



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3139/2024

Jayesh Pravin Choudhari and another

...Versus...

The State of Maharashtra through its Ministry of Urban Development,
Mantralaya, Mumbai – 400032 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. R.D. Dhande, Advocate for petitioners
Ms Tajwar Khan, AGP for respondent Nos.1 to 3 and 6
Mr. S.N. Kumar and Ms PM. Masodkar, Advocates for respondent No.8
Mr. M. Anilkumar, Advocate for respondent Nos.9 and 10

**CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATE : 03/03/2025

CIVIL APPLICATION (CAW) NO.3269/2024

1. Heard.
2. This is an application filed by the petitioners/applicants, to quash and set aside the notice dated 10/12/2024, issued by the office of the respondent No.3.
3. It is contended that the petitioners, who are the joint owners of the property, are not being noticed before the measurement is being conducted.
4. What is necessary to note is that while deciding Writ Petition No.4670/2023, filed by the respondent No.9, all that has been directed is for the respondent No.3 to measure

the land by following due process of law. The measurement is yet to be carried out. In case the petitioners/applicants have any grievance regarding the manner in which the measurement is being done, it is open for the petitioners/applicants to avail of the remedies available under the Maharashtra Land Revenue Code, 1966.

5. The civil application is rejected. No order as to costs.

WRIT PETITION NO.3139/2024

1. Heard Mr. Dhande, learned Counsel for the petitioners. This appears to be a last ditch effort by the original owners of the property, who had mortgaged the same with the Union Bank of India and have defaulted.

2. The petition seeks recall of the order dated 08/04/2024, passed by this Court in *Writ Petition No.4670/2023 (Desh Videsh Sales, A Partnership Firm, Nagpur and another Vs. State of Maharashtra, Through Ministry of Urban Development, Mantralaya, Mumbai and others)* (pg.135) on the ground that the petitioners were not made parties to that petition, on account of which, the valuable right of the petitioners, is being adversely affected.

3. It is necessary to note that the property, which is the subject matter, is Survey No.112/3 admeasuring 1.28 HR situated at Mouza Bidgaon, Tahsil Kamptee, District Nagpur. The same was mortgaged by the petitioners with the Union Bank of India as a security for loan availed by one Nakoda Fruits Products Pvt. Limited, in which, the petitioners were the

co-borrowers. On account of default, the aforesaid property was attached by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short hereinafter “SARFAESI Act”) and possession was taken by the Bank on 10/02/2020. The petitioners had approached the Debts Recovery Tribunal on 08/07/2020, challenging the possession and proposed auction, in which, no stay was granted, as a result of which, the property was thereafter put to auction on 20/10/2020, in which, the respondent No.9, purchased it. A sale certificate also came to be issued on 14/01/2021 (pg.159) in favour of the respondent No.9. The name of the respondent No.9 also came to be mutated in the revenue records, challenge to which by the present petitioners before the Sub Divisional Officer came to be dismissed on 19/01/2022, an appeal against which before the Collector also came to be dismissed on 07/09/2023. It is also necessary to note that the petitioners had also filed Regular Civil Suit No.46/2023 before the Civil Judge Junior Division, Kamptee, in which the present respondent No.9 was the defendant No.7, in which a decree was sought that the defendants had no right to dispossess the petitioners/plaintiffs, which plaint came to be rejected under Order 7 Rule 11 of the Code of Civil Procedure by the order dated 01/08/2023 (pg.109). Appeal No.27/2021 at the behest of the petitioners is pending before the Debts Recovery Tribunal, challenging the action of the respondent No.7 – Bank under Section 17 of the SARFAESI Act.

4. An application for measurement of the aforesaid land, which was made by the respondent No.9 to the Revenue Authorities and since it was not getting any response, the respondent No.9 had filed Writ Petition No.4670/2023, in which admittedly, the present petitioners were not made parties. Though several reliefs were claimed in the said petition, however, by the order dated 08/04/2024, the same came to be disposed of in the following terms :-

“Heard.

2. Ms. Kotecha, learned counsel for the petitioners, restricts the relief in the present petition to prayer clause (a). The petition therefore is now restricted to prayer clause (a) only. In view of the nature of the relief in prayer clause (a), no formal notice is necessary to the respondent Nos. 5 and 8.

3. Mr. Thakare, learned AGP appears for the respondent Nos. 1 to 3 and 6/State.

4. Mr. Ingole, learned counsel appears for the respondent No.4.

5. Mr. Bargat, learned counsel appears for the respondent No.7.

6. The only relief claimed in the present petition is of direction to the respondent No.3 to measure the land without insisting for disposal of S.A. No. 27/2021 pending before the learned D.R.T., Nagpur. S.A. No. 27/2021 is by the respondent No.7 challenging the action of the respondent No.4/Bank under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is therefore apparent, that the said challenge has nothing to do with the measurement of the property, in view of which, the petition is allowed by directing the respondent No.3 to measure the property, in case appropriate fees in that regard have been paid, by following due process of law.

7. The Petition is therefore disposed of in the above terms. No costs.

8. Pending application/s, if any, shall stand disposed of accordingly.”

5. The present petition has now been filed by the petitioners for recalling the aforesaid order dated 08/04/2024 on the ground that the petitioners were not made parties to Writ Petition No.4670/2023.

6. It is the contention of Mr. Dhande, learned Counsel for the petitioners that possession has not been delivered to the auction purchaser, as the same was never taken by the Bank, on account of which, the application for measurement was rightly not being entertained and therefore, the measurement ought not to have been directed by this Court.

7. The panchanama, dated 10/02/2020 (pg.173) included with the sale certificate indicates that the possession has been taken of the mortgaged property by the Bank. The Bank has also on 10/02/2020 intimated the taking over of possession to the concerned Police Officer of Police Station Officer, Wathoda (pg.174). A perusal of the sale certificate dated 14/01/2021 in terms of Rule 9 (6) of the Rules applicable, indicates that the Bank has handed over the delivery and possession of the scheduled property to the auction purchaser.

8. Though Mr. Dhande, learned Counsel for the petitioners relies upon averments made in paras 24 and 28 of Writ Petition No.4670/2023, the same cannot be read out of context inasmuch as, para 15 of that petition, contains a specific averment that respondent No.9 herein/petitioner therein was put in possession of the property and the grievance, which was made in paras 24 and 28 was in relation to the extent and the disturbance being made by the present

petitioners. We are, therefore, not ready to hold that the Bank has not taken possession of the property and not placed the auction purchaser in possession thereof.

9. Once the auction purchaser has been placed in possession and the title stands transferred to him, on account of registration of the sale certificate in his favour, the question of making the petitioners parties to Writ Petition No.4670/2023, vis-a-vis the measurement of the property which was delivered in his possession did not arise. All that the petitioners can claim on the plea that they are also owners of the adjacent property, is a notice to them before the measurement and nothing else. It is also necessary to note that while disposing off Writ Petition No.4670/2023 we have specifically directed that the measurement would be carried out by following due process of law.

10. In that view of the matter, since no legal right survives of the petitioners in the auction property, the petition at their behest, raising the aforesaid grievance that they were necessary parties to Writ Petition No.4670/2023, in our considered opinion, is clearly not tenable.

11. The writ petition is, therefore, dismissed. No order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)