

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7777 OF 2016
WITH CA/4717/2014 WITH CA/4720/2017 IN WP/7272/2016 WITH
CA/4722/2017 IN WP/7299/2014 WITH WP/7300/2016 WITH
WP/7301/2016 WITH CA/4715/2017 IN WP/7302/2016 WITH
CA/4713/2017 IN WP/7303/2016 WITH CA/4714/2017 IN
WP/7304/2016 WITH CA/4718/2017 IN WP/7305/2016 WITH
CA/4716/2017 IN WP/7306/2016 WITH CA/4712/2017 IN
WP/7778/2016 WITH CA/4719/2017 IN WP/7779/2016 WITH
WP/7780/2016 WITH CA/4721/2017 IN WP/7781/2016

THE CHIEF EXECUTIVE ENGINEER, MINOR IRRIGATION
DEPARTMENT ZILLA PARISHAD, BEED
VERSUS
POPAT AASU PAWAR AND ANOTHER

Advocate for Petitioner : Shri A.D. Aghav.
Advocate for Respondent No. 1 : Shri S.B. Choudhari.
AGP for Respondent No. 2 : Shri S.K. Tambe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 18th July, 2017

ORAL ORDER :

1. In all these petitions, the petitioner Zilla Parishad, Beed,
has challenged the following orders :

(1) WP No. 7777/2016 - Order dated 16/06/2016 below
Exhibit No. 6 in LARD No. 328/2015.

(2) WP No. 7272/2016 - Order dated 10/06/2016 below
Exhibit No. 9 in LARD No. 258/2015.

(3) WP No. 7299/2016 - Order dated 10/06/2016 below Exhibit No. 6 in LARD No. 260/2015.

(4) WP No. 7300/2016 - Order dated 10/06/2016 below Exhibit No. 8 in LARD No. 237/2015.

(5) WP No. 7301/2016 - Order dated 10/06/2016 below Exhibit No. 8 in LARD No. 41/2016.

(6) WP No. 7302/2016 - Order dated 10/06/2016 below Exhibit No. 8 in LARD No. 259/2015.

(7) WP No. 7303/2016 - Order dated 10/06/2016 below Exhibit No. 9 in LARD No. 274/2015.

(8) WP No. 7304/2016 - Order dated 10/06/2016 below Exhibit No. 6 in LARD No. 27/2016.

(9) WP No. 7305/2016 - Order dated 10/06/2016 below Exhibit No. 6 in LARD No. 308/2015.

(10) WP No. 7306/2016 - Order dated 10/06/2016 below Exhibit No. 6 in LARD No. 275/2015.

(11) WP No. 7778/2016 - Order dated 16/06/2016 below Exhibit No. 6 in LARD No. 282/2015.

(12) WP No. 7779/2016 - Order dated 16/06/2016 below Exhibit No. 6 in LARD No. 287/2015

(13) WP No. 7780/2016 - Order dated 16/06/2016 below Exhibit No. 6 in LARD No. 331/2015.

(14) WP No. 7781/2016 - Order dated 16/06/2016 below Exhibit No. 6 in LARD No. 281/2015.

2. Pursuant to the order passed by this Court, while issuing notice to the respondents, status quo was granted on the condition that the petitioner shall deposit the amounts mentioned in the order, in this Court. It is informed that the petitioners have deposited the said amount in this Court.

3. The grievance of the petitioner in all these matters is that when the judgment of the Competent Court in the LAR proceedings was delivered, it was specifically observed that respondent No. 1 and 2 i.e. The State of Maharashtra and the The Executive Engineer, Minor Irrigation Department, Zilla Parishad, Beed, shall jointly and severally pay the enhanced compensation at the rates mentioned in the order.

4. Contention of the learned advocate for the Zilla Parishad

is that though it is an acquiring body, the compensation ultimately is to be paid by the State Government. The learned AGP appearing on behalf of the State submits that as the Zilla Parishad is the acquiring body, the State is not in the picture and Zilla Parishad has to generate funds to make the said payment. I am of the view that such disputed questions are not required to be gone into by this Court in these pending petitions. It is settled law that even the executing Court cannot go beyond the decree and cannot modify the decree. This issue, therefore, needs to be left open for the Executing Court before which all the above mentioned proceedings are pending, to adjudicate upon.

5. By the impugned order, the Executing Court has frozen the Bank account of the Chief Accounts Officer, Accounts and Finance Department, Zilla Parishad, Beed. Prima facie, it appears, going by the decree, that respondent Nos. 1 and 2 mentioned in the cause title in the LAR proceedings, are to make the payment of compensation, jointly and severally. I make it clear that I am not dealing with the said issue and I am

not arriving at any conclusion on that aspect. Suffice it to say that going strictly by the words of the decree, the Zilla Parishad may have to pay 50 % of the total compensation amount, which part has been deposited in this Court.

6. Learned Counsel for the original claimants who are respondents in these proceedings submits that 11 claimants have filed Civil Applications for withdrawal of amount in 11 petitions. Three original claimants are yet to file such applications in the remaining three Writ Petitions. He, therefore, submits that if these original claimants are permitted to withdraw the amounts which are towards compensation and rightfully belong to them, these petitions can be disposed of by modifying the impugned order.

7. Learned counsel for the Zilla Parishad and the learned AGP for the State submit that First Appeals before this Court, with regard to the enhanced amounts, have not been filed. They further state that the original claimants could withdraw the amounts only after submitting the usual undertakings.

8. In the light of the above, all these petitions are partly allowed. The impugned orders are modified, keeping in view that the petitioner/Zilla Parishad has deposited the amounts in this Court. Consequentially, the direction to freeze the accounts of the Zilla Parishad to the extent of the money mentioned in the impugned order, is quashed and set aside. Consequentially, clause 2 of the impugned order would also stand set aside.

9. The Civil Applications are allowed, in as much as, the oral request for the three claimants who have not filed the Civil Applications, is also accepted. At the request of the claimants and by the consent of all the litigating sides, the amounts deposited in this Court shall stand transferred in the respective LARD proceedings before the Joint Civil Judge (Senior Division), Beed, forthwith along with accrued interest. The claimants shall, therefore, tender individual applications before the Executing Court for withdrawal of the said amounts by submitting the usual undertaking that is required to be filed along with their recent photographs, copies of their recent address proof and Election Commission's Voter ID Card.

10. Needless to state, the execution proceedings shall proceed in accordance with law and it is made clear that this Court has not expressed any opinion as regards the proportion of the money that has to be recovered either from the Zilla Parishad or the State.

(RAVINDRA V. GHUGE, J.)

S.P.C.