

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

933 WRIT PETITION NO.5495 OF 2017

MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION
THROUGH ITS AREA MANAGER AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Shrirang S. Dande
AGP for Respondent No.1 : Mr.S.N.Kendre
Advocate for Respondent No.2 : Mr.V.D.Sapkal, Senior Advocate
i/b. Mr.S.R.Sapkal

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 6th July, 2022

ORDER :-

. The petitioner Corporation is aggrieved by the order passed by the Civil Judge, Senior Division, Ahmednagar, dated 24 August, 2016, below Exhibits-'1' and '5' in Regular Darkhast Proceeding No.209 of 2015, and the order dated 17 December, 2016 passed by the executing Court, thereby reissuing possession warrant and appointing special Bailiff for that purpose.

2. The petitioner Corporation is the Judgment debtor against whom the Judgment and decree is passed on 4 September, 2013 in Special Civil Suit No.78 of 2012. It is not in dispute that the Judgment and decree is not challenged by the petitioner

Corporation before the appropriate Court.

3. Pursuant to the Judgment and decree, Regular Darkhast proceeding No.209 of 2015 was initiated by the decree holder in which after hearing the parties, the executing Court has passed an order on 24 August, 2016, thereby allowing application Exhibit-5 and appointing the Deputy Superintendent Land Records, Ahmednagar as Court Commissioner for delivery of possession of suit plot and land No.C-135 admeasuring 8489 sq.mtrs. specifically described in the plaint. The decree holder was directed to deposit requisite fees of the Court Commissioner and to submit the necessary documents for the purpose of delivery of possession. The possession warrant was issued for the purpose of delivery of the possession of suit plot in presence of the Court Commissioner after measurement within ambit of Judgment and decree dated 4 September, 2013 in Special Civil Suit No.78 of 2012 which is subsequently corrected by the order dated 14 February, 2014, passed in Day application No.23 of 2013.

4. Subsequently, on 17 December, 2016, the decree holder filed an application stating that the suit plot is in possession of Judgment debtor Nos.2 and 4 and the allotment of plot is done

under the Maharashtra Industrial Development Corporation Act by Judgments debtors Nos.2 to 4. There is separate "Planning Authority" in the Judgment debtor Corporation. In spite of appointment, the T.I.L.R. has not taken any steps for measurement etc. Since the suit plot is at Supa Parner, special Bailiff be appointed for handing over of the possession of the suit plot to the decree holder. On the said application, according to the petitioner Corporation, without hearing the Corporation, the executing Court has passed an order that as per the decree holder, measurement is not necessary and as already a detail order is passed on Exhibits-'1' and '5' dated 24 August, 2016 and in the circumstances, possession warrant is reissued and special Bailiff is appointed as prayed for by the decree holder.

5. Heard the learned Advocate for the petitioners, the learned AGP for respondent No.1 and the learned Advocate for respondent No.2.

6. Learned Advocate for the petitioner Corporation submits that the impugned order dated 17 December, 2016 is passed without giving an opportunity of hearing to it. He then pointed out the objection filed by the petitioner Corporation under Section 47 read with Section 151 of the Code of Civil Procedure,

as to the executability of the decree. He, therefore, submits that both the impugned orders are liable to be quashed and set aside and after decision on the objection taken by the petitioner Corporation, the executing Court may proceed in accordance with law.

7. Learned Senior Advocate for respondent No.2 - decree holder strongly opposed the petition. He submits that the Judgment and decree is passed in the year 2013 and the executing petition is filed in the year 2015. At the time when the impugned orders in this petition are challenged, the objection was not at all filed by the petitioner Corporation. The present petition is filed on 12 April, 2017, whereas objection is filed on 15 April 2017 and therefore, he submits that there is no substance in the challenge raised by the petitioner Corporation and the executing Court cannot go beyond the decree and therefore, it has rightly passed the impugned orders, which need not be interfered with.

8. It is a matter of record that after filing of the present petition, the petitioner Corporation has filed objection on 15 April 2017, however, fact remains that the said objection is pending for adjudication before the executing Court. The impugned order

dated 17 December, 2016 appears to be passed without giving an opportunity of hearing to the petitioner Corporation. In that view of the matter, without going into the merits of the case, this Court is inclined to allow the writ petition in the following terms.

9. The executing Court is directed to decide the objection filed by the petitioner Corporation within a period of six weeks from the date of receipt of writ of this Court.

10. Till the objection filed by the petitioner Corporation is decided, both the impugned orders are kept in abeyance.

11. Both the impugned orders shall be subject to the decision of objection filed by the petitioners.

(NITIN B. SURYAWANSHI)
JUDGE

SPT