

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

56 WRIT PETITION NO.2042 OF 2023

**THE EXECUTIVE ENGINEER IRRIGATION DEPARTMENT
THROUGH ITS AUTHORIZED OFFICER
VERSUS**

MAHADEV BASWANTRAO BIDWE AND OTHERS

...
Advocate for Petitioner : Mr. Ashwin Vinayak Hon

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 20-02-2023

PER COURT :

. Heard.

2. By this petition, the challenge is to the order dated 21.11.2022 passed below Exh.51 in Special Darkhast No.6 of 2005 dismissing the petitioner's application to recall attachment warrant and dismissal of the execution proceedings.

3. By way of the execution proceedings the decree passed in Special Civil Suit No. 135 of 2002 seeking rental compensation was put in execution.

4. The learned counsel for the petitioner submits that in P.I.L. No. 103 of 2017 by an order dated 21.02.2018 this Court had restrained the respondents from releasing any payments as rental

compensation for period subsequent to issuance of date of section 4 notification under the Land Acquisition Act. The said proceedings are pending.

5. Learned counsel for the petitioner has invited attention of this Court to the Government Resolution dated 17.05.2018 whereby the Officers have been cautioned not to release rental compensation in view of the order dated 21.02.2018 passed in P.I.L. 103 of 2017.

6. The application was moved by the petitioner before the Executing Court to place on record the documents i.e. order dated 21.02.2018 passed in P.I.L. No. 103 of 2017 and the government resolution seeking to implement the order of this Court which came to be allowed. Subsequently an application was moved by the petitioner seeking dismissal of the darkhast and for recalling of the attachment order. What has been restrained by way of the order dated 21.02.2018 is the releasing of the payment as rental compensation. It appears from the order dated 21.02.2018 that the said order is an interim order and P.I.L. is pending. In such a situation, the petitioner - Zilla Parishad cannot be expected to release the payment of rental compensation as the same may be construed as

contempt of the order of this Court dated 21.02.2018. By this application, the petitioner – Zilla Parishad sought the dismissal of the execution proceedings which is misconceived as the order passed in P.I.L. No.103 of 2017 is an interim order restraining the petitioner from releasing the payment as rental compensation. In my opinion, the Executing Court has rightly rejected the application by considering that there is existing decree and the Executing Court cannot go beyond the decree.

7. The submission of the learned counsel for the petitioner that the decree is a nullity, cannot be accepted for the reason that the order dated 21.02.2018 is an interim order and as far as the issue of nullity is concerned, it is not as if the decree was passed by the Court without jurisdiction. At the same time, it needs to be considered that there has been a restraining order passed by this Court and in such a situation the Executing Court cannot proceed with the execution and direct the petitioner to release the payment of the rental compensation.

8. Considering the order dated 21.02.2018 passed by this Court in P.I.L. No.103 of 2017, the petitioner is at liberty to file an appropriate application before the Executing Court to stay the

execution proceedings pending hearing and final disposal of the P.I.L. No. 103 of 2017 which will be considered by the Executing Court on its own merits and in accordance with law and in particular by taking into consideration the order of this Court dated 21.02.2018.

9. The application to be filed within a period of two weeks from today.

10. Till the decision of the Executing Court on the application for stay which will be filed by the petitioner, the attachment warrant issued by the Executing Court is stayed.

11. Writ petition is disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)

GGP