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A.Nos.5795 and 5796 of 2014

A.Nos.5795 and 5796 of 2014 in A.No.2044 of 2013

in

E.P.No.176 of 2012

C.SARAVANAN, J.

The applicant is the Award Holder, who has secured favourable Award from the Arbitral Tribunal on 30.03.2009. The Award was subject to a challenge under Section 34 of the Arbitration and Conciliation Act, 1996 in O.P.No.541 of 2009.

2. By an order dated 02.11.2011, the Award was partially modified by this Court. The Award was upheld and the Original Petition filed by the respondent was dismissed.

3. Aggrieved by the same, the respondent/Award Debtor had filed an appeal before the Hon'ble Division Bench of this Court in O.S.A.No.88 of 2012. O.S.A.No.88 of 2012 is said to be pending before the Hon'ble Division Bench of this Court.

4. The Hon'ble Division Bench of this Court has passed an interim order in O.S.A.No.88 of 2012 on 28.03.2012. Relevant portion of the order of the Hon'ble Division Bench of this Court in M.P.No.1 of 2012 in



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O.S.A.No.88 of 2012 reads as under:-

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"3. There shall be an order of interim stay pertaining to the finding with regard to claim No.2 alone. It is made clear that there shall be no order of stay to the findings with regard to other claims. This petition is ordered accordingly."

5. Pursuant to the partial modification of the Award by this Court under Section 34 of the Arbitration and Conciliation Act, 1996 in O.P.No.541 of 2009 on 02.11.2011, the applicant/Award Holder has filed E.P.No.176 of 2012.

6. It is in this background, the applicant secured an order of interim attachment before the learned Master on 09.12.2012. The order of attachment was however raised by the learned Master vide order dated 20.11.2013 with the following observations:-

"5. Admittedly, the property sought for attachment by the decree holder is the Government poramboke land. In the schedule of property in the execution petition the property is described as Government poramboke land which is presently utilized by the Judgment debtor as site office. Admittedly, the property sought for attachment does not belongs to the judgment debtor or the applicant/Judgment debtor is not the true owner of the property. Since the property is classified as Government poramboke, the State Government is the absolute owner of the property. For the development of Government



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Organizations, the State Government may vest poramboke land for occupation and for the development of the particular Government Organization.

6. The State Government may issue Patta for landless poor people for the construction of houses and issue Patta for landless people to cultivate. The order of issuing Patta or order to vest poramboke land by the State Government does not give any right or title over the property in favour of whom such an order is passed.

7. The person or institution in favour whom the order of vesting poramboke land is passed by the Government, may enjoy the property, may not claim any right or title over the property, even if an order of vesting poramboke land is passed, the State Government is always the ultimate owner of the poramboke land.

8. The Government may cancel the Patta or cancel the order of vesting poramboke land with any institution and may issue Patta in favour of any other person or order to vest the poramboke land to some other institution. Now the present EP is filed by the decree holder to attach and sale of the Government poramboke land, to which the judgment debtor is not the owner of the property.

9. The State Government is no way responsible or liable to pay decree amount by the judgment debtor to the decree holder. So far the amount payable by the judgment debtor, the State Government property namely the Government poramboke land may not be attached, may not be brought to sale. It is needless to say that the property sought for attachment and sale, does not belongs to the judgment debtor. So the order of attachment of execution petition schedule mentioned property is not correct and the attachment order dated



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19.12.2012 deserves to be set aside. The attachment order was passed on 19.12.2012 by this Court, and not on 28.01.2013.

In the result, this application is allowed, the order of attachment passed on 19.12.2012 regarding the EP schedule mentioned property is set aside."

7. The claim of the applicant/Award Holder pursuant to the order passed by this Court in O.P.No.54 of 2009 dated 02.11.2011 was thus confined to Rs.1,37,04,223/- as against the total Award amount of Rs.2,01,23,010/-. The details of which are as under:-

Claim No.	Description	Amount Awarded
1.	Rate for conveyance of surplus excavated earth	Rs. 3,45,502/-
2.	Revision of rates for items of work carried out beyond the contract period	Rs. 68,37,575/-
3.	Release of pending bills for the work done	Rs. 12,55,599/-
4.	Loss of profit claimed on the work not performed in 37 roads	Rs. 47,81,690/-
5.	Loss of Turnover due to breach committed by the Employer	Rejected
6.	Loss due to idle overhead: (i) Loss due to idle establishment (ii) Loss due to idle machinery	Rs. 3,69,324/- Rejected
7.	Loss due to omission of work from contracts	Rejected
8.	Payment of interest on awarded amount under Claim Nos.1 and 3	Rs. 1,14,533/-
	Total :	Rs.1,37,04,223/-



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8. In view of the interim stay passed by the Hon'ble Division Bench of this Court on 28.03.2012, the petitioner is still entitled to pursue with the Execution Petition as far as the Original Petition to the extent of Rs.68,66,648/- out of claim amount of Rs.2,05,41,798/- [1,37,04,223 + 68,37,575 = 2,05,41,798].

9. It is in this background, the applicant has filed O.A.No.5795 of 2014 as appeal against the order of the learned Master raising order of attachment and O.A.No.5796 of 2014 to stay the operation of order raising order of attachment.

10. Though the name of the learned counsel for the respondent is printed in the Cause List today, there is no representation on behalf of the respondent/Award Debtor.

11. Having heard the learned counsel for the applicant and having perused the order passed by the learned Master on 20.11.2013 and having perused the documents filed in support of these applications, it emerges



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that the land in question in respect of which order of attachment was passed by the learned Master on 09.12.2012 was the land which was given by the respondent/Award Debtor for carrying on the work contracted to the applicant/Award Holder. This is evident from the communication dated 04.12.2009 wherein, the respondent/Award Debtor has requested the applicant/Award Holder to vacate the site office at Industrial Estate in Guindy near RR roundana and to hand over the same for storing materials and machines.

12. Relevant portion of the aforesaid communication of the respondent/Award Debtor, bearing REf.No.15 GIEIUC 08, dated 04.12.2009, reads as follows:-

"We request you to vacate your site office at Industrial Estate, Guindy near RR Roundana, handed over to you for storing of materials and machines for the above work, within a week's time and hand over the vacant possession to your Branch Office Guindy, so as to enable us to proceed with the construction of Display Exhibition Centre already proposed."

13. Since the land was not under the control of the respondent/Award Debtor, the question of the land being allotted on



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temporary basis to the applicant/Award Holder for the work in connection with the contract awarded to the applicant/Award Holder would not have arisen.

14. Consequently, Order dated 20.11.2013 raising the Order of Attachment passed on 09.12.2012 cannot be sustained. In any event, the property which is said to be a poramboke land can be sold.

15. No prejudice or harm will be caused if there is an Order restraining the sale/transfer/alienation of the property by the respondent/Award Debtor for the present. This is without prejudice to the rights of the Government to deal with the land independently in accordance of law.

16. The order passed by the learned Master raising Order of Attachment dated 09.12.2012 on 20.11.2013 is therefore set aside. In the result, A.No.5795 of 2014 is allowed. A.No.5796 of 2014 and A.No.2044 of 2013 are closed.



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