
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2088 OF 2024

Hindustan Petroleum Corporation Ltd. ...Petitioner

Versus

The District Magistrate & Collector,
Dist. Thane & Anr. ...Respondents

Mr. S.S. Panchpor, a/w. *G.D. Tamboli*, *Advocates for
Petitioner.*

Mr. Shyam Kapadia, a/w. *Charles D'souza* a/w. *Shakib
Dhorajiwala & Indrajeet Deshmukh i/b. Vidhii Partners*, for
Respondent No.3.

Mr. A.I. Patel, *Addl.GP* a/w. *M.S. Bane*, *AGP for Respondent/
State.*

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : FEBRUARY 14, 2024

P. C.

1. The above Writ Petition is filed *inter alia* seeking a writ, order or direction to quash and set aside the Order dated 22nd August, 2022 passed by the District Magistrate and Collector, Dist. Thane (Respondent No.1) under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (***"SARFAESI Act, 2002"***). In the alternative, it is prayed that Respondent Nos.1 and/or 2 be restrained from taking possession of land admeasuring 6988.74 sq.mtrs. (for short ***"part of the secured property"***) from and out of the total land admeasuring about 16140 sq.mtrs of Survey Nos.16/2/1, 16/2/2 and 16/2/3 of Village Arjunali, Tal. Bhiwandi, District, Thane (for short the ***"entire secured property"***), till 30th April, 2024. The Petitioner before us is Hindustan Petroleum Corporation Limited, which is a public sector undertaking.

2. The Learned Counsel appearing on behalf of the Petitioner fairly submitted that though one of the prayers is to quash and set aside the Order passed by Respondent No.1 under Section 14 of the SARFAESI Act, 2002, he is not pressing the aforesaid prayer. The only relief the Petitioner-HPCL is seeking is that they be granted time till 30th April, 2024 to handover physical possession of a part of the secured property (in their occupation) to Respondent No.3 (Asset Reconstruction Co.Ltd. ***"ARC"***) because on this part of the secured property, the Petitioner-HPCL runs a petrol pump. The dealer of the petrol pump is Respondent No.4, who is also now the owner of the property which was leased to the Petitioner-HPCL under a registered lease-deed dated 25th April, 1994.

3. Mr. Kapadia, the Learned Counsel appearing on behalf of

Respondent No.3-ARC submitted that the Petitioner-HPCL was aware that Respondent No.3-ARC has been trying to auction the entire secured property since the year 2022, and yet, has approached this Court at the last minute, when possession is to be taken today. He submitted that after much efforts, they have finally got the appointment for taking physical possession of the entire secured property. Considering the difficulty expressed by the Petitioner-HPCL, he submitted that the possession of the entire secured property can be taken today by Respondent No.2 and they would allow the Petitioner-HPCL to continue to occupy the part of the secured property (land admeasuring 6988.74 sq.mtrs. on which the petrol pump is situated) as an agent of Respondent No.3-ARC till 30th April, 2024. Thereafter, Petitioner-HPCL ought to be directed to vacate the part of the secured property [on which the petrol pump is situated] and handover the same to the secured creditor, to enable it to take further action under the provisions of the SARFAESI Act, 2002.

4. Having heard the Learned Counsel for the parties, we find that the stand taken by Mr. Kapadia is a very fair and reasonable one. Respondent Nos.4 and 5 have been duly served. Despite this they have chosen not to appear today before this Court. As far as the Petitioner-HPCL is concerned, they seek time till 30th April, 2024 to handover possession of the part of the secured property on two

grounds. Firstly, it is HPCL's case that the lease created in their favour expires on 25th April, 2024. Secondly, this time is required because around 4000 liters of petrol and 4000 liters of diesel is the existing stock in the said petrol pump and which would have to be disposed of before vacating the part of the secured property.

5. When we take all the facts narrated above into consideration, we are of the view that the above Writ Petition can be disposed of by passing the following directions:

(a) Respondent No.2-Tehsildar shall take possession of the entire secured property today and handover the same to the authorized officer of Respondent No.3-ARC.

(b) Respondent No.3-ARC shall not physically vacate the Petitioner from the part of the secured property (admeasuring 6988.74 sq.mtrs.) in their occupation, until 30th April, 2024. The Petitioner-HPCL shall occupy part of the secured property (admeasuring 6988.74 sq.mtrs.) as the agent of the 3rd Respondent-ARC till 30th April, 2024.

(c) The Petitioner-HPCL shall vacate the part of the secured property in their occupation and handover the same to the authorized officer of Respondent No.3-ARC at 12.00 p.m. on 2nd May, 2024.

(d) It is made clear that possession of the entire secured property, which is being taken today, will and continue to be with the 3rd Respondent-ARC during the aforesaid period.

(e) Once HPCL vacates the part of the secured property in their occupation, the Petitioner is free to proceed further under the provisions of the SARFAESI Act, 2002 to recover its dues against the borrowers, namely, Respondent Nos.4 and 5.

6. The above Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs. Though we have disposed of the above Petition, we place it on board for reporting compliance on 3rd May, 2024.

7. 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.]