed before the Additional District Magistrate, Pune. Perusal of the impugned order dated June 8, 2021 indicates that the said order does not refer to the NOC which is at page 81 of the writ petition.

4. In this view of the matter, issue notice to the respondent no. 3, returnable on January 27, 2022. There shall be an ad-interim order in terms of prayer clause (b) for a period of two weeks or until further orders, whichever is earlier.

5. In addition to Court's notice, the petitioners to serve copy of the petition along with the copy of this order on the respondent no. 3 and file additional affidavit of service by the next date.

6. Mr. Pabale, learned AGP waives service of notice on behalf of respondent nos. 1 and 2. Learned counsel for the petitioners undertakes to serve the copy of the writ petition on Mr. Pabale, learned AGP during the course of this day."

2. The office remark indicates Advocate for petitioner has not supplied copies for serving notice upon respondent No.3. Petitioner, however, has filed an affidavit of one Swapnil Velonde affirmed on 12th July, 2022 confirming service of petitioner and the copy of the order dated 20th January, 2022 upon respondent No.3. It appears respondent No.3 has been served on 29th January, 2022. Respondent No.3, however, is not present though served.

3. Ms.Salunkhe for respondent Nos.1 and 2 leaves it to Court to pass such orders as deemed fit.

4. In view of what is recorded in the order dated 20th January, 2022 and the fact that respondent No.3 shows no desire to oppose the petition, petition is made absolute in terms of prayer clause (a) which reads as under :-

“(a) This Hon’ble Court be pleased to call for the records and proceedings of the Respondent Nos.1 in relation to the procedure followed by the Respondent No.1 for passing of the impugned order against the Petitioners for taking forceable possession of the said property which is already released by the Respondent No. 3 and 4 and after examining the legality and validity of the same be pleased to quash and set aside the said impugned order dated 08.06.2021 and impugned Notice dated 23.12.2021.”

5. Petition disposed. No order as to costs.

(A.S.DOCTOR, J.)

(K.R.SHRIRAM, J.)

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