

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 29 OF 2016

Pandit Sheshrao Shinde,
Age major, occup. Agril.,
R/o Bokangaon, Tq. and
Dist. Latur

..Petitioner / Original
Decree Holder

versus

1. The State of Maharashtra,
through Collector, Latur
2. Executive Engineer,
Respondents/Original
Minor Irrigation Division,
Latur

.. Respondents/Orig.
Judgment Debtors

WITH

WRIT PETITION NO. 33 OF 2016

1. Sattendra s/o Dhondiram Patil ,
Age 41 years, occup. Agril.,
R/o Bokangaon, Tq. and
Dist. Latur
2. Pradeep s/o Dhondiram Patil,
Age 39 years, occup. Agril.,
R/o Bokangaon, Tq. and
Dist. Latur.

.. Petitioners/Original
Decree Holder

versus

1. The State of Maharashtra,
through Collector, Latur
2. Executive Engineer,
Minor Irrigation Division,
Latur

.. Respondents/Original
Judgment Debtors

WITH

WRIT PETITION NO. 35 OF 2016

Bhausahab Gopalrao Datal,
Age major, occup. Agril.,
R/o Bokangaon, Tq. and
Dist. Latur

..Petitioner / Original
Decree Holder

versus

1. The State of Maharashtra,
through Collector, Latur
 2. Executive Engineer,
Minor Irrigation Division,
Latur
- ..Respondents/Original
Judgment Debtors

Mr. T. G. Gaikwad, Advocate for petitioners
Mr. V. G. Shelke, Assistant Govt. Pleader for respondent no.1

CORAM : SUNIL P. DESHMUKH, J.
15TH MARCH, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.'
2. Petitioners are aggrieved by orders passed on 31-07-2015 by executing court [2nd Joint Civil Judge, Senior Division, Latur] on Exhibit-15 in Special Darkhasts bearing Nos. 282 of 2009, 281 of 2009 and 283 of 2009, imposing condition of furnishing bank guarantee for withdrawal of amounts deposited towards land acquisition awards in favour of the petitioners.
3. Learned counsel for parties agree upon situation that against the awards passed by land acquisition reference court, appeals have been filed in the high court and the same are pending and further do not dispute that there is no interim relief granted in the appeals.

4. In the circumstances, learned counsel for the petitioners relies on judgment delivered by learned single judge in writ petition no. 2247 of 2012 on 13-03-2012 and draws attention to observations in paragraph no. 6 of the same which read thus;

" 6. In the instant matter, although appeal is presented by the State challenging the award passed by the Reference Court, there is no interim order passed by this Court directing stay of execution of the award. It was, therefore, improper on the part of the learned Joint Civil Judge, Senior Division, Ahmednagar, to insist for furnishing bank guarantee by the claimants-petitioners herein while seeking withdrawal of the amount. The order passed by the In charge Joint Civil Judge, Senior Division, Ahmednagar on 20-01-2004 is erroneous and liable to be quashed and is accordingly quashed and set aside. "

5. In yet another Special Darkhast bearing No. 13 of 2010 for withdrawal of amount deposited in land acquisition reference court [2nd Joint Civil Judge, Senior Division, Latur], while passing order on Exhibit-15 on 19-03-2013, the reference court had in paragraph 5 of the same referred to following observations of learned single judge in the case of *Vilas v. S.L.A.O.* reported in [2012 (2) Mh.L.J. 314]:

*" 5.
In the Execution Proceedings of the Decree of Reference Court, it is improper to impose conditional order to withdraw decretal amount after furnishing bank guarantee, in absence of any stay in appeal against decree passed by the Reference Court. Condition of furnishing bank guarantee imposed by executing Court was held as not proper. "*

6. According to learned counsel for the petitioners, having regard to aforesaid, present petitioners are entitled to withdraw the amounts without furnishing any bank guarantee.

7. In view of above, it appears that the land acquisition reference court while passing order on 31-07-2015 on Exhibit-15 in respective special darkhasts had been in error in imposing condition of furnishing bank guarantee for withdrawal of the amounts in the absence of any interim relief granted by high court. As such, petitions deserve to be considered along the same lines and be given treatment as had been done by the high court in the matters referred to hereinabove.

8. Writ petitions, as such, are allowed in terms of prayer clause (B) and (C) and disposed of.

9. Rule made absolute accordingly.

SUNIL P. DESHMUKH,
JUDGE

pnd