



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

WRIT PETITION NO. 10760 OF 2022

Bura Nagar Grampanchayat Through Its Sarpanch
VERSUS
Arjun Kisan Bhagat

Mr. A. K. Gawali, Advocate for Petitioner
Mr. P. R. Katneshwarkar, Senior Advocate i/b Mr. A. V. Bhagat, Advocate
for Respondent

CORAM : R. M. JOSHI, J.
DATE : 18th March, 2025

PER COURT :-

1. This petition takes exception to the order dated 27.07.2022 passed below Exhibit 60 in Regular Darkhast No. 149/2008 whereby this application came to be allowed and judgment debtor i.e., petitioner herein was directed to submit information and documents in respect of immovable properties of Gram Panchayat, Bura Nagar, for passing further order of attachment thereof.

2. Petitioner is Gram Panchayat/defendant in Regular Civil Suit No. 671/1980. This suit is decreed by the Trial Court on 16.08.1996. This judgment and decree is confirmed till Second Appeal. Original plaintiff/decreed holder filed execution proceedings being Regular Darkhast No. 149/2008 in the said proceedings. An application Exhibit 60 came to be filed initially for action of Contempt Court against officers and the office bearers of the Gram Panchayat for willful disobedience of the

injunction granted by the Trial Court in Regular Civil Suit No. 671/1980. A direction was also sought for compensation of Rs. 1,00,000/- payable by judgment debtor. The learned Execution Court relying upon order passed on 02.02.2017 by same Court earlier held that the Court has already held about their being willful disobedience of order/judgment passed against Gram Panchayat, and hence, without recording any independent findings proceeded to pass impugned order.

3. Learned counsel for Petitioner has drawn attention of the Court to the application filed before the Execution Court on 29.09.2008 and order passed thereon date 02.02.2017 to submit that the said application came to be dismissed and hence there was no reason for petitioner to challenge any findings therein. It is further argument that relying upon the said order, present impugned order came to be passed which is not sustainable in law.

4. Learned senior counsel appearing on behalf of the respondent/decreed holder supported the impugned order. By referring to the judgment and decree passed in Regular Civil Suit No. 671/1980, it is contended that there is willful disobedience of the order and hence in view of the Order XXI Rule 32, it is open for the Execution Court to pass order of attachment of the properties of Gram Panchayat without even determining the amount of compensation.

5. Perusal of the record indicates that application was moved before the Execution Court seeking directions against the judgment debtor to provide documents and information. This application came to be rejected on 02.02.2017. Though, in the said order, learned Execution Court has recorded findings that the Gram Panchayat under the guise of taxes, has in fact recovered the rent, which is contrary to the judgment and decree passed by Trial Court. In this regard, if the application on which this order came to be passed is perused then it reveals that there was no case sought to be made out by the decree holder that the Gram Panchayat has recovered the rent under the guise of recovery of taxes. Once no such case was made out, the Gram Panchayat was denied an opportunity of hearing on this issue. Since, the application came to be rejected, Gram Panchayat had no occasion to challenge the said finding. In any case, this Court finds substance in the contention of learned counsel of petitioner that in absence of allowing the party to meet such contention, the order would not bind such party.

6. Suffice it to say that case sought to made out to that effect, it was not justified for the Execution Court to rely upon the said findings in order to pass order impugned. The Execution Court is required to decide the said issue afresh on its own merit, which has not been done herein.

7. In view of above discussion, impugned order cannot sustain.

Hence, set aside. Order passed below Exhibit 60 is relegated back to the Execution Court for decision afresh in accordance with law.

(R. M. JOSHI, J.)

bsj