

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

WRIT PETITION NO.2753 OF 2017

- 1 Sudam Mangal Koli (Ingale),
Age : 36 years, Occupation : Agriculture.
- 2 Kaushiyabai Mangal Koli,
Age : 59 years, Occupation : Agriculture.
- 3 Deelip Mangal Koli,
Age : 35 years, Occupation : Agriculture.
- 4 Manisha Rajendra Purkar,
Age : 30 years, Occupation : Agriculture.
- 5 Mukta Mangal Koli,
Age : 36 years, Occupation : Agriculture.

All R/o Kapuswadi, Taluka Jamner,
District Jalgaon.
Through GPA of Petitioner No.3.

...PETITIONERS

-VERSUS-

- 1 The State of Maharashtra.
Through the District Collector,
Jalgaon.
- 2 The Special Land Acquisition Officer (1),
Upper Tapi Project, Hatnur, Jalgaon.
- 3 The Superintendent Engineer,
Tapi Irrigation Development Corporation,
Jalgaon.
- 4 The Executive Engineer,
Tapi Irrigation Development Corporation,
Jalgaon.

- 5 Sonabai Rajdhar Patil,
Age : 76 years, Occupation : Agriculture,
R/o Kurha Kakola,
Taluka Muktainagar,
District Jalgaon.

...RESPONDENTS

**WITH
WRIT PETITION NO.2757 OF 2017**

Subhash Mango Koli,
Age : 55 years, Occupation : Agriculture,
R/o Kapuswadi, Taluka Jamner,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through the District Collector,
Jalgaon.
- 2 The Special Land Acquisition Officer (1),
Upper Tapi Project, Hatnur, Jalgaon.
- 3 The Superintendent Engineer,
Tapi Irrigation Development Corporation,
Jalgaon.
- 4 The Executive Engineer,
Tapi Irrigation Development Corporation,
Jalgaon.
- 5 Sonabai Rajdhar Patil,
Age : 76 years, Occupation : Agriculture,
R/o Kurha Kakola,
Taluka Muktainagar,
District Jalgaon.

...RESPONDENTS

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Shri A.B.Kale h/f Shri A.M.Hajare, Advocates for the Petitioners.
Shri S.R.Yadav, Assistant Government Pleader, for Respondent Nos.1 and

2.

Shri P.S.Shendurnikar, Advocate for Respondent No.5.

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CORAM: RAVINDRA V. GHUGE, J.

Reserved on 08th August, 2018.

Pronounced on 04th September, 2018.

JUDGMENT:

1 Since both the sides agree that the challenge in these two Writ Petitions is common, they are being decided by this common judgment. For properly appreciating the arguments of the parties, the facts in Writ Petition No.2753/2017 are referred to.

2 The Petitioners are aggrieved by the judgment and order dated 03.02.2017 passed by the concerned Court in MANRJE No.9/2016. Similarly, they are aggrieved by the order dated 03.02.2017 passed by the concerned Court below Exhibits 23 and 32 in Regular Darkhast No.350/2016, by which, they are directed to redeposit the withdrawn amount and are issued a show cause notice as to why criminal proceedings should not be initiated against them.

3 The Petitioners claim to have their agricultural land at village Kapuswadi, Taluka Jamner in Gat No.287/2 admeasuring 2 hectors 18 R and 93 R Potkharaba. The said land is said to have been acquired by the acquiring body for an irrigation project. The Special Land Acquisition

Officer delivered an award on 12.10.2007. These Petitioners moved the Reference Case under Section 18 of the Land Acquisition Act, 1894 seeking enhancement in compensation. Evidence was led in the matter and the LAR Court partly allowed the reference on 30.07.2015.

4 The LAR Court recorded in its judgment that the Petitioners as well as Sonabai Rajdhar Patil (Respondent No.5 herein) are entitled for compensation. The contention of the Petitioners is that the said judgment dated 30.07.2015 is erroneous and perverse. Respondent No.5/ Sonabai was never a party to the LAR proceedings and hence, no share in the compensation amount could have been granted in favour of Sonabai Patil in her absence.

5 An application MANRJE No.9/2016 was filed by these Petitioners under Section 152 of the Code of Civil Procedure and prayed for deleting the name of Sonabai Patil from the judgment. The concerned Court rejected the said application by the impugned order dated 03.02.2017.

6 Notwithstanding the above, these Petitioners have filed Regular Darkhast No.350/2016 and sought execution of the same judgment of the LAR Court dated 30.07.2015. The acquiring body deposited the compensation amount in the Executing Court. The Petitioners applied for withdrawal of the entire sum deposited. The concerned Court passed an order on 07.07.2016, thereby, allowing the

Petitioners to withdraw the said amount on the condition of furnishing a bond/ undertaking.

7 Sonabai Patil, therefore, filed applications Exhibits 23 and 32 in the execution proceedings and brought it to the notice of the Executing Court that she was entitled for compensation in view of the judgment of the LAR Court. A request was put forth to direct these Petitioners to deposit the withdrawn amount of Rs.38,13,300/- so that Sonabai could take her 4/7th share. By the impugned order dated 03.02.2017, the concerned Court directed the Petitioners to redeposit an amount of Rs.21,79,028/- in the Court and has issued the impugned show cause notice. The operative part of this order reads as under :-

- “1) Both the applications are allowed.*
- 2) The decree holders Sudam Mangal Koli, Kaushalyabai Mangal Koli, Dilip Mangal Koli, Manisha Rajendra Purkar and Mukta Mangal Koli are hereby directed to deposit an amount of Rs.21,79,028/- (Twenty one lakhs seventy nine thousand and twenty eight rupees only) (i.e. 4/7th share of Sonabai Rajdhar Patil) in the Court within 15 days from the date of this order.*
- 3) After depositing an amount of Rs.21,79,028/- by the decree holders Sudam Mangal Koli, Kaushalyabai Mangal Koli, Dilip Mangal Koli, Manisha Rajendra Purkar and Mukta Mangal Koli in the Court, Sonabai Rajdhar Patil is allowed to withdraw the said amount by paying deficit court fees and furnishing bond of like amount and undertaking for the payment of income tax deductions if any and for depositing the said amount as and when directed by the Court and subject to decision of Reg. Civil Appeal No.179/2015.*
- 4) Issue show cause notice to the decree holders Sudam Mangal Koli, Kaushalyabai Mangal Koli, Dilip Mangal*

Koli, Manisha Rajendra Purkar and Mukta Mangal Koli as to why criminal action should not be initiated against you for concealing the material facts from the Court within fraudulent and dishonest intention to get the wrongful gain by depriving the lawful right of Sonabai in the enhanced compensation amount, returnable on 21.02.2017.”

8 The grievance of the Petitioners is that Sonabai Patil is not entitled for any compensation and as such, the Court could not have ordered the Petitioners to redeposit the amount. It is further contended that only an interested person can file a reference case for seeking enhancement in compensation. Sonabai Patil had not filed any such reference case for seeking enhancement in compensation. The Petitioners have 3/7th share and hence, they have withdrawn the whole amount deposited in the Court. Sonabai Patil cannot stake any claim for any amount as she has not filed any proceedings under Section 18 and within the limitation prescribed therein. She may file a separate suit for recovery of the amount or may approach the competent authority under Section 30 of the Land Acquisition Act, 1894.

9 Reliance is placed upon the judgment of the Honourable Supreme Court in the matters of *P.K.Sreekantan and others vs. P. Sree Kumaran Nair and others, AIR 2000 SC 516* and *Sunderlal vs. Paramsukhdas and others, AIR 1968 SC 366*.

10 The Petitioners are also aggrieved by the observations of the

Executing Court in its order dated 03.02.2017, which are as under:-

(a) Paragraph 10 :-

“The Decree Holders have withdrawn the entire amount deposited by the Respondent without having right to withdraw the entire amount.”

(b) Paragraph 11 :-

“As the decree holders have withdrawn the entire amount, it is necessary to direct the Decree Holders to deposit the amount to the extent of 4/7th share of the Sonabai Rajdhar Patil.”

(c) Paragraph 12 :-

“The award as well as 7/12 extract of the property shows the name of Sonabai Rajdhar Patil as one of the owner. Despite having knowledge of all the above facts, the decree holders have neither pleaded the said facts in the reference nor brought it to the notice of the Court. After the said decision, the decree holders have filed the present Darkhast and have withdrawn entire amount. This clearly shows that the decree holders have concealed the material facts from the Court with fraudulent and dishonest intention to get the wrongful gain by depriving the right of Sonabai. Hence, for this act of the decree holders, criminal action needs to be initiated.”

11 The contention is that Sonabai has no right to any share in the property and hence, she could not have prayed for any amount of compensation. She is not entitled to any amount and the Executing Court cannot insist that the amount equal to 4/7th share be preserved in the

proceedings to be paid to Sonabai. The Petitioners have not committed any fraud or any illegality in withdrawing the entire amount that was deposited. A further amount of Rs.29 lac has to be deposited and that amount can be paid to Sonabai as her 4/7th share.

12 The learned Advocate appearing on behalf of Sonabai Patil submits as under :-

(a) The revenue records indicate that Sonabai is one of the property holders.

(b) The LAR Court realized, while delivering the judgment on 30.07.2015, that the name of Sonabai Patil has been suppressed by these Petitioners in order to deprive her of her share.

(c) Sonabai Patil is one of the heirs and she has a share in the acquired land.

(d) The LAR Court, therefore, concluded that she needs to be granted her 4/7th share in the compensation amount.

(e) The LAR Court, therefore, issued the following order after considering the entire evidence on record :-

“2) In L.A.R. No.593/2008, the opponents shall pay to the claimant and Sonabai Rajbhar Patil enhanced compensation of land bearing Gat No.287/2 area 2H-80 Ares bagayat land and 0-93 Ares potkharab land situated at village Kapuswadi Tal.Jamner at the rate of Rs.4,60,000/- (Rupees Four Lacs Sixty Thousand only) per hectare, at the rate of Rs.1,15,000/- (Rupees One lac Fifteen thousand only) per hectare respectively and

enhanced compensation of trees Rs.3,78,734/- (Rupees Three lacs Seventy Eight thousand Seven Hundred Thirty Four only) after deducting land value and valuation of trees already received by the claimant in the award.

- 3) *In L.A.R. No.595/2008, the opponents shall pay to the claimant and Sonabai Rajbhar Patil enhanced compensation of land bearing Gat No.287/1 area 1H-65 Ares bagayat land and 0-15 Ares potkharab land situated at village Kapuswadi Tal.Jamner at the rate of Rs.4,60,000/- (Rupees Four Lacs Sixty Thousand only) per hectare and at the rate of Rs.1,15,000/- (Rupees One lac Fifteen thousand only) per hectare respectively and enhanced compensation of tree Rs.80,751/- (Rupees Eighty Thousand Seven Hundred Fifty One only) after deducting land value and valuation of trees already received by the claimant in the award.”*

(f) The order dated 30.07.2015 delivered by the LAR Court settling the right of Sonabai, has not been challenged by these Petitioners in any Court even today and has attained finality.

(g) The Regular Civil Suit No.17/2002 (new No.241/2006) led to the judgment dated 03.09.2015 by which, the Trial Court concluded that Sonabai has a 4/7th share in the suit property.

(h) As such, the view taken by the LAR Court on 30.07.2015 is in tune with the judgment and decree of the Trial Court dated 03.09.2015, which clearly establishes that Sonabai has a 4/7th share in the acquired property.

(i) All these Petitioners were parties to RCS No.17/2002 (new No.241/2006) and as such, they were aware that Sonabai has a 4/7th

share.

(j) The Petitioners, on the one hand, contend that the judgment of the LAR Court dated 30.07.2015 is erroneous in which, the share of Sonabai was decided and on the other hand, have not challenged the said judgment before any court.

(k) Despite this position, the Petitioners have initiated the execution proceedings of the same judgment dated 30.07.2015 and while praying for the execution of the said award, they have misled the Executing Court and have obtained an order in haste and have withdrawn the entire amount of compensation deposited, beyond their share which is 3/7th.

(l) The right of Sonabai to 4/7th share in view of the award dated 30.07.2015 and in view of the judgment and decree of the Trial Court dated 03.09.2015, has attained finality as both these verdicts have not been set aside by any court.

(m) Reliance is placed upon the judgment of the Honourable Apex Court in the matter of *Dadu Dayal Mahasabha vs. Sukhdev Arya and another, (1990) 1 SCC 189* and of this Court in the matter of *Babasaheb s/o Laxman Tidke vs. Karbhari Bapurao More, 2002 (5) Mh.L.J. 177*.

13 I have considered the submissions of the learned Advocates as are summarized above. I have gone through the record available,

threadbare. I have considered the reports cited and the impugned orders.

14 Though the Petitioners have made a valiant attempt to canvass that they have not acted fraudulently as the LAR proceedings No.593 were lodged in the year 2008 when the right of Sonabai was not crystallized, it cannot be ignored that the judgment and award was delivered by the LAR Court on 30.07.2015. The Petitioners, therefore, became aware that the right of Sonabai to 4/7th share was crystallized. This judgment has attained finality. The Petitioners were also aware that they were the defendants in the suit instituted by Sonabai long ago in 2002 and by judgment dated 03.09.2015, the Civil Court also crystallized the share of Sonabai. In spite of this position and despite the Petitioners seeking execution of the same award dated 30.07.2015, which recognizes the right of Sonabai, have apparently misled the Executing Court and succeeded in withdrawing the entire share. Their fraudulent acts have been sufficiently exposed and hence, the impugned order by which show cause notices were issued to these Petitioners as to why criminal action should not be initiated against them, cannot be faulted.

15 I had called upon the learned Advocate for the Petitioners to make a statement as to whether, the Petitioners would deposit the amounts in the Executing Court and the proposed criminal action can be dropped against them. The learned counsel submitted, on instructions, that these Petitioners are not willing to deposit the said amount. This is an

aggravating factor at this stage.

16 In *Dadu Dayal Mahasabha (supra)*, the Honourable Supreme Court has held in paragraph 7 as under :-

“7. The High Court, while confirming the order, said that in the exercise of inherent power under Section 151 of the Code of Civil Procedure a court can vacate an order obtained by fraud on it. Reliance had been placed on an old decision of Bombay High Court of 1882 and a Madras decision of 1880. In *Basangowda Hanmantgowda Patil v. Churchigirigowda Yogangowda*, I.L.R. 34 Bombay 408, the defendant applied to the court to set aside a compromise decree on the ground that he had not engaged the lawyer claiming to be representing him and had not authorised him to compromise the suit. The court accepted his plea and ruled that it is the inherent power of every court to correct its own proceedings when it has been misled. Similar was the view of the Calcutta High Court in several decisions mentioned in *Sadho Saran* case. The ratio has been later followed in a string of decisions of several High Courts. The same principle applies where a suit is permitted to be withdrawn on the basis of a prayer purported to have been made on behalf of the plaintiff. The courts below were, therefore, not right in holding that the application of the appellant invoking the inherent jurisdiction of the court was not maintainable. If the appellant's case is factually correct that Hari Narain Swami was not its elected secretary and was, therefore, not authorised to withdraw the suit, the prayer for withdrawing the suit was not made on behalf of the appellant at all and the impugned order was passed as a result of the court being misled. Such an order cannot bind the appellant and has to be vacated. The trial court was thus clearly wrong in dismissing the appellant's application as not maintainable, and the High Court should have intervened in its revisional power on the ground that the trial court had failed to exercise a jurisdiction vested in it by law.”

17 In **Babasaheb Laxman Tidke (supra)**, this Court observed in paragraph Nos.17 and 18 as under :-

“17. A reference with profit can be made to the case of *Dadu Dayal Mahasabha vs. Sukhdeo Arya*, 1990 (1) SCC 189. In case of *Dadu Dayal Mahasabha*, the suit was allowed to be withdrawn by an unauthorised person by misleading the Court. The said withdrawal order was tried to be recalled under Section 151 of Civil Procedure Code. The Supreme Court has observed that a court has inherent power to correct its own proceedings when it is satisfied that in passing a particular order it was misled by one of the parties. The Supreme Court approved the ratio of *Baswangowda*, referred *supra*, and observed that the order which is outcome of misrepresentation cannot bind the opposite party and has to be vacated.

18. The Supreme Court in case of *Moolchand vs. Fatima Begum*, 1995 (6) SCC 742 has explained the scope of inherent powers under section 151 of Civil Procedure Code. The Supreme Court has held that interests of justice are the primary consideration in granting or not granting prayers in a petition under section 151 of Civil Procedure Code. The Supreme Court has further observed that no rule of procedure can curtail inherent powers of the Court. It is said that the Court's role is of a balancer. The Supreme Court in case of *Budhia Swain vs. Gopinath Deb*, (1999) 4 SCC 396 has laid down certain guidelines for invoking inherent powers under section 151, Civil Procedure Code. It is said that a Tribunal or Court may recall an order earlier made by it if :-

(1) The proceedings culminating in the order suffer from inherent lack of jurisdiction which is patent.

(2) Fraud or collusion have been used to obtain the judgment and,

(3) There has been a mistake by the Court prejudicing a party and,

(4) A judgment has been rendered in ignorance of fact that necessary party has not been served at all or has died and the estate was not represented.”

18 The Honourable Apex Court has laid down the law in ***Syed Yakoob v/s K.S.Radhakrishnan, AIR 1964 SC 477*** and ***Surya Dev Rai v/s Ram Chander Rai, AIR 2003 SC 3044*** that unless an order appears to be perverse, erroneous and likely to cause gross injustice to the litigants, no interference is called for only because a second view is possible.

19 By the impugned order, the Executing Court has only issued show cause notices to these Petitioners and hence, they would be at liberty to submit their explanation and would be heard before the Court passes an order. As such, they still have an opportunity to make amends and re-deposit the amounts

20 In view of the above, both these Writ Petitions are dismissed with costs quantified at Rs.10,000/- (Rupees Ten Thousand) to be paid by each of these Petitioners to Sonabai i.e. (total Rs.60,000/-). The said amount shall be deposited in this Court on or before 06.10.2018, failing which, the said amount shall carry interest at the rate of 6% per annum, besides liberty to Sonabai to initiate appropriate proceedings in this Court for disobedience of the order and/or before any competent court for recovery of the said amount of costs.

21 After the pronouncement of this judgment, the learned Advocate for the Petitioners prays for staying this judgment. Learned Advocate for respondent No.5 /Sonabai submits that she is about 77 years

of age and is yet to receive her benefits since the Petitioners approached this Court in 2017 and stalled the apportionment of compensation to Sonabai.

22 I find that the Petitioners were given an opportunity by this Court before delivering this judgment to re-deposit the entire amount withdrawn by them. They have refused to re-deposit the amount. In view of their insistence, these proceedings were considered and I have arrived at a prima facie conclusion that these Petitioners have acted fraudulently. It is in these circumstances and upon considering the plight of Sonabai, who has not received a penny whereas, these Petitioners have taken away the entire amount deposited, which did not belong to them entirely, that the request is rejected.

kps

(RAVINDRA V. GHUGE, J.)