IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

ON THE 2nd OF NOVEMBER, 2026

WRIT PETITION No. 44972 of 2026

CNR No.: MPHC020431052026

VASTU HOUSING FINANCE CORPORATION LTD THORUGH ITS AUTHORISES OFFICER

Versus

STATE OF MADHYA PRADESH THORUGH ITS PRINCIPAL SECRETARY DEPARTMENT OF HOME AND OTHERS

Appearance:

Ms. Pragya Joshi - Advocate along with Ms. Krishna Paliya - Advocate for the petitioner. .

Ms. Bhagyashree Gupta - GA for the State.

ORDER

1. This petition has been filed under Article 226 of the Constitution of India seeking following reliefs :

> i) Issue an appropriate writ, order or direction, including _a writ of mandamus, directing Respondent Nos. 3 to 6 (Collectors and District Magistrates) and Respondent Nos. 7 to 10 (Superintendents of Police), as applicable to the respective matters, to provide necessary police and revenue assistance to the Petitioner in relation to the secured assets in respect of which physical possession was taken pursuant to proceedings under Section 14 of the SARFAESI Act, 2002, for securing and, wherever warranted in law, restoring possession thereof to the Petitioner;
>
> ii) Direct the concerned Respondent Nos. 3 to 10, as applicable, to take appropriate steps in accordance with law in respect of alleged unauthorised re-entry into, obstruction of, or interference with the secured assets, including removal of unauthorised occupants, wherever legally permissible;]
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> iii) Direct the concerned Respondent Nos. 7 to 10 (Superintendents of Police) and other competent police authorities, as applicable to the respective matters, to consider and take appropriate action in accordance with law on the representations and complaints submitted by the Petitioner.

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iv) Pass any other or further order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case, in the interest of justice.

2. It is the case of the petitioner that earlier, the possession was taken over by the Tehsildar pursuant to the order passed in the proceeding under section 14 of the SARFAESI Actm, 2002, therefore, the borrower has again entered into the possession, which was already taken over, and not vacating the possession, therefore, the petitioner / Finance Corporation approached the Tehsildar for repossession by making representation, but the same has not yet been decided. By relying upon the order dated 16/06/2025 passed by Division Bench of this Court in W.P. no. 1681/2015, it is prayed that present petition may be allowed as there is no bar to take over the possession again pursuant to the order passed under the SARFAESI Act, 2002.

3. I have considered the submissions at bar and also considered the fact that once the possession is taken over by the Tehsildar pursuant to the order passed under section 14 of the SARFAESI Act, 2002, it is the duty of the secured creditor to preserve the property and possession in appropriate manner. In many cases, it is found that after taking over the possession, the secured creditor are not acting in vigilant manner and for reasons best known to them, they are also not proceeding further and due to the delay of further proceeding, borrowers are again entering into the possession of properties/ premises. Such approach on the part of the secured creditors are also required to be viewed strictly and also consider as negligent approach of the secured creditors on their part in discharging their duties, once the possession is already taken over.

4. After observing that, it is needless to observe that the Tehsildar is

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always empowered to assist the secured creditor in case of difficulty in taking over the possession of the property Though earlier, the Tehsildar had assisted the secured creditor, again there is no bar under the law to provide more assistance. This factum is considered by the Division Bench of this Court in ***W.P. no. 1681/2015,*** of which relevant paras are reproduced as under :

> 2. Precisely stated facts of the case, giving rise to the present petition are that petitioner is a financial institution as defined under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Securitization Act"). Petitioner company extended the loan facility to the borrower in lieu of property mortgaged by the borrower. Thereafter, since borrower failed to pay the loan amount, therefore, petitioner issued a notice under Section 3(2) of the the Securitization Act but borrower did not hose to repay the loan amount. Therefore, petitioner moved an application under Section 14 of the the Securitization Act before the District Magistrate, Gwalior for taking possession of the property from the borrower. That application was allowed on 05-01-2023 directing the concerned Tahsildar to take possession of the property under mortgage.
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> 10. From perusal of the aforesaid provision, it is clear that there is no legal bar on re-executing the order of possession or providing re- assistance to the secured creditor as tried to be projected by the respondents through their return. As such there is no legal impediment to dispossess the borrower from the mortgaged property once he has illegally entered into it.
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> 11. Illegality cannot be permitted to be perpetuated. Here, in the present case, the borrower with their family members, reentered into the mortgaged property on the pretext of removing their belongings and thereafter if they are not vacating the mortgaged property, then the petitioner being secured creditor has remedy to again approach the respondents authorities to provide assistance and aid to take possession back from the borrower by dispossessing him from the property in question.
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> 12. The tricks adopted by the borrower in entering into the mortgaged property after taking over possession by the petitioner, cannot be permitted to be rewarded. Once the borrower failed to repay the loan amount then the property which is under mortgage should be taken over by the petitioner as petitioner falls under the category of secured creditor. In fact, by the action of borrowers, while re-entering into the premises, legally owned by petitioner, made themselves vulnerable. Now, petitioner may initiate criminal proceedings also for criminal trespass and other related offences.

5. Otherwise also, this Court is of the opinion that repossession can

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always be taken over as in the case for the purpose to unite the proceeding under the SARFAESI Act, 2002 and with a view to assist in the process of recovery of huge public money, the State Authorities, more particularly, the Tehsildar / Respondent - Authority is duty bound to provide all assistance in taking over possession, however, it is painful to note that due to lackluster approach and negligent approach taken by the Authority of Secured Creditor by not preserving the possession of the property, which is already taken over, again entire machinery is required to be engaged in same process for taking over the possession. For that aspect, it is a fit case, where the Court can impose cost upon the present petitioner, however, with a view to see that in future, the petitioner will be more vigilant in other cases, this Court is refrained to impose any cost at this stage.

6. In view of the aforesaid, present petition is allowed by directing the respondent / Authority concerned to see that repossession of the property, which is subject matter of present petition, can be taken over and handed over to the petitioner in accordance with law, as expeditiously as possible , preferably within a period of 15 days from the date of receipt of certified copy of this order.

7. Present petition is disposed of accordingly.

CC as per rules.

(SANDEEP N. BHATT)
JUDGE

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