

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

WRIT PETITION NO.5985 OF 2019

JAGANNATH RANBA PALWADE THROUGH LRS MANIK JAGANNATH
PALWADE AND ANOTHER

VERSUS

SANTOBA DHARBA PALWADE THROUGH LRS LULA SANTOBA
PALWADE

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Advocate for the Petitioners : Shri Mundhe Sanjay V.

Advocate for Respondent 1/a : Shri Bhavthankar Vivek Vasantrao

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th December, 2019

Per Court:

1 On 01.07.2019, I had passed the following order :-

- “1. The petitioners are aggrieved by the order dated 21.12.2018 passed by the executing Court, vide which, it has rejected application Exhibit 232, filed by the decree holders in RD No.68 of 1986. Grievance is that the executing Court observed that a possession warrant need not be issued against J.D. No.2 since he is not in actual possession of the area, which is shown to be the suit land, when in fact, the same judgment debtor had made a statement before this Court in Civil Revision application No.868 of 2000, that he would remove entire encroachment. Said statement is recorded in the order of this Court dated 28.09.2000, while disposing of the CRA.
2. Issue notice to the respondents, returnable on 09.08.2019.”

2 This matter was heard for some time on 12.12.2019. I had

called upon the learned advocate for respondent no.1/a (Lula Santoba Palwade) to state as to why has he disobeyed the order of this Court dated 28.09.2000 when his statement that he would remove the entire encroachment, was recorded and this Court showed sympathy towards him and granted time to remove the encroachment. The record also reveals that instead of removing the encroachment, he has violated the order of this Court by repurchasing the land from the encroachers and taking possession of the entire portion of the land.

3 Shri Bhavthankar, learned advocate, though has strenuously opposed this petition, submits that respondent no.1/a has repurchased the land from the encroachers. The learned advocate today submits, on instructions, that respondent no.1/a is presently suffering from cancer and is admitted in a hospital at Barshi, District Solapur. He is unable to speak and cannot pass on any instruction to the learned advocate.

4 In the light of the above and considering the record, I find that the Executing Court, which has passed the impugned order dated 21.12.2018, has completely lost sight of the above fact. Rather than ensuring that the decree holder is not frustrated, the Executing Court has practically abdicated its jurisdiction and has passed an order which would cause hardships to the decree holder and would actually perpetuate the misdeeds committed by the judgment debtor.

5 In view of the above, this Writ Petition is allowed. The

impugned order dated 21.12.2018 is quashed and set aside. The application exhibit 232 stands allowed in terms of the prayer put forth in the said application. The Executing Court shall issue necessary orders in terms of the said prayer clause.

kps

(RAVINDRA V. GHUGE, J.)