

3. *Learned Counsel having instructions to appear on behalf of Respondent No.8 seeks short adjournment to place affidavit and certain documents on record.*

4. Let the reply/affidavit alongwith documents be placed on record on behalf of the Respondent No.8 on or before 19th January 2026. No further time shall be granted.

5. List the Petition for final disposal on 21st January 2026 to be included in the Supplementary Board.

6. Before the next date of listing, the Petitioners are permitted to place on record affidavit of service.”

2. Today, when the petition is called for hearing, learned counsel for respondent No.8 has tendered affidavit in reply on behalf of the said respondent. The same is taken on record.

3. The learned counsel for the petitioners submits that in the present case, in execution of an order dated 19th January 2024 passed by the competent Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), a *panchanama* was executed on 26th July 2024 along with a *taba pavati*, whereby possession of the subject flat was handed over to the petitioners. This was in pursuance of proceedings initiated under the provisions of the SARFAESI Act against the borrowers i.e. respondent Nos.6 and 7.

4. The grievance of the petitioners is that despite possession being handed over upon execution of the aforesaid order passed by the competent Magistrate, respondent No.8 again trespassed into the subject flat, claiming to be a licensee of the aforesaid borrowers i.e. respondent Nos.6 and 7. In that light, the petitioners have prayed for directions to the respondent Nos.2 to 5 i.e. the State Authorities, including the Police to remove the

trespasser (respondent No.8) from the subject flat and also a direction to respondent Nos.6 to 8 to forthwith handed over vacant and physical possession of the same.

5. The learned counsel for the respondent No.8 invited attention of this Court to copy of leave and license agreement annexed to the affidavit in reply. On the basis of the said document, it was submitted that the respondent No.8 was entitled to continue as a licensee for the period of the agreement i.e. 5th May 2023 to 4th February 2026. It was submitted that although the competent Magistrate had passed order under Section 14 of the SARFAESI Act, as far back as on 19th January 2024 and the *panchanama* itself recorded that there was a licensee in the premises when the *panchanama* and *taba pavati* dated 26th July 2024 was executed, the petitioners have woken up from their slumber and filed the present writ petition only on 18th December 2025. It is submitted that all along the petitioners were aware about the respondent No.8 being in possession and certain negotiations were also attempted, thereby indicating that the claims made in the present petition are not bonafide. It was further submitted that the respondent No.8 is a senior citizen and in the event, this Court is inclined to hold in favour of the petitioners, reasonable time may be granted to vacate the subject flat.

6. We have perused the documents on record. The *panchanama* and the *taba pavati* dated 26th July 2024 specifically record that

the possession of the subject flat was handed over to the petitioners upon execution of the order dated 19th January 2024 passed by the competent Magistrate under Section 14 of the SARFAESI Act. It was also recorded that the material found in the said flat was removed and possession was handed over. The aforesaid act was undertaken by the Circle Office of Tahsildar Vasai, Dist. Palghar, in accordance with law and obviously a lock and seal was placed on the said flat.

7. In such a situation, if the respondent No.8 claimed that she had been illegally dispossessed, she had the remedy of either filing a suit under Section 6 of the Specific Relief Act, 1963 or she could have approached the Debt Recovery Tribunal under Section 17(4A) of the SARFAESI Act. The aforesaid provisions i.e. Section 17(4A) of the SARFAESI Act, reads as follows :

“17. Application against measures to recover secured debts —

(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the

Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.”

8. It is an admitted position that in present case, no such action was undertaken and the respondent No.8 actually claims to be in physical possession of the subject flat. This clearly demonstrates violation of law by the respondent No.8 without any explanation at all. She took the law in her own hands without any justification and now, since she is in possession, premium is sought to be made out of such a blatantly illegal act on the part of respondent No.8. We are of the opinion that the respondent No.8 could have exhausted remedies available in law, instead of taking law in her hands. If at all, she has any grievance in the context of leave and license agreement, she can always proceed for damages against her licensors i.e. original borrowers (respondent Nos. 6 and 7 herein). The contention sought to be raised on behalf of respondent No.8 that the petitioners could very well proceed to institute proceedings for evicting her, cannot be countenanced in the facts and circumstances of the present case. Hence, we are inclined to allow the writ petition.

9. At this stage, the learned counsel for the respondent No.8 is pressing for reasonable time to be granted for the said respondent to vacate the subject flat, asserting that she is a senior citizen. But,

we find that in the affidavit, her age is recorded 56 years, which shows that she is not a senior citizen. The learned counsel for respondent No.8 submits, on instructions, that an undertaking on affidavit shall be filed within one week from today before this Court, stating that the respondent No.8 shall hand over vacant and physical possession of the subject flat to the petitioners within four weeks from today.

10. In view of the above, the writ petition is allowed in terms of prayer clauses (a) and (c).

11. If the respondent No.8 files an undertaking on affidavit, as noted hereinabove, within one week from today, she will be permitted to retain possession of the subject flat only for a period of four weeks from today, on the expiry of which she shall vacate the same and hand over the vacant and physical possession of the subject flat to the petitioners.

12. In the event, such an undertaking on affidavit is not filed within one week from today, respondent Nos. 2 to 5 shall take immediate steps for handing over vacant and physical possession of the subject flat to the petitioners, by taking appropriate steps in the matter.

13. In the event, the respondent No.8 after filing such an affidavit of undertaking, fails to abide by the same and does not hand over vacant and physical possession of the subject flat to the petitioners upon expiry of four weeks, the respondent Nos. 2 to 5

shall take necessary steps forthwith to ensure that the vacant and physical possession of the subject flat is handed over to the petitioners.

14. The writ petition is disposed of in above terms.
15. Pending applications, if any, also stand disposed of.
16. List the petition under the caption 'for compliance' on 25th February 2026, to be included in the supplementary list.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)