IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9909 OF 2017

...

WITH

WP/9914/2017

WITH

WP/9917/2017

WITH

WP/9918/2017

WITH

WP/9919/2017

WITH

WP/14462/2017

WITH

WP/14463/2017

WITH

WP/14464/2017

WITH

WP/14465/2017

WITH

WP/14466/2017

WITH

WP/14467/2017

WITH

WP/14468/2017

WITH

WP/14469/2017

WITH

WP/14470/2017

WITH

WP/14471/2017

WITH

WP/14472/2017

WITH

WP/14473/2017

WITH

WP/14474/2017

WITH

WP/14475/2017

WITH
WP/14476/2017

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
THE UNION OF INDIA AND OTHERS
...
AGP for Petitioners : Mr. S P Tiwari
Advocate for Respondents 1,2 : Mr D G Nagode
Mr. Gore Ravindra Vitthal For Respondent nos.3(i) To R(iv)
...
CORAM : V.K. JADHAV, J.
Dated: March 21, 2018
...

PER COURT :-

1. By way of these writ petitions, the State of Maharashtra has challenged the order passed by the Executing Court. The respondents/decree holders has filed an application before the Executing Court under Order 21 Rule 41 of the Civil Procedure Code. Respondents/Decree Holders has prayed in their respective execution petitions for directions to the State to disclose the property details and accordingly on 21.6.2017 the petitioner no.2 has filed an affidavit stating out the details of the properties and bank accounts. Consequently, respondents/decree holders in their respective execution petitions filed applications

before the executing Court with a prayer for payment of the decretal amount by deducting the same from the bank account maintained in the Collector's name for the Chief Minister Relief Fund.

2. By the impugned order dated 17.7.2017 the learned 5th Jt. Civil Judge S.D., Ahmednagar, was pleased to allow the application filed by the respondent/decree holder.

3. In these writ petitions, the petitioner/State has also impleaded the Union of India through the Secretary of Ministry of Defence and the Defence Estates Officer, Defence Estate, Pune as party respondents and in these writ petitions respondent nos. 1 and 2 have filed their affidavit-in-reply through the defence Estate Officer, Pune Circle, Pune that respondent nos. 1 and 2 have deposited the entire amount under award that is including the enhanced land value plus 30% solatium enhanced land value plus 9% interest for the first one year on enhanced land value plus 15% interest from

second year onwards. Learned counsel appearing for respondent nos. 1 and 2 submits that the cheque dated 12.1.2005 for total amount of Rs.13,19,70,372/- was deposited with the petitioner no.2 herein and thereafter further deposited an amount of Rs.8,79,932/- i.e. interest calculated up to 27.9.2006 as per the interim order passed by this Court in the pending First Appeals. Learned counsel submits that, calculation sheets are annexed alongwith the affidavit-in-reply of respondent no.2 Exh.R-3.

4. Learned counsel for respondents/Decree holders submits that, entire amount under award has not been deposited before the Executing Court nor before this Court during the pendency of the First Appeals preferred by the State and as such the petitioner/State is liable to pay the amount as per the chart submitted alongwith the written notes of arguments placed before this Court in the pending Writ Petitions today.

5. It appears that, the Executing Court has passed

the order under Order 41 Rule 46 of the Civil Procedure Code even though, respondents/decree holders have not filed application under Order 21 Rule 46 of the Civil Procedure Code. Prima facie, it also appears that, the trial court has not correctly applied its mind while passing the impugned order in terms of the provisions of Order 21 Rule 46 of the Civil Procedure Code. By effect of the order impugned in these writ petitions, the Bank account maintained in the District Collector's name meant for Chief Minister Relief Fund has been attached and as a result thereof, the said Chief Minister Relief fund could not be utilized, in case certain emergency arises. It is difficult to understand in what way the Executing Court has concluded that the amount lying in the said account meant for Chief Minister Relief Fund as a debt in terms of the provisions of Order 21 Rule 46, 46-A and rule 46-B of the Civil Procedure Code.

6. Furthermore, there is a dispute about the amount deposited as per the award passed by the Reference Court, confirmed by this Court in the First Appeals,

which has now attained the finality. Respondents/Decree holders contend that entire amount has not been deposited and the amount to the tune of rupees five crores is still balance and outstanding.

7. In view of the same, I proceed to pass the following order.

O R D E R

I. WRIT PETITION NOS. 9909 OF 2017, WP/9914/2017, WP/9917/2017, WP/9918/2017, WP/9919/2017, WP/14462/2017, WP/14463/2017, WP/14464/2017, WP/14465/2017, WP/14466/2017, WP/14467/2017, WP/14468/2017, WP/14469/2017, WP/14470/2017, WP/14471/2017, WP/14472/2017, WP/14473/2017, WP/14474/2017, WP/14475/2017, WP/14476/2017 (THE STATE OF MAHARASHTRA AND ANOTHER VERSUS THE UNION OF INDIA AND OTHERS) are hereby partly allowed. No costs.

II. The order passed below Exhibits-39 in Regular Darkhast No.49/2002, Exh-51 in Regular Darkhast No.11/2005, Exh-74 in Regular Darkhast No.86/2005, Exh-53 in Regular Darkhast No.46/2002, Exh-70 in Regular Darkhast No.26/2005, Exh-46 in Regular

Darkhast No.40/2002, Exh-79 in Special Darkhast No.37/2002, Exh-47 in Special Darkhast No.51/2002, Exh-33 in Special Darkhast No.41/2002, Exh-42 in Special Darkhast No.38/2002, Exh.35 in Special Darkhast No.47/2002, Exh-39 in Special Darkhast No.36/2002, Exh-45 in Special Darkhast No.39/2002, Exh-49 in Special Darkhast No.23/2002, Exh-39 in Special Darkhast No.22/2002, Exh-51 in Special Darkhast No.45/2002, Exh.56 in Special Darkhast No.59/2002, Exh.39 in Special Darkhast No.42/2002, Exh-44 in Special Darkhast No.43/2002, Exh-55 in Special Darkhast No.67/2002 are hereby quashed and set aside.

III. The applications at Exhibit-39 in Regular Darkhast No.49/2002, Exh-51 in Regular Darkhast No.11/2005, Exh-74 in Regular Darkhast No.86/2005, Exh-53 in Regular Darkhast No.46/2002, Exh-70 in Regular Darkhast No.26/2005, Exh-46 in Regular Darkhast No.40/2002, Exh-79 in Special Darkhast No.37/2002, Exh-47 in Special Darkhast No.51/2002, Exh-33 in Special Darkhast No.41/2002, Exh-42 in Special

Darkhast No.38/2002, Exh.35 in Special Darkhast No.47/2002, Exh-39 in Special Darkhast No.36/2002, Exh-45 in Special Darkhast No.39/2002, Exh-49 in Special Darkhast No.23/2002, Exh-39 in Special Darkhast No.22/2002, Exh-51 in Special Darkhast No.45/2002, Exh.56 in Special Darkhast No.59/2002, Exh.39 in Special Darkhast No.42/2002, Exh-44 in Special Darkhast No.43/2002, Exh-55 in Special Darkhast No.67/2002 are hereby rejected.

IV. The respondent nos. 1 and 2 are at liberty to file an application for intervention before the Executing Court and the Executing Court may consider the same to the extent of finding out as to how much of the amount under the Award is still balance and outstanding.

V. The Respondents/decree holders are also at liberty to file appropriate applications under the relevant provisions of Order 21 of the Civil Procedure Code for execution of the Award.

VI. The learned Judge of the Executing Court, after considering the record available and after giving an opportunity of being heard to all the parties,

pass appropriate orders in accordance with law within three months from the date of this order.

VII. All points kept open.

VIII. All writ Petitions are accordingly disposed of. No costs.

sd/-
(V.K. JADHAV, J.)

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aaa/-