

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

926 WRIT PETITION NO.9743 OF 2018

**SHAKUNTABAI DATTATRAY MORE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Suraj V. Gundre, Advocate for the petitioners
Mr. S. G. Sangle, Advocate for respondent No.2
Mr. R. D. Sanap, AGP for the respondent/State

**CORAM : N. J. JAMADAR, J.
DATE : 01-04-2021**

P. C.

. Heard learned counsel for the petitioners, learned counsel for the respondent No.2 Sangle and learned AGP for the respondent Nos. 1 and 3.

2. The challenge in this petition is to an order dated 06-05-2017 passed by the executing court in LAR Darkhast No.162 of 2016, taken-out by the petitioners to execute the award passed by the Reference Court in LAR No. 165 of 02008 dated 29-10-2010, whereby the executing court permitted the petitioners-decree holders to withdraw the amount of compensation deposited by the respondent No.2-acquiring body to the tune of Rs.36,70,160/- subject to furnishing bank guarantee of the equivalent amount.

3. Evidently, no appeal was preferred at the time the

impugned order came to be passed. In fact, the executing court categorically recorded that neither any appeal was preferred by that time nor there was any stay to the execution of the award. Yet, executing court went on to impose the condition of furnishing bank guarantee for withdrawal of the decretal amount on the premise that the respondent No.2-acquiring body was in the process of taking steps to file the appeal.

4. When the petition was placed before the court on 10-06-2019, by an elaborate order this court directed the executing court to remit the 90% of the deposited amount to the petitioners-decree holders without imposing any condition, and also issued notice to respondents.

5. Learned counsel for the petitioners would urge that the imposition of condition of furnishing bank guarantee in a case where neither an appeal is preferred nor stay is granted to the award is wholly impermissible. Attention of the court was invited to the various orders passed by this court in the cases of Kapurchand Mansing Chavan Vs State of Maharashtra and others in Writ Petition No. 4103 of 2009, Rupchand Ragho Sapkale Vs Special Land Acquisition Officer and another in Writ Petition No. 249 of 2008 and Sambhappa Maharudrappa Warad (died) through his LRs Vs State of Maharashtra and another in Writ Petition No. 2839 of 2020 wherein this court has quashed such conditions of furnishing bank guarantee where there was no restraint on execution of award.

6. When the matter was listed before the court yesterday, learned counsel for the respondents especially learned counsel for the respondent No.2-acquiring body, were directed to make a statement as to whether any appeal has been filed assailing the award passed by the Reference Court in LAR No. 165 of 2008, which is put to execution in LAR Darkhast No. 162 of 2016. Learned counsel sought time to take instructions.

7. Today, learned AGP and Mr. Sangle, learned counsel for respondent No.2-acquiring body, fairly submitted that as of today no appeal is preferred by the respondent.

8. It defies comprehension as to how the condition of furnishing bank guarantee can be imposed, when the respondent-judgment debtor has not preferred an appeal and there is no restraint whatsoever by the Superior Court on the execution of the award. A period of more than 10 years has elapsed from the passing of the award in LAR No. 165 of 2008. No appeal is preferred till today. There is no reason, much less justifiable one, to deprive the petitioners-decree holders of the fruits of the award.

9. The impugned order is, thus, plainly unsustainable. Hence, the following order.

ORDER

- i. The order dated 06-05-2017 passed by the executing court in LAR No. 162/2016 stands set aside to the extent it directs the petitioners-decree holders to furnish bank guarantee and undertaking for withdrawal of the amount of compensation deposited by JDS.
- ii. The executing court is directed to release balance 10% of the amount of compensation alongwith interest accrued thereon, if any, to the decree holders unconditionally.
- iii. The petition stands allowed in aforesaid terms.
- iv. No costs.

[N. J. JAMADAR, J.]