



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6606 OF 2023

(M/s. Yashwant Shaikshanik Krida Va Sanskritik Sanstha, Buldhana, through its Secretary & Ors. Vs.
District Magistrate cum Additional Collector, Buldhana & Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri P.B. Patil, Advocate for the petitioners.

Shri A.A. Madiwale, Assistant Government Pleader for respondent nos. 1 and 2.

Shri R.S. Bhalerao with Shri I.S. Ghagarkar, Advocate for respondent no.3.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : SEPTEMBER 29, 2023

The petitioners seek to challenge the possession notice dated 6/9/2023 issued by the Naib Tahsildar and Executive Magistrate, Chikhli by which the petitioners have been informed that possession of the mortgaged property which is a premises where a School is being run would be taken on 3/10/2023 at 11:00 am. According to the petitioners, the School run by petitioner no.1 – Society from Classes I to XII is presently being operated from the mortgaged premises. The petitioners seek to approach the Debts Recovery Tribunal for recovery of the amounts due. However, due to paucity of time and ensuing holidays, it is not practicable to take such steps immediately. It is stated that the notice dated 6/9/2023 was served on the petitioners on 23/9/2023. The petitioners therefore pray for some breathing time to approach the Debts Recovery Tribunal by filing proceedings under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “Act of 2002”).

2] The prayer is opposed by the learned Counsel for respondent no.3 by submitting firstly that statutory remedy is available before the Debts Recovery Tribunal to raise challenge to the measures taken under Section 13(4) of the Act of 2002. Secondly, respondent no.3 has borne the expenses for obtaining assistance of the police authorities while taking such possession. It is also submitted that even if any breathing time is granted to the petitioners, same

should be made subject to deposit of some amount that would indicate the petitioners bonafide.

3] We find that the petitioners have remedy for challenging the notice dated 6/9/2023 by filing proceedings before the Debts Recovery Tribunal. However, since the possession of the mortgaged premises where School is being run is to be taken on 3/10/2023 at 11:00 am, we are inclined to grant some breathing time to the petitioners to enable them to approach the Debts Recovery Tribunal.

4] Accordingly, without entering into the merits of the challenge raised by the petitioners, the following order is passed :

ORDER

i] Within a period of 15 days from today, the petitioners shall deposit an amount of Rs.25,00,000/- with respondent no.3 – Bank. The same shall be without prejudice to the rights and contentions of the parties.

ii] The petitioners shall by 3/10/2023 pay an amount of Rs.50,000/- to respondent no.3 – Institution to meet the expenses borne by respondent no.3 towards obtaining police assistance. After deducting the actual amount of expenses borne, the balance amount, if any, shall be credited to the account of the petitioners.

iii] Subject to the aforesaid, the petitioners are granted time till 9/10/2023 to approach the Debts Recovery Tribunal. The petitioners are free to pray for appropriate interim relief before the Debts Recovery Tribunal.

iv] This order of ad-interim protection shall operate for a period of 15 days from today and shall cease to operate thereafter subject to complying with what has been stated hereinabove.

5] With the aforesaid directions, the Writ Petition is disposed of.

6] An authenticated copy of this order be supplied to the learned Counsel for the parties.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)