

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13289 OF 2024

M/s. DNS Power System Private Limited

Thr. Its Authorized Signatory

Dattatray S. Khutwad & Ors.

..... Petitioners

VERSUS

District Magistrate, Pune & Ors.

..... Respondents

Dr. Uday P. Warunjikar a/w. Ms. Ayodhya Patki for the Petitioners.

Mr. B. V. Samant, Additional G.P. a/w. Mr. A. R. Deolekar, A.G.P. for the State.

Mr. Sarang S. Aradhye a/w. Ms. Gauri Velankar, Mr. Shantanu Gurav, Mr. Saarth Chordia for the Respondent Nos. 7 and 8.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 25th SEPTEMBER, 2024

P.C. :-

The petitioners who have suffered the recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 have approached this Court seeking to raise a challenge to the order dated 12th June 2023 that has been passed by the District Magistrate thereby initiating steps to take possession of

the secured asset. Consequently, the Circle Officer on 27th August 2024 has issued a notice by which steps are proposed to be taken to take over possession of the secured asset tomorrow.

2. At the outset, we may indicate that we are not inclined to examine the challenge as raised by the petitioners to the issuance of the recovery certificate. This is for the reason that the petitioners had approached this Court earlier in *Writ Petition No. 9419 of 2023 (M/s. DNS Power System Pvt. Ltd. vs. Jijamata Mahila Sahakari Bank Ltd. Through Chief Executive Officer & Ors.)*. Liberty was granted to invoke the statutory remedy which is not been done by the petitioners. Be that as it may, it is seen that the impugned notice dated 27th August 2024 seeking to take possession has been issued by the Circle Officer who is otherwise not empowered to do so. It would be for the Tahsildar to issue such notice and take steps to take over possession of the secured asset.

3. The learned Additional Government Pleader points out that in view of the order dated 12th June 2023 passed by the Collector, the matter was delegated to the Tahsildar. Thereafter, on 3rd August 2023 the Tahsildar sub-delegated his authority to the Circle Officer. It is fairly submitted that such sub-delegation is not permissible. On instructions, it is submitted that in terms of the order of the Collector dated 12th June 2023, the Tahsildar would take steps to seek possession of the subject land.

4. The submission is accordingly accepted and the following order is passed :-

(a) The notice dated 27th August 2024 issued by the Circle Officer is quashed on the ground of the same is in exercise of the power of sub-delegation that has been exercised by the Tahsildar which is not permissible.

(b) The Tahsildar shall take appropriate steps in

terms of the order to the Collector dated 12th June 2023 and seek possession of the secured asset. The needful be done expeditiously.

(c) It is made clear that it is open for the petitioners to contest the recovery certificate on its own merit by invoking appropriate remedy. Needless to observe that if the petitioners approach the respondent no.8 – Bank for settlement of the account, the Bank is free to consider the request in accordance with law.

(d) By keeping all points on merits of the challenge to the recovery certificate open, writ petition is disposed of.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]