

Kavita S.J.

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

WRIT PETITION NO.12438 OF 2025

**M/s Durahomes & Builders & Developers Pvt. ...Petitioner
Ltd.,**

Versus

**State of Maharashtra
Through Tehsilsar & Ors.,**

...Respondents

Mr. Rashmin Khandekar a/w Mr. Vatsal Gosalia & Suparna Holamagi
for the Petitioner.

Mr. A.A. Alaspurkar, AGP for Respondent No.1 – State.

Mr. Charles D'souza a/w Mr. Nikhil Rajani i/b M/s V. Deshpande &
Co. for Respondent Nos. 2 & 3.

Mr. Pranav Nair a/w Mr. Kunal Chheda for Respondent No.7.

**CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.**

DATED : 23rd SEPTEMBER, 2025.

ORDER :

1. The Petitioner claims to be the owner of plot bearing
CTS/Survey Nos. 19, 20, 21, 22, 23, 81/2, 81/5, 82/3, 83/1, 103
and 107 situated in village Pogaon, Taluka Bhiwandi, District Thane

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(more particularly described in the Schedule annexed to the present Writ Petition) along with the structures standing thereon. On one of these plots of land, an industrial building called KL-1 is constructed consisting of several galas. The Petitioner claims to be the absolute owner of Gala Nos.1 to 5 in the said building KL-1 (“**Subject Properties**”)

2. By the present Writ Petition, the Petitioner seeks an order directing Respondent Nos. 2 and 3 to restore the possession of the Subject Properties which are alleged to have been illegally taken by them on 19th September, 2025 pursuant to proceedings filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) Act, 2002 and in compliance with the Order dated 1st August, 2025 passed by this Court in Writ Petition No.10250 of 2025 filed by Respondent Nos.2 and 3 herein. The Petitioner further asserts that possession of the Subject Properties was taken without any prior notice and which has resulted in 400 people being rendered unemployed and brought the functioning of a cloth unit of Respondent No.7, licensee of the Petitioner herein of the Subject Properties to a standstill.

3. Upon perusal of the record, it is revealed that the Petitioner has already availed the statutory remedy prescribed under the SARFAESI Act by filing Securitization Application (D) No.262 of 2023 in the Debt Recovery Tribunal (“DRT”) at Mumbai in November, 2023 which is still pending. A perusal of this Securitization Application would further reveal that the Petitioner has sought similar reliefs from the DRT, as are sought in the present Writ Petition.

4. Respondent No.7 is stated to be a Licensee of the Subject Properties of the Petitioner under a registered Leave & License Agreement dated 27th April 2024 which is executed for a term of three years. Respondent No.7 is stated to be operating a cloth manufacturing unit from the Subject Properties. On 19th September 2025, forcible possession of the Subject Properties was stated to have been taken by Respondent Nos.2 and 3 from Respondent No.7.

5. In the present Writ Petition, the main grievance of the Petitioner is that it is the owner of the Subject Properties. The Petitioner further contends, and which position does not appear to be controverted by Respondent Nos.2 and 3 that, the Petitioner is

neither the borrower, nor the mortgagor nor the guarantor of any facility granted by the original lender or that is assigned to Respondent No.2 herein. Despite this position, the Petitioner contends that Respondent Nos.2 and 3 have illegally taken possession of the Subject Properties, which do not form part of the Secured Assets belonging to the borrowers, viz Respondent Nos.4, 5 and 6 herein and which are stated to be mortgaged with the original lender and thereafter assigned to Respondent No.2 herein. This contention is however stated to be disputed by Respondent Nos.2 and 3 herein.

6. Considering such disputed questions of fact are raised in the present Writ Petition, this Court is not inclined to entertain the same, especially when the Petitioner has already availed the statutory remedy prescribed under Section 17(1) of the SARFAESI Act, 2002, by filing a Securitization Application which is still pending adjudication before the Debts Recovery Tribunal (DRT) II, Mumbai. Accordingly, considering the urgency in this matter this Court directs that the DRT-II shall hear and decide the said Securitization Application (D) No.262 of 2023 expeditiously and in any event, within a period of six weeks from the date this Order is brought to its notice. Mr. D'souza, learned Counsel for the Respondent Nos. 2 & 3

makes a statement that his clients will render full co-operation in this process.

7. We also grant liberty to Respondent No.7 herein viz. Shah Garments who is stated to be the Licensee of the Petitioner to approach the Debts Recovery Tribunal, Mumbai and take out an appropriate application seeking reliefs including *inter alia* that it be put back in possession of the Subject Properties from which it was dispossessed by Respondent Nos.2 and 3 on 19th September 2025, on such terms and conditions as the DRT may deem fit and proper, if it favourably considers such request. We make it clear that we have not expressed any view on the merits of such application which shall be heard and decided by the DRT, on its own merits. However, if such application is preferred by Respondent No.7, the same shall be heard and disposed of by the DRT expeditiously and in any event, within a period of one week from the date on which such application is filed.

8. With these directions, the present Writ Petition disposed of. There shall be no orders as to costs.

9. This Order will be digitally signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on

production and / or print out or email of such digitally signed copy of this Order.

[FARHAN P. DUBASH, J.]

[R.I. CHAGLA, J.]