

M. Ex. 13/2014

Order No.- 42
dt.-30.06.2018

Today is fixed for passing order arising out of hearing of the petition dated 29.03.2018 filed by the decree holder under order 21 rule 52 read with section 151 C.P.C. The record is taken up for passing order.

By filing the petition under order 21 rule 52 read with section 151 C.P.C dated 29.03.2018 the decree holder prayed for a direction upon the ADM (LA) Purba Bardhaman to held up the accounts mentioned in the schedule of the petition and the interest or dividend payable thereon till satisfaction of the decree on the grounds inter alia that ADM (LA), Purba Bardhaman being a responsible officer of the Jdr/state has disclosed the P/L accounts under his control and the same is required to be held up for the purpose of execution and satisfaction of the decreetal dues which is kept unpaid since long inspite of affording sufficient opportunities to that effect. Decree holder also prayed for a direction upon the ADM (LA) to held up the P/L accounts and call for a report to that effect within a specified period for the decreetal dues amounting to Rs.2,87,38,077/- as on 31.03.2018. Be it mentioned here that in the schedule of the petition the decree holder disclosed **4877: as Scheme ID and Description of General Account and 5123: as Scheme ID and Description of L.A Contingency** which are under control and custody of ADM (LA) Purba Barddhaman.

On the other hand Ld. G.P Burdwan by filing objection prayed for dismissal of the application so filed by the decree holder on the grounds inter alia that inspite of several requests made by the LA Collector, the amount in question is not paid by the requiring body and accordingly the Jdr/State has failed to deposit the same to satisfy the decree. It is further contended that no payment from the P/L Account can be made as prayed for and any order for holding up the P/L Account would be against the public policy as the decree holder has his dues only to the extent of Rs.2,42,17,199/- as on 30.06 .2018 while prayer has been made to held up the entire account with a malafide intention on the part of the decree holder.

In course of hearing Ld. Counsel for the decree holder submitted that the decree holder has suffered a lot due to negligent attitude of the Jdr/State, so far payment of the decreetal dues is concerned. Ld. counsel for the D.hr further submitted that the Jdr/State has no right to cause further delay to satisfy the decreetal dues on the ground of its non payment by the Jdr/BDA or the stranger promoter / developer . He further submitted that since the Jdr/State has acquired the lands from the land looser and since the Jdr/State has sufficient fund in its various accounts to satisfy the decreetal dues, Jdr/State

cannot be allowed to cause further delay in making the payment in any manner rather the Jdr/State may be directed to pay the decretal dues from the fund/funds mentioned above and recover the same from the Jdr/BDA or the promoter concerned in course of time. It is further argued that the Jdr/State has already dragged and delayed the matter for indefinite period and unless the account in question is held up by the court it would not be possible to recover the decretal dues kept unpaid since long at the whims of the Jdr/State. He further submitted that the Jdr/State has disputed the decretal amount in its W.O and so for the time being the admitted amount to the extent of Rs. 2,42,17,199/- may be held up by the court with an option kept opened to settled the dispute regarding quantum of decretal dues in course of time.

On the other hand Ld. G.P Burdwan submitted that the decretal dues involved in this case cannot be recovered in the manner as prayed for by the decree holder and the petition has been filed with an ill motive to cause hardship and embarrassment to the Jdr/State and its executives. It is further argued that the petition being filed with a mala fide intention is liable to be dismissed. He further submitted that the claim amount is required to be settled before holding up the same and prayer of the decree holder to hold up the admitted amount cannot be entertained.

Admittedly agricultural land of the decree holder have been acquired by the Jdr/State in the year 2006/2007 and the enhanced compensation is yet to be paid to the decree holder inspite of obtaining a decree to that effect in the year 2013. Moreover, the Jdr/State having acquired the lands of the land looser and having sufficient fund in its various accounts to satisfy the decretal dues, may be directed to pay the decretal dues from the fund/funds mentioned above and recover the same from the Jdr/BDA or the promoter concerned in course of time. Be that as it may, perusal of the materials on record reveals that the land in question acquired by the Jdr/State is the agricultural land and the fundamental right of a farmer to cultivate the lands is a part of right to livelihood. Agricultural land is the foundation for a sense of security and freedom from fear and there is strong linkage between the land and the persons status in the social system. In a case law reported in 2014(4) ICC 534, Bhusawal Municipal Council Vs Nivrutti Ramchandra Phalak and others Hon'ble Apex Court clearly observed that "A blinkered vision of development, complete apathy towards those who are highly adversely affected by

the development process and a cynical unconcerned for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens. For people whose lives and livelihood are intrinsically connected to the land, the economic and cultural shift to a market economy can be dramatic”.

A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmers. Unless one experiences their struggle, that headache he will never know how it feels. In the present case the D.hr lost his agricultural land in the acquisition process for the purpose of development in the year, 2006/07 Vide L.A. reference case no. 3(iv)/2006-2007 and being dissatisfied with the compensation award filed a reference case for enhancement of compensation which got decreed on 17.08.2013 wherein the Jdr/State was directed to clear the entire decretal dues within 90 days from the date of the decree. Unfortunately the D.hr has not got a single penny in view of that decree who is running from pillar to post since 2013 to recover his adequate dues. In spite of having a Court's order in his hand the D.hr has lost all hopes and all sorts of harassments is getting meted out upon him by the executives of the Jdr/State. Even several directions issued by this Court from time to time with regard to payment of the decretal dues to satisfy the decree has not worked as the Jdr/State extended its full non cooperation and preferred not to take positive steps for the purpose of satisfying the decree. Such attitude of the Jdr/State and its executives not only amounts high handedness and arbitrariness on their part rather it has caused serious prejudice to the D.hr. The excuse that the decretal dues involved in this case can not be satisfied by the funds maintained in the P.L. Account/General Account as disclosed by the executives of the Jdr/State can not be accepted as a justified cause. When the land has been acquired, the law requires prompt payment of compensation/enhanced compensation. In case the party by whom the land is acquired is not in a position to make the payment of compensation, the person aggrieved becomes entitled to get the land restored. Be that as it may, since the Jdr/State has not satisfied the decretal dues till now in spite of specific direction to that effect, this Court can not sit limply and allow the defaulter to go Scot free and force the person seeking protection to loose hope. This court can not adopt an indifferent and passive attitude in such circumstances.

It is well known to all of us that there is a proverbial saying amongst the litigants in this country that it is easy to obtain a decree in India but difficult to execute it. In order to redress the said mischief and in order to curb public evil of delaying and stalling execution of a decree by a Judgment debtor and to effectuate public benefit to allow the decree holder to enjoy the fruits of decree expeditiously, all the powers vested with the civil court is required to be exercised liberally to administer proper justice.

A litigant especially a judgment debtor where a decree has been passed against him is required to be fair to himself, to the decree holder and before the Court. This court can not afford to encourage the judgment debtor/State to adopt an unfair behaviour towards the D.h. simply to delay the execution of decree. The Jdr/State can not be allowed to claim a vested right to delay the execution proceeding by withholding decreetal dues for indefinite period.

Since the entire decreetal dues along with up to date interest in this case is kept unpaid since long by the Jdr/state without any lawful justification and the decree holder being worst sufferer is running from pillar to post and since the Jdr/state inspite of having sufficient means and opportunity did not satisfy the decreetal dues rather avoiding its liability by dragging and delaying the execution process by various means, this court is of the view that the ADM (LA) Purba Bardhaman may be directed to held up the accounts partly as mentioned above and there is no impediment to do so from this end.

*Accordingly, ADM (LA), Purba Bardhaman is hereby directed to held up a sum amounting to Rs.2,42,17,199/- (which appears to be admitted amount by the Jdr/State) towards the decreetal dues involved in this case from any one or from both the following two accounts ie. **(General Account having Scheme ID and Description 4877 as well as L.A Contingency having Scheme ID and Description 5123)** within 06.07.2018 subject to further order of this court with a further direction to send a report to the undersigned by 09.07.2018 to the effect that the order has been complied with and the amount has been held up as directed by this court. Let a copy of this order be sent to the ADM (LA), Purba Bardhaman through the Ld. G.P Bardhaman for his information and taking necessary action*

from his end. Decree holder to put necessary requisite at once. Be it mentioned here that only the admitted amount by the Jdr/State has been held up by this order and an option is kept opened to settle the decretal dues by the parties later on.

To date i.e 09.07.2018 for awaiting report from ADM (LA) Purba Bardhaman with regard to attachment of the amount mentioned above and passing further order.

Dictated & corrected by me

*L.A Judge
(Addl. District Judge),
1st Court, Burdwan*

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(Addl. District Judge),
1st Court, Burdwan*

