

RAMESHWAR
LAXMAN
DILWALE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.17666 OF 2024

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M/s Viorica Hotel Pvt. Ltd. Thr.
Its Director Mr. Vaibhav Lamba & Ors.
Vs.

.. Petitioners

Union of India & Ors.

.. Respondents

Mr. Rahul Narichania, Senior Advocate with Adv. Ismail Nasikwala, Adv. Huzefa Nasikwala, Adv. Farzana Rine, Advocates for the Petitioners.

Mr. Mayur Khandeparkar with Adv. Krushi N. Barfiwala, Adv. Gayatri Mohite, Adv. Divyanshu Gupta, Adv. Jahanvi Bhatia i/by Parinam Law Associates, Advocates for the respondent no.11.

Ms. Vaishali Bhilare with Ms. Bhargavi Patil, Advocates for the respondent no.1-UOI.

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

DATE : 5TH DECEMBER 2024.

P.C. :

1. Heard.
2. The learned Senior Advocate for the petitioners has tendered draft amendment. Considering the nature of amendment proposed which seeks to raise a challenge to the order dated 29/11/2024 passed by the Debts Recovery Appellate Tribunal (for short, 'DRAT') on consideration of the prayer for pre-deposit, the amendment is allowed. The same be carried out forthwith.
3. The petitioners are aggrieved by the order dated 29/11/2024

by which the DRAT has directed the petitioners to pre-deposit of an amount of Rs. 16 crores for consideration of the appeal as preferred. In the order, it has been stated that an amount of Rs.8.75 crores was already paid by the petitioners. The balance amount of Rs.7.25 crores was directed to be deposited in two installments being Rs.3.50 crores by 20/12/2024 and Rs.3.75 crores by 10/01/2025. It was further directed that the auction purchasers were precluded from alienating the property and the same was made subject to the outcome of the Securitization Application.

4. The learned Senior Advocate for the petitioners submitted that the petitioners had purchased the subject Hotel building ten years ago. By the order dated 05/11/2024, the Debts Recovery Tribunal (for short, 'DRT') permitted it to remove the movables inside the building by 11/11/2024 after which the auction purchasers were permitted to demolish building. He submitted that the petitioners are willing to comply with the direction of pre-deposit in the impugned order. However, the auction purchasers ought to be restrained from demolishing the structure. It is urged that in case the Securitization Application is allowed by the DRT, no relief could be granted to the petitioners with regard to the subject building. The proceedings in the appeal could be expedited

for deciding the same on merits. It is thus submitted that this Court may modify the impugned order in the matter of demolition of the building.

5. The learned counsel for the auction purchasers submits that in the absence of a Completion certificate as well as Occupancy certificate, the property purchased in auction cannot be put to any use. It is for this reason that after obtaining the Sale certificate pursuant to the auction held on 14/02/2024, further steps have been taken. Since the building itself is illegal, there was no error committed while passing the aforesaid order. It was submitted that the writ petition was liable to be dismissed.

6. We have heard the learned counsel. The learned Senior Advocate for the petitioners was called upon to indicate as to whether the observations made in paragraph 7 of the order passed in Interim Application No.1881 of 2024 dated 05/11/2024 are factually incorrect. However, neither the Completion certificate nor the Occupancy certificate have been produced before us. It is further seen that the auction of the subject property was not successful on about four earlier occasions. On the fifth occasion, the bid of the auction purchasers for a sum of Rs.105.05 crores was successful and the Sale certificate was issued in its favour on 30/03/2024. It

was then put in physical possession on 18/03/2024. It is thus obvious that with the Sale certificate having been issued, the title stands transferred in favour of the auction purchasers. The DRAT has however restrained the auction purchasers from making any further alienation, which in our considered view is a sufficient safeguard.

As regards the prayer for staying the demolition of the subject property, it is obvious that in absence of any Completion certificate or Occupancy certificate, the structure itself is illegal. Needless to state that the steps for demolition are being taken by the auction purchasers at their own risk and consequences. In case the Securitization Application is allowed, it is always open for the DRT to consider the nature of relief that could be granted to the petitioners in such situation. For these reasons, we are not inclined to exercise writ jurisdiction. The Writ Petition is dismissed. It is clarified that observations in this order are only for considering the challenge as raised. The proceedings shall be decided uninfluenced by the same.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]