

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

**CIVIL APPLICATION NO. 3449 OF 2015
(FOR REVIEW)
IN
FIRST APPEAL NO. 07 OF 1987**

The State of Maharashtra

...APPLICANT

versus

Sitaram Gangasahai Agrawal
and others

...RESPONDENTS

.....
Mr. B.A. Shinde, A.G.P. For applicant

.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 29th APRIL, 2016.

Order :-

1. By present application, the applicant - State is seeking review of judgment and order dated 28-04-2003 passed by this court in First Appeal No. 7 of 1987 with cross objection stamp no. 6238 of 1987.

2. Mr. Shinde, learned Assistant Government Pleader submits that the division bench of this court (Coram: B.H. Marlapalle and V.G. Munshi, JJ.) vide judgment and order dated 28-04-2003 dismissed the appeal filed by the appellant – State on the ground that one of the claimants died and his share was only to the extent of 10%. According to learned Assistant Government Pleader, the court abated the appeal only on the ground that even if one of the claimants dies there cannot be two decrees.

3. According to learned Assistant Government Pleader, the property involved in the appeal never belonged to the claimants and it was the property of partnership firm. As such, the proposition applied by the court, while abating the appeal was improper and incorrect.

4. We have considered the submissions. On perusal of order, it appears that this Court had passed order dismissing the appeal as abated way back in the year 2003. The respondents must have received the amount by now.

5. Be that as may, we have also gone through the award passed by Reference Court. Reference Court has considered the sale instances in respect of the property situated in the nearby vicinity i.e. sale deed dated 1st April, 1981 whereunder land was purchased by auction. Notification under section 4 of the Land Acquisition Act, 1894 (For short "Act of 1894") is dated 28-12-1980. The Reference Court has considered that Patkar's Colony is situated on the eastern side of Survey No. 18 and on the western side of State High-way there are Taj Hotel, Dr. Vaidyas Clinic, commercial shops including petrol pump. The situation of the acquired property was considered. The registered sale deed dated 27-03-1980 is also considered. The Reference Court had also considered the various sale deeds even the Reference Court has considered all relevant aspects of the matter. As such, no such ground is shown by the applicant- State for review of the impugned judgment and order.

6. In the light of that, civil application for review of impugned judgment and order stands dismissed. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK