

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

**CRIMINAL APPLICATION NO. 1063 OF 2021
IN
CRIMINAL APPEAL NO. 808 OF 2015**

Samratsingh Omkarsingh Pardeshi
and others

.. Applicants

Versus

The State of Maharashtra and another

.. Respondents

Mr. Rajendra S. Deshmukh, Senior Advocate i/by Shivanand L.
Jaybhaye, Advocate a/w Tejshree K. Nalawade, Advocate for the
Applicants.

Smt. D. S. Jape APP for Respondent No. 1.

Mr. S. V. Adwant, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 28th March, 2023.

Date on which order pronounced : 12th May, 2023.

ORDER :-

. The applicants are the appellants who have filed Criminal Appeal No. 808/2015 in this Court and the same is pending for final hearing. The appeal is filed praying for quashing and setting aside the order dated 06.10.2015 attaching all the immovable properties of the appellants and putting the same in auction. It is also prayed in the appeal to stay the order passed by the learned Sessions Court dated 06.10.2015. The applicants have moved this application seeking

permission to withdraw the amount of Rs. 3,07,33,410/- along with interest deposited in the Court by the Maharashtra State Road Development Corporation (MSRDC) as per the order passed in Criminal Application No. 453/2021. Subsequently the prayer is added that the applicants be permitted to withdraw only accrued interest part of amount upon principal amount of Rs. 3,07,33,410/- deposited by the MSRDC.

2. The facts giving rise to the application in short as below :

3. The applicant No. 1 – Samratsingh was working as Executive Engineer in Irrigation Department. The applicant No. 2 is his wife. These applicants were tried for the offence punishable under Section 13 (1) (e) r/w Section 13 (2) of the Prevention of Corruption Act, 1988. They were held guilty of the said offence and are directed to suffer rigorous imprisonment for three years and to pay fine of Rs. 20,000/- and in default of payment of fine to suffer simple imprisonment for three months. The applicant No. 2 is convicted for the offence punishable under Section 109 of the Indian Penal Code r/w Section 13 (1) (e) and 13 (2) of the Prevention of Corruption Act and is directed to suffer rigorous imprisonment for three years and to pay fine of Rs. 20,000/- and in default to pay fine to suffer simple imprisonment for three months. This judgment and order dated

21.05.2014 was passed by the learned Additional Sessions Judge, Aurangabad in Special Case No. 23/2003. The applicant Nos. 1 and 2 filed an appeal bearing Criminal Appeal No. 361/2014 and the same is already admitted. The substantive sentence of the applicants is also suspended by this Court. Since the applicants were prosecuted even for the offence punishable under Section 13 (1) (e) of the Prevention of Corruption Act and in view of finding by the learned Additional Sessions Judge that the applicants have gained property disproportionate to their income. The properties standing in the name of applicants came to be attached in which the property Gut No. 65 also came to be attached which stands in the name of applicant Nos. 2 and 3.

4. The property was attached by an order passed on Criminal M. A. No. 110/2003 pending trial by the learned Special Judge. After conclusion of trial the prosecution filed an application bearing Criminal M. A. No. 111/2005 praying for an auction of the properties by the learned Special Judge and the same is impugned in Criminal Appeal No. 808/2015.

5. This Court finds that, earlier application was filed bearing Criminal Application No. 6206/2015 in the appeal. Stay was sought to the order passed by the learned Special Judge putting the property for

auction. This Court by order dated 29.01.2016 had observed that already an order was passed on 05.08.2015 in Criminal Appeal No. 361/2014 in which stay was directed to putting the properties to auction till the disposal of the criminal appeal.

6. The applicants thereafter filed this Criminal Application No. 1063/2021 challenging the order of auction of properties passed by the learned Additional Sessions Judge – 2 in Criminal M. A. No. 111/2015. The total immovable properties i.e. Gala No. 19, CTS No. 307, situated at Somwar Peth, Pune, Plot bearing Old Municipal No. 971 & 2-3-11/1 and New No. 4-15-50/p, CTS No. 2712/1, situated at Kotwalupura, Aurangabad along with constructions, Plot bearing Municipal No. 4-15-19, admeasuring 12.20 Meter × 15.55 Meter, Land Gut No. 2 admeasuring 11R situated at Mauje Girner, Land Gut No. 65 admeasuring 8.5 Hectar situated at Rampuri, and the constructed shed of Gurukrupa Steel and Gurukrupa Wires Company situated in the land Gut No. 65, of Mauje Rampuri Tq. & Dist. Aurangabad were directed to be put for auction seal and the same process were directed to be credited to the State by the judgment and order dated 06.10.2015.

7. In the meantime, some portion of the attached property i.e. Gut No. 65, Mauje Rampuri, Taluka and District – Aurangabad standing in

the name of applicant No. 2 – Shivnanda and applicant No. 3 Abhijitsingh came to be acquired for the project of Samruddhi Mahamarg to the extent of 1 H 1262 R by MSRDC. The MSRDC in view of attachment order sought permission of this Court to deposit the compensation amount towards the said land in this Court. This Court allowed the application bearing Criminal Application No. 453/2021 and allowed respondent – MSRDC to deposit the amount of compensation in this Court by way of order dated 26.02.2021.

8. The applicants by way of application submits that, since now some portion of the land Gut No. 65 is acquired by the MSRDC and the compensation is also deposited in this Court, a prayer is made to permit the applicants to withdraw the amount of compensation along with interest.

9. In support of the application, the applicants submit that this property Gut No. 65 is purchased in the name of applicant Nos. 2 and 3 in 1992 out of amount applicant No. 2 received from her fathers' share in the property. The applicant No. 2 received this property from her parents in partition. Thus, even remotely there is no material to show that the property is purchased out of the amount allegedly acquired by illegal means.

10. The applicants, however, submits that since the amount is unnecessarily lying in this Court and since it is demonstrated that the property is acquired from out of funds received by applicant No. 2, the amount be allowed to be withdrawn. In support of their case, learned senior advocate took this Court to various documents, orders of the Court to demonstrate that the property Gut No. 65 was purchased totally out of the funds she had received from her parents side. He draws attention to a decree passed in Special Civil Suit No. 278/1985 passed by the learned Civil Judge Senior Division, Nashik where this applicant No. 2 and her mother Phulabai were plaintiffs. She had filed the suit against her paternal uncles along with her mother. The original owner of the properties involved in the same suit was belonging to one Gangaramsingh Pardeshi. He had four sons and one daughter. The suit was thus filed against these five persons and Jasodabai Gangaramshingh Pardeshi i.e. wife of Gangaramsingh. Plaintiff No. 1 – Phulabai is wife of deceased Laxmansingh. By way of decree various lands were partitioned and Phulabai and applicant No. 2 were held to be entitled to the properties. The suit was decided in view of compromise and decree was passed. It was decided that by way of compromise Rs. 51,000/- came to be paid to the plaintiffs. Further amount was to be paid in installments of Rs. 1,00,000/- till 31.12.1989 and Rs. 1,60,000/- before 31.07.1990. The total amount of

Rs. 3,11,000/- was to be paid to the plaintiffs and the decree came to be passed. Thus, in view of this compromise the applicant No. 2 received the amount. She has also executed the receipt which is on record showing that they received Rs. 1,00,00/- on 24.12.1989 and thus total amount received Rs. 1,51,000/-. The remaining amount was to be received thereafter. Learned senior advocate thereafter invited attention to a sale deed by which applicant No. 2 purchased the property along with their children namely Kumari Deepali and applicant No. 3 – Abhijitsingh from one Dattatray Shankarrao Borgaonkar for Rs. 5,00,000/-. The sale deed is dated 09.04.1992. Thus, it is submitted that, she had received the amount from her parents side and out of that she had purchased this property along with her mother Phulabai. The total land purchased was 9 H 50 R. Learned senior advocate further invited attention to deed dated 09.04.1992 whereby again some property was received by her in the family arrangement that took place between her and her uncles. Thereafter, he invited attention to gift deeds dated 01.06.1998 by her uncles and one aunt as below :

- (i) Subhash Ramlalsingh Pardeshi - Rs. 50,000/-.
- (ii) Popatsingh Gangaramsingh Pardeshi - Rs. 1,00,000/-.
- (iii) Shevantabai Ishwarsingh Pardeshi - Rs. 1,00,000/-.
- (iv) Shivilalsingh Ramlalsingh Pardeshi - Rs. 50,000/-.

(v) Ramlalsingh Gangaramsingh Pardeshi - Rs. 1,25,000/-.

(vi) Rajaramsingh Gangaramsingh Pardeshi - Rs. 75,000/-.

11. Thus, she has received amount of Rs. 5,00,000/- from her uncles and aunt.

12. Along with this, it is the case of the applicants that when the property is purchased out of income/property received in partition the same cannot be connected with the offence in question.

13. The learned A.PP submits that, from the impugned judgment and order it is seen that, the total disproportionate assets are found to be of Rs. 27,33,374.26/- for the period from 1972-2000. The disproportionate assets are shown to be Rs. 8,83,221/-. Thus, considering that the disputed property Gut No. 65 is acquired before year 2000, she submits that, there is no reason to believe that the property is purchased out of the amount of the offence. She further submits that the learned Trial Court by applying its mind has come to a conclusion that the property is acquired out of the offence and has rightly passed the order of attachment. When the attachment order is in force, the applicants cannot be given any benefit of the land as it is yet to be proved the nature of the property and source of income of purchase of property. She submits that, this can be done only after the

Criminal Appeal No. 361/2014 is decided on merits. Proper care is taken by this Court by directing stay to the auction. She further states that sufficient care is taken of the interest of the applicants by staying order of auction and the property is secured. No case is made out to withdraw the amount or the interest. She prays for rejection.

14. On going through the order passed by the learned Additional Sessions Judge on Criminal M. A. No. 111/2015 dated 06.10.2015 impugned in appeal it is seen that before the Court the application was filed by the prosecution for attachment of the property under Section 5 of the Criminal Law Amendment Ordinance, 1944 r/w Section 452 of the Code of Criminal Procedure. This application was filed seeking further directions for auction of the property. The properties were already attached in view of order passed in Criminal M. A. No. 110/2003 during the trial of the sessions Special Case No. 23/2003. This Criminal M. A. No. 111/2015 was opposed by applicant Nos. 1 and 2. They had also filed their written say in response to the application. There the case of the present applicants was that the property was only attached during the trial and the order on Criminal M. A. No. 110/2003 was in existence or its operation was limited only till the trial was over i.e. still 21.05.2014 the date of the judgment in special case. It is further stated that Criminal M. A.

No. 111/2015 is filed on 16.04.2015 after 11 months after the judgment in the special case. It is further contended about the properties that those cannot be said to be properties acquired from the income without disclosing source. About the property Gut No. 65 which is presently involved in this application is stated to be stridhan and therefore cannot be attached or put for auction. Here one thing needs to be noted that the said property is purchased in 1992. The consideration was paid by the relatives from the uncles of applicant No. 2.

15. The learned Additional Sessions Court has considered all these aspects and has passed an order putting the properties along with present property for auction.

16. As stated, against the said order already this Court has passed an order of staying the auction. Thus, as on today no order is passed by this Court except staying the auction in Criminal Appeal No. 808/2015. So far as Criminal Appeal No. 361/2014 is concerned, the same is pending adjudication. The said appeal is against the judgment in main Special Case No. 23/2003 holding the present applicants No. 1 and 2 guilty. Today, though now in the argument so many details are given about showing as to how applicant No. 2 purchased the property out of the funds she

received from her uncles, however, looking to the say filed Criminal M. A. No. 111/2015, it is seen that the only explanation offered is that the said property is stridhan property and therefore cannot be attached and auctioned. It does not appear from the say and from the order on Criminal M. A. No. 111/2015 that the case has been canvassed now was before the learned Trial Court.

. The case put up before this Court finds place in defence and 313 statement in special case.

17. This Court finds that, by earlier order on Criminal Application No. 453/2021 already interest of the applicants is protected by granting stay to auction of the properties. However, what needs to be considered is that now the appeal is pending in this Court. It is not certain as to when appeal would be taken up for final hearing. The applicant though have tried to get the appeal listed for hearing it could not be taken up. The applicants have no control over the same and still have to suffer. As rightly submitted the applicant No. 1 is not getting any benefit of service and regular pensionary benefits. The applicants are also deprived of income from the properties. Question is whether parties can be made to suffer for indefinite period ? The property in question also stands in the name of applicant No. 3 who is not an accused. Because of this litigation he is also deprived of the property

and income from property. Considering this, the following order is passed.

ORDER

(i) The application is partly allowed in respect of applicant No. 3.

(ii) Applicant No. 3 shall be entitled to receive 25% of the amount of interest on the amount deposited by respondent No. 2 – MSRDC in this Court, subject to furnishing undertaking that if decision goes against appellants, he shall be liable for the recovery of the said amount if Court passes specific order at the conclusion of the Criminal Appeal Nos. 361/2014 and 808/2015.

18. The Criminal application thus stands disposed off accordingly.

(KISHORE C. SANT, J.)

PS.B.