

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12214 OF 2023

Tata Capital Housing Finance
Ltd & Anr

..Petitioners

Versus

State of Maharashtra & Ors

..Respondents

ANJALI
TUSHAR
ASWALE

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ANJALI TUSHAR
ASWALE
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***Mr.Nikhil Mehta i/b KMC Legal Venture, Advocates
for the Petitioners.***

***Mr. A. I. Patel, Addl. G. P. with Mr.M. M. Pabale, AGP,
for Respondent Nos.1 to 4/State.***

***Mr.Bhavik Lalan with Sandeep Singh, Mahesh Mishra,
Advocates for Respondent No.5.***

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**
DATE : DECEMBER 12, 2023

P.C.

The above Writ Petition is filed seeking a direction to Respondent Nos.1 and 2 to forthwith render necessary assistance to Respondent Nos.3 and 4 for restoration of their secured asset being a shop bearing No.2, on the ground floor, admeasuring 385 sq.ft. in the building known as “Jay Jay Shreeram Co-operative Housing Society” situated at Balaji Path, Dombivali-East, Survey No.112, Hissa No.A, Mouje Ayare, Tal Kalyan, Dist. Thane and thereafter handover the same to the Authorized Officer of the

Petitioner- NBFC. In the facts of the present case, there was an order passed under Section 14 of the SARFAESI Act, 2002 by the District Magistrate. After this order was passed, physical possession of the secured asset was taken by the Tehsildar and the same was handed over to the Petitioner-NBFC. Thereafter, the borrowers, illegally reentered the secured asset and dispossessed the Petitioner-NBFC. It is in this light that the Petitioners have approached this Court seeking the reliefs more particularly set out earlier.

2 The learned counsel appearing on behalf of the borrowers (Respondent Nos.5 and 6) has fairly not even tried to defend the actions taken by his clients and on instructions has stated that Respondent Nos.5 & 6 shall vacate the secured asset on or before 31st December, 2023 and hand over physical possession of the same to the Authorized Officer of the Petitioner bank. We accept this statement as an undertaking given to this Court.

3 If for any reason, the borrowers (Respondent Nos.5 & 6) do not abide by the statement recorded above, then, the Tehsildar (Respondent No.2) shall take physical possession of the secured asset on 3rd January, 2024 and dispossess/vacate whoever

is found therein and thereafter hand over the physical possession of the secured asset to the Petitioner-NBFC. In order to ensure that the Tehsildar is allowed to take physical possession of the secured asset, the Police Inspector of the local Police Station (Dombivali Police Station) shall give all necessary assistance to the Tehsildar to ensure that he is able to take physical possession of the secured asset and vacate whoever is found therein, failing which the Senior Police Inspector of the said Police Station shall be liable for contempt. The necessary charges payable to the Police Authorities for giving assistance to the Tehsildar shall be paid by the Petitioner-NBFC.

4 The above Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

5 Though we have disposed of the above Writ Petition, we place the same on Board on 4th January, 2024 for reporting compliance.

6 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act

on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] [B. P. COLABAWALLA, J.]