

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

WRIT PETITION NO. 19507 OF 2024

Mr. Chandrakant Suresh Ghuge & Ors.	...Petitioners
Versus	
The State Of Maharashtra & Ors.	...Respondents

Mr. Tejesh Dande a/w Bharat Gadhavi, Vishal Navale, Trushna Shah, Mansi Dande, Sarvesh Deshpande, Pratik Sabrad, Vinayak Shelar & Aniket Shitole i/by Sarvesh Deshpande & Prathamesh Deshpande, for the Petitioners.
Mrs. Neha S. Bhide, Govt. Pleader a/w O. A. Chandurkar, Addl. Govt. Pleader, for Respondent Nos.1 & 2.
Mr. Sachin C. Kale, for the Respondent No.4.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATE : 2nd JANUARY, 2025

P. C.

1. Heard Mr. Tejesh Dande, learned counsel representing the Petitioners and Mr. Sachin Kale, learned counsel representing the Respondent No.4.

2. This Petition challenges a notice issued by the office of Tahsildar dated 6th December, 2024, whereby the Petitioners have been required on 3rd January, 2025 for taking over possession of the subject property. The said notice has been issued pursuant to an order dated 20th August, 2023 passed by

the District Collect, Nashik under Section 156 of the Maharashtra Co-operative Societies Act r/w Rule 107 of the Maharashtra Co-operative Societies Rules, 1961.

3. By the order dated 20th August, 2023, the Collector has allowed the application moved by the Respondent No.4, which is a co-operative credit society for failing to repay the loan. The Collector by the said order has appointed Tahsildar concerned as a representative of the District Magistrate to take possession of the mortgaged property.

4. As a matter of fact, submission of learned counsel for the Petitioners is that the Petitioners are neither the borrowers nor the guarantors, however, the flats were constructed by the developers – borrowers which were purchased by them and accordingly liability of the loan amount in question cannot be saddled with the Petitioners.

5. Be that as it may, Rule 107 (19)(a) of the 1961 Rules provide that if any objection is made to the attachment of any property that such property is not liable to such attachment,

the Recovery Officer shall investigate the claim or objection and dispose of the same on merits. The Petitioners thus ought to have taken recourse to the remedy available to them under Rule 107(19)(a) of the 1961 Rules, instead they have preferred this Petition under Article 226 of the Constitution of India.

6. For the reason of availability of a statutory and efficacious remedy to the Petitioners and also for the reason that determination in this proceedings under Article 226 of the Constitution of India about the personal liability of the loan amount may not be permissible and possible, we dispose of this Petition finally with the liberty to the Petitioners to approach the authority concerned by taking recourse to the provisions contained in Rule 107 (19)(a) of the 1961 Rules within a week from today.

7. In case any such objection is preferred by the Petitioners, the same shall be considered and decided by the authority concerned, after issuing notice and giving opportunity of making representation and hearing to all concerned including co-operative credit society concerned. The decision under this

order on the representation to be preferred by the Petitioners shall be taken by the competent authority within four weeks from the date such an objection is raised.

8. We further provide that for a period of six weeks from today, operation of the attachment order and the impugned notice shall remain in abeyance, which will be subject to final orders which might be passed by the competent authority on the objections to be preferred by the Petitioners under this order. We specifically observe that nothing in this order shall be construed as our opinion as to the merit of the claim of the respective parties and the competent authority shall decide the objections to be made by the parties on their own merit and in accordance with law, rules, regulations and extant circulars etc.

[AMIT BORKAR, J.]

[CHIEF JUSTICE]