

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15493 OF 2023

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Religare Finvest Limited

.. Petitioner

Versus

1. State of Maharashtra
through Tehsildar, Purandar
& 2 Ors.

...Respondents

Mr. Archit Virmani, Advocate for Petitioner.

**Mr.A.I. Patel, Addl. G.P. a/w. Mr.R.S.Pawar, AGP for Respondent
Nos.1 & 3-State.**

**Mr.Dattatray Gawari, Naib Tahsildar, Purandar is present in
Court.**

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

DATE : JANUARY 31, 2024.

P C:

1. The above Writ Petition is filed *inter alia* seeking a direction to the Respondents to withdraw and/or cancel the impugned Notice dated 30th November 2023. The impugned notice was issued by Respondent No.1- Tehsildar, Purandar putting the property mortgaged with the Petitioner-

NBFC for sale for recovery of an amount of Rs.32,75,439/-. This amount was sought to be recovered because of an order passed by Maha-RERA authority and the Warrant issued by the said authority on 30th June 2022 under Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 and Rule 3 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeals, etc.) Rules, 2017. The grievance of the Petitioner is that the entire project is mortgaged with the Petitioner NBFC, and therefore, no notice could have been issued either attaching any property in the said project or sale of the same to recover a claim of a purchaser, who at the highest, has an unsecured claim.

2. The learned Addl.G.P. has filed an affidavit in reply, dated 30th January 2024 in which the procedure followed by Respondent No.1 for attaching and thereafter putting to sale the mortgaged property is set out. However, in paragraph 7 of this affidavit, the 1st Respondent has stated that the said notices hereby stand withdrawn. Paragraph 7 of this affidavit, for ready reference, is reproduced hereunder :

7. I say that upon receiving Warrant under Section 40(1) of RERA Act, my office has issued notice under Rule 9 of Maharashtra Land Revenue Rules, 1966 on 23.7.2023 and 31.07.2023, thereby attaching the said property which is subject matter of this Petition. Thereafter, vide notice dated 30.11.2023 under Rule 12(2)(C), the property was put for auction/sale by my office. However, since the said property is secured asset/mortgaged to the Petitioner bank

under Section 26(E) of the SARFAESI Act, the said Petitioner have priority over the unsecured asset and as per the Judgment of this Hon'ble Court I have to handover possession implementing the order under Section 14 of the District Magistrate, Pune. In view of the aforesaid fact, the notice dated 30.11.2023 was issued by my office under Rule 12(2)(C) of the Maharashtra Land Revenue Rules, 1966. Hereto ..annexed and marked as Exhibit R-3 Colly are the copies of 2 notices under Rule 9 dated 23.07.2023 and 31.07.2023 Exhibit R-4 is the copy of notice under Rule 12(2)(C) dated 30.11.2023.

I hereby withdraw the said notices and have authorized Circle Officer, Bhiwandi, Tal. Purandar to take possession, who has issued notice dated 30.1.2024 for taking possession of the secured asset and to handover the same to the Petitioner being secured creditors and further request for police protection from the concerned police authorities. This Hon'ble Court may be pleased to direct the Petitioner to pay necessary charges for the said police protection.

(emphasis supplied)

3. In light of this affidavit, the grievance raised by the Petitioner in the above Petition now stands redressed.

4. We are informed by the learned Addl. G.P. that taking of possession of the secured asset is fixed on 12th February 2024 at 11:00 a.m. We find that this period may be too short for serving the possession notice on the borrowers, and hence, we direct that physical possession of the secured asset shall be taken on 21st February 2024. The notice of the date of taking possession of the secured asset shall be immediately served by the Tehsildar on the borrowers informing them that possession will be

taken on 21st February 2024. For the purposes of ensuring that physical possession is taken on the said date, the Senior Inspector of local Police Station is directed to provide all police assistance to the Tehsildar (including deputing adequate number of police personnel) to assist the Tehsildar in taking physical possession of the secured asset and thereafter handing over the same to the authorised officer of the Petitioner. All necessary costs, charges and expenses for the said police assistance shall be paid by the Petitioner. We make it clear that if for any reason, the police protection is not provided, we will not hesitate to hold the concerned Senior Police Inspector liable for contempt of this order.

5. We may further clarify that this order of taking possession on 21st February 2024 is subject to any order passed by the Debts Recovery Tribunal ('DRT'), if approached by the borrowers. In other words, the DRT is free to restrain the Petitioner-NBFC from taking possession of the secured asset if it finds any merit in the case advanced before it by the borrowers.

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

7. Though we have disposed of the Writ Petition, we place the same on Board for reporting compliance on 22nd February 2024.

8. 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.]