



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3340 OF 2024

Aavas Financiers Limited Through Authorised Officer
VERSUS
The Upper District Magistrate And Another

Mr. V. M. Vibhute, Advocate for the Petitioner
Mr. D. R. Korade, AGP for the Respondent/State

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 1st April, 2024

PER COURT :-

1. The Petitioner is compelled to approach this Court on account of the attitude of Respondent No.2- Tahsildar, Shrirampur, Dist. Ahmednagar, namely, Milindkumar Ramdas Wagh.
2. The order passed by the District Magistrate under Section 14 of the SARFAESI case No. 678 of 2022, is dated 20th January, 2023. The said order was communicated to the Tahsildar, Shrirampur, Respondent No.2 herein, to take the physical possession of the mortgaged property and hand it over to the Petitioner which is the financial institution. It is beyond debate that the order has to be complied with within 30 days. Despite the said order, the Tahsildar did not take appropriate steps to execute the order.

3. The learned AGP is instructed to inform the Court that the panchnama dated 16th January, 2024 is not at the behest of the Tahsildar. He sent an Awal Karkun (Senior Clerk). He did not even proceed to execute the order, when it is a settled position of law that it is only the Tahsildar who has to execute the order of the District Magistrate passed under Section 14 of the SARFAESI Act. Reference can be made to the order passed by this Court at the Principal Seat in ***L & T Finance Ltd. Vs. State of Maharashtra and others, 2023 SCC Online Bom. 931.***

4. The Awal Karkun prepared a panchnama, as late as on 16th January, 2024 in relation to the order of the District Collector dated 20th January, 2023 after 1 year. The spacious plea put forth by the Awal Karkun is that the mortgaged property was locked and the gate was locked and therefore, he had an apprehension that there could be certain valuables inside the property and hence he declined to take over the physical possession. Be that as it may, it is only the Tahsildar who can execute such order and not the Awal Karkun.

5. This is apparently an act of declining to execute an order of the Collector, by the Tahsildar. What could have been done plainly, as a part of the procedure laid down under the SARFAESI Act, has not been done. He has not only circumvented the procedure, but he has also shown the courage of not implementing the order of the District

Collector. It is confessed before us that he has not even reported back to the District Magistrate as to the steps were taken by him and as regards his reluctance in taking over the physical possession of the property.

6. The Tahsildar has filed an affidavit dated 1st April, 2024 before us. He has tendered an unconditional apology by making a statement that he has highest regards to the order of this Court. He has lost sight of the fact that he was dealing with the order of a District Magistrate which he is duty bound to implement. He has not even explained as to why the order of the District Collector dated 20th January, 2023 has not been implemented for 13 months. It is admitted that he has not reported back to the District Magistrate, which he was duty bound to, whether he executed the order passed by the District Magistrate, or not. Now a pretence is set out in paragraph No.3 that due to heavy work load of election work, he needs one week's time to implement the order of the District Magistrate. We find this to be a feeble excuse put forth which does not deserve any consideration.

7. In view of the above, **this Petition is disposed off** with a direction to the Tahsildar to personally implement the order of the District Magistrate, within 30 days.

8. We deem it appropriate to record our serious displeasure

about the manner in which the Tahsildar Mr. Milindkumar Ramdas Wagh has performed his duties. We direct the District Collector to record our displeasure in his Service Book. We also direct the District Collector, Ahmednagar to follow the procedure under Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and initiate appropriate steps with reference to the Tahsildar, Shrirampur Mr. Milindkumar Ramdas Wagh.

9. We direct the learned Registrar (Judicial) of this Bench, to place serve this order on the District Collector Ahmednagar, who shall place a compliance report before us on 01st July, 2024.

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

ssp