

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

905 WRIT PETITION NO.2705 OF 2018

The Municipal Council,
Tuljapur, Dist. Osmanabad,
Through its Chief Officer

... Petitioner.

Versus

1. Narsing S/o Raosaheb Malba (Kadam)
2. The State of Maharashtra
Through the Collector, Osmanabad ... Respondents.

WITH

WRIT PETITION NO.2698 OF 2018

The Municipal Council,
Tuljapur, Dist. Osmanabad,
Through its Chief Officer

... Petitioner.

Versus

1. Bhagwan S/o Shripati Malba (Kadam)
2. The State of Maharashtra
Through the Collector, Osmanabad ... Respondents.

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Mr. Krishna K. Kulkarni, Advocate for the Petitioner.
Mr.R.N. Dhorde, Senior Counsel h/f Mr. V. R. Dhorde, Advocate for
Respondent No.1 in both petitions.
Mr. V.S. Badakh, A.G.P. for Respondent No.2 in both petitions.

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CORAM : V.L. ACHLIYA, J.

DATED : 17th APRIL, 2018

PER COURT:-

1. By these petitions, filed under Articles 226 & 227 of the Constitution of India, the petitioner have challenged the order dated 25.01.2018 separately passed by District Judge-2, Osmanabad in Special Darkhast No.2/2012 (Narsing Malba Vs. State and others) and Special Darkhast No. 1/2012 (Bhagwan

Malba Vs. State and others). By the impugned orders, the Executing Court has passed the order to attach 54 Bank accounts of the petitioner-Municipal Council towards execution of awards passed in land acquisition proceedings.

2. Heard the learned counsel for the petitioner and respondent No.1 and the learned A.G.P. for respondent no.2. Perused the impugned orders.

3. In nutshell, it is the contention of the petitioner that due to the order passed by the Executing Court, the entire work of the petitioner-Municipal Council has come to stand still. Now they are not in a position even to discharge their statutory obligations. The salary of the employees could not be disbursed due to the attachment of the accounts. The amount lying in various accounts is received under various heads and to be utilised for a particular object for which the funds have been released by the State or Central Government. It is contended that in case, funds are not utilised for the purpose released by the State or Central Government and utilisation certificate is not produced, there is every likelihood the further installments of grant/assistance may not be received by Municipal Council from the State or Central Government. It is further contended that the petitioner-Municipal Council is trying hard to receive the funds from the State Government to discharge their liability towards the awards under execution. The Chief Officer of the Municipal Council has already requested the Government through the Collector, Osmanabad to allow the Municipal Council to utilise the amount of Rs. 2,00,00,000/- (Rupees Two Crores) received as an Award Money to Municipal Council as best Municipal Council for maintaining cleanliness and efficient public administration. The orders are awaited from the State Government to satisfy the claim of petitioners. He further submit that on receipt of permission from

State Government, the amount will be deposited in the executing Court to satisfy the decree/award. The Chief Officer, who is personally present in Court, also urged to allow the Municipal Council to pay the amount in monthly installment of Rs.5,00,000/- (Rupees Five Lakh) per month.

4. On the other hand, the learned senior counsel representing the respondent no.1 in both the petitions contended that the respondents whose lands have been acquired by the Municipal Council way back in the year 1990 are still waiting to receive their legitimate claim towards compensation. The period of more than 29 years has been lapsed from acquisition of land. The Municipal Council has failed to honour the award passed in favour of the petitioner. He submit that though the executing court has attached 54 accounts, the order can suitably modified by restricting the order of attachment in respect of few accounts which will satisfy the recovery of the amount of Rs.3,05,76,807/- (Rupees Three Crore Five Lakh Seventy Six Thousand and Eight Hundred Seven) i.e. amount required towards satisfaction of the awards passed in favor of the respondent No.1 in respective petitions. He further submit that modification of order to that extent would not affect the administration of Municipal Council. Learned senior counsel also produced on record the copies of various orders passed in the matter and the undertaking given on behalf of Municipal Council to deposit the amount towards discharge of liability of Municipal Council in respect of awards passed in favour of the respondents.

5. On due consideration of the submissions advanced and perused the list of 54 accounts with amount lying credited in those accounts, I am of the view that the concern of the petitioner and the interest of the respondent No.1 in both the petitions can be protected by modifying the impugned order. It is

no where the case of the petitioner that they are not liable to pay the amount as showed to be recoverable in execution petition filed by the respondent No.1 in respective petition. From the order passed in Special Darkhast No.1/2012 (Bhagwan Malba Vs. State and others) it appears that the impugned order is passed towards the recovery of amount of Rs.69,25,292/- (Rupees Sixty Nige Lakh Twenty Five Thousand Two Hundred Ninety Two). Special Darkhast No.2/2012 (Narsing Malba Vs. State and others) is filed towards recovery of amount to the tune of Rs.2,36,51,515/- (Ruppes Two Crore Thirty Six Lakh Fifty One Thousand Five Hundred Fifteen). As per the chart/list of accounts submitted by counsel for petitioner, in 54 accounts, about 12 crore rupees are lying deposited. In the account maintained with the State Bank of Hyderabad (now State Bank of India), Tuljapur bearing account no.62251982487 the amount of Rs.1,73,68,321.05 ps. (Rupees One Crore Seventy Three Lakh Sixty Eight Thousand Three Hundred Twenty One and Five Paise) is lying deposited for the purpose to be utilised for Macchi Market. Similarly, in the account bearing No.92302 with IDBI Bank, Tuljapur the amount of Rs.2,54,38,505/- (Rupees Two Crore Fifty Four Lakh Thirty Eight Thousand Five Hundred Five) is lying deposited. The said amount is shown to be utilised as Yatra fund. In my view the amount lying deposited in these two accounts is more than the amount to be recovered i.e. Rs.3,05,76,807/- (Rupees Three Crore Five Lakh Seventy Six Thousand and Eight Hundred Seven) towards satisfaction of awards in execution proceeding. Thus the attachment of two accounts to recover the amount to the extent of 3.05 crores would achieve the purpose for which the order of attachment passed by the Executing Court. Hence, there is no need to continue the attachment of all the 54 accounts of the Municipal Council as per the impugned order passed by the Executing Court to meet the ends of justice. Hence, the following order is passed:

ORDER

I) The impugned orders dated 25.01.2018 passed in Special Darkhast Nos.1/2012 and 2/2012 are modified as under:

- a) The impugned order dated 25.01.2018 passed in Special Darkhast Nos.1/2012 and 2/2012 passed by District Judge-1, Osmanabad stands vacated with immediate effect except the following two accounts:
 - i) Account No.62251982487 with State Bank of Hyderabad (now State Bank of India), Tuljapur in the name of Municipal Council, Tuljapur.
 - ii) Account No. 92302 with IDBI Bank, Tuljapur in the name of Municipal Council, Tuljapur.
- b) District Judge-1, Osmanabad is directed to issue warrant of attachment to the tune of Rs.2,00,00,000/- (Rupees Two Crore) lying deposited in Account No.92302 with the IDBI Bank, Tuljapur stands in the name of Municipal Council, Tuljapur towards recovery of amount in Special Darkhast No.2/2012 with further direction to Branch Manager that amount as attached be transferred to District Court, Osmanabad towards satisfaction of award passed in Special Darkhast No.2/2012 (Narsing Malba Vs. State and others) pending with the District Judge-1, Osmanabad.
- c) On transfer of amount of Rs.2,00,00,000/- (Rupees Two Crore) from Account No.92302 with the IDBI Bank, Tuljapur to District Court, Osmanabad, the order of attachment of the said account stands vacated.

- d) District Judge-1, Osmanabad is further directed to issue warrant of attachment to the tune of Rs.69,25,292/- (Rupees Sixty Nine Lakh Twenty Five Thousand Two Hundred Ninety Two) to attach amount to that extent from Account No.62251982487 with State Bank of Hyderabad (now State Bank of India) stands in the name of Municipal Council, Tuljapur towards recovery of amount in Special Darkhast No.1/2012 with further direction to Bank Manager to transfer the amount attached to the account of District Court, Osmanabad.
- e) District Judge-1, Osmanabad is further directed to issue warrant of attachment to the tune of Rs.36,51,515/- (Rupees Thirty Six Lakh Fifty One Thousand Five Hundred Fifteen) from Account No.62251982487 with State Bank of Hyderabad (now State Bank of India) stands in the name of Municipal Council, Tuljapur towards recovery of amount in Special Darkhast No.2/2012 with further direction to Bank Manager to transfer the amount so attached to the account of District Court, Osmanabad.
- f) On attachment and transfer of the amount to the tune of Rs.69,25,292/- (Rupees Sixty Nine Lakh Twenty Five Thousand Two Hundred Ninety Two) towards recovery of amount in Special Darkhast No. 1/2012 (Bhagwan Malba Vs. State and others) and amount of Rs.36,51,515/- (Rupees Thirty Six Lakh Fifty One Thousand Five Hundred Fifteen) towards recovery in Special Darkhast No.2/2012 (Narsing Malba Vs. State and others), the attachment of S.B.I. Account No. 62251982487 pursuant to order dated 25.01.2018 stands vacated.

- g) On transfer of the amount in Special Darkhast Nos.1/2012 and 2/2012, the executing court is directed to verify the amount exactly to be payable to the decree holders. If the amount, if any, deposited during the pendency of the execution proceedings, same shall be adjusted towards the total amount to be payable to the decree holders. In case, if any excess amount found to be recovered, same shall be paid to judgment debtor-Municipal Council.
- II) Petitions stand disposed of in above terms.
- III) List the petitions for reporting compliance of order on 04.05.2018.
- IV) The parties to act upon the authenticated copy of this order.

(V.L. ACHLIYA)
JUDGE

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