



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5199 OF 2024

Charushila W/o Ghanshyam Tijare,
Aged about 65 years, Occ.-Homemaker,
R/o Indira Devi Town, Wathoda,
Nagpur.

.... **PETITIONER**

// **VERSUS** //

- 1) The State of Maharashtra,
Through Secretary, Ministry of
Corporation, Textile and Marketing
Department, Hutatma Rajguru Square,
Madam Cama Road, Mantralaya,
Mumbai – 400032.
- 2) Mahalaxmi Urban Credit Co-operative
Society Ltd., Thr. its
Special Recovery Officer,
228, Tajshree Govind, Sakkardara
Square, Umred Road, Nagpur – 440017.
- 3) The District Magistrate,
Nagpur, Civil Lines, Nagpur.
- 4) The Ld. Tehsildar,
Tehsildar Office, Nagpur.

.... **RESPONDENTS**

Mr. R. H. Agrawal, Advocate with Mr. Samish Agrawal, Advocate for the Petitioner.
Mr. B. M. Lonare, Assistant Government Pleader for Respondent Nos.1, 3 and 4.
Mr. N. R. Bhishikar, Advocate for the Respondent No.2.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 12/03/2025.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith.

2. Heard finally with the consent of the learned counsel appearing for the parties.

3. Being aggrieved by the order passed by respondent No.3/ learned District Magistrate, Nagpur dated 20/12/2023 and thereby authorized respondent No. 2 for taking over the physical possession of the property of the petitioner.

4. Petitioner is the owner of following property described as :

All that piece and parcel of land bearing Tenement No.1: (“C” Type) standing on plot bearing No. 15 land admeasuring about 141.162 Sq. Mtrs. Along with more that twelve-year-old residential construction of about 120.214 Mtr in the sanctioned layout known as “Indiradevi Town”, situated on Kh. No. 43-44/1, bearing City Survey No.168, Sheet No. 333/43-44, Municipal house No.2230/C/15, Ward No.21, Mouza Wathoda within the limits of NMC and NIT in Tahsil and District Nagpur having boundaries as :

On the East	:	9 Mtr. Layout Road.
On the West	:	Plot No. 14,
On the North	:	9 Mtr. Layout Road
On the South	:	Plot No. 16.

5. Respondent No. 2 Society granted Loan amounting of Rs.50,00,000/- to the petitioner against alleged security of House of the petitioner. Respondent No.2 time and again asking the recovery

from the Petitioner, thereby the petitioner has deposited an amount of more than Rs.22 Lakhs after issuing of alleged RRC directly in the respondent Society against recovery of the loan amount under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short the “MCS Act”). In the meantime, on 17/09/2022, the declaration of reserve price for sale was issued by the respondent Society for auctioning the aforesaid property of the petitioner. Thereafter, the respondent No.2 has filed a case bearing No. 117/2023 before respondent No.3 under Rule 107 (11)(d-1)(vi)(a) of the Maharashtra Co-operative Societies Rules, 1961 (for short the “MCS Rules”), seeking assistance for taking physical possession of above detailed property and obtained an order dated 20/12/2023, the aforesaid order is the subject matter of challenge in the present Writ Petition.

6. Learned counsel for the petitioner contended that the lower authority failed to considered that the proceedings under Rule 107(11) (d-1) (vi) (a) of the Maharashtra Co-Op. Societies Act, 1960 and the Rule are not maintainable before learned District Magistrate after issuance of Sale Notice of the property. It is further contended that the there are no powers to the learned District Magistrate in Rule 107(11-d)(vi-a) of the MCS Rules to delegate such powers, conferred upon him by the legislature, therefore, the order passed by the learned Additional District Magistrate dated 20/12/2023, is not sustainable and needs interference by this Court.

7. It is further contended that because in the application before the respondent No.3, the respondent Society has prayed for handing over the possession to the purchaser and in alternate deliver it to the Society to deliver to the Purchaser, hence, the said application cannot be considered filed under Rule 107 (11) (d-1) (vi) (a) of the MCS Rules and, therefore, the order dated 20/12/2023 and consequent letters dated 26/07/2024, which needs interference and also needs to be quashed and declared void.

8. Learned counsel for the respondent No. 2 contended that the petitioner has been maliciously protracting the matter just to avoid the legal action on some or the other count. Now as a novel idea the petitioner has approached this Court belatedly at the fag end of the legal action just to avoid payment of the dues. It is worth noting here that the impugned order is passed way back on 20/12/2023. The petition is also not tenable for the delays and laches on the part of the petitioner. No fault can be found in the impugned order. The respondent No.2 has acted well within the powers conferred upon him. There is absolutely no violation of any of the legal provisions. Not only that but by causing the possession to be taken through Tahsildar, no illegality in any manner is committed by respondent No.3. The impugned order does not in any way cause any loss or prejudice to the petitioner.

9. Heard learned counsel for the petitioner and learned counsel for the respondents. Perused impugned order and documents placed on record. The contention of the petitioner herein is that the learned District Magistrate after issuance of sale notice of the property has no jurisdiction under Rule 107 (11) (d-1) (vi) (b) of the MCS Rules, (for the sake of convenience Rule 107 (11) (d-1) (vi) (a) and (b) of the MCS Rules) are reproduced below:-

“Rule 107 (11) (d-1) (vi) (a) Where the possession of the any property is required to be taken by the Recovery Officer under the provisions of this rule, the Recovery Officer may, for the purpose of taking possession, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such property is situate to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him take possession of such property and forward such property to the Recovery Officer.

(b) For the purpose of securing compliance of this sub-rule, the Chief Metropolitan Magistrate or the District Magistrate, may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.”

10. It is also contention of the petitioner that the District Magistrate cannot delegate such powers to his Deputy or others which are specially conferred upon him by the legislature. On perusal of Rule 107 (11) (d-1) (vi) (a) & (b) of the MCS Rules, it is very much clear that where the possession of the any property is required to be taken by

the Recovery Officer under these Rules, the Recovery Officer may request to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such property is situated to take possession thereof. Clause (b) is very specific that for the purpose of securing compliance of this sub-rule, the Chief Metropolitan Magistrate or the District Magistrate, may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary. As such, he himself can take the steps or cause to be taken such steps by any other person or authority. Thus, learned District Magistrate is having power under Rule 107 of the MCS Rules.

11. On perusal of the impugned order, there is no illegality committed by the learned District Magistrate. After perusal of the all relevant documents i.e. Title Mortgage and Loan etc., he has passed the order and directed Tahsildar/Executive Magistrate, Nagpur City, District Nagpur to take over the possession and also directed to take aid of Police Station Wathoda. Thus, order passed is well within the power of District Magistrate and there is no illegality in the said order. As such, petition is devoid of any merit and is liable to be set aside. Accordingly, the Writ Petition is dismissed. Rule is discharged. No order as to the costs.

(SMT. M.S. JAWALKAR, J.)