

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1065 WRIT PETITION NO. 7012 OF 2005

1. State of Maharashtra,
Through the Collector, Parbhani
2. Executive Engineer,
Jaikwadi Project, Divn. No.2,
Ratnapur, Tq. Paithan
District Aurangabad
3. Sub Divisional Engineer,
Jaikwadi Project Construction
Sub Dvin. No.10, Parbhani
4. The Special Land Acquisition Officer
J.P. No.2, Parbhani ...Petitioners

versus

Sarladevi Bansilal Sharma
Age 49 years, Occ. Household
and agriculture, R/o. Nanalpeth
District Parbhani ...Respondent

...
AGP for Petitioners : Mr. S.P. Tiwari
Advocate for Respondent : Mr. S.S. Choudhari
.....

CORAM : V. K. JADHAV, J.
DATED : 23rd MARCH, 2018

ORAL JUGMENT:-

1. The agricultural lands owned and possessed by the respondent came to be acquired for construction of Jaikwadi canal. The Special Land Acquisition Officer has passed an award and granted the compensation.

2. Being aggrieved by the inadequate compensation awarded by the S.L.A.O., the respondent had filed L.A.R. No. 213 of 1982 in the reference court. The reference Court by judgment and award dated 8.4.1993 partly allowed the reference petition and granted compensation at the enhanced rate. The said award passed by the reference court has attained the finality. There is no dispute that the award passed by the reference court has attained the finality and accordingly the respondent herein has filed Special Darkhast No. I-32 of 1993 before the learned C.J.S.D. Parbhani. In the pending Darkhast, the petitioners-judgment debtors have filed an application Exh.43 mentioning therein that due to incorrect calculation the excess amount has been paid to the decree holder to the tune of Rs.37,890/- and the same may kindly be recovered from the decree holder. By the impugned order dated 16.11.2004, the learned Civil Judge, Senior Division, Parbhani has rejected the said application. Hence, this writ petition.

3. The petitioners-original judgment debtors though submitted calculation which is a part of application Exh.43 indicating thereby that the excess amount has been paid to the respondent-decree holder as against the award which has attained finality, the said application came to be decided in absence of the petitioners-

judgment debtors.

4. On the other hand, learned counsel appearing of the decree holder has invited attention of the executing court to Exh.29 and further pointed out to the Court that in fact, the amount of Rs.3,16,127/- is due and outstanding against the petitioners-judgment debtors and there is no scope to say that there is excess payment made to the respondent-decree holder. Consequently, the trial court has rejected the application.

5. It thus appears that the executing court has not given opportunity of being heard to the petitioners-judgment debtors. On perusal of the calculation as shown in the application Exh.43, it appears that the petitioners-judgment debtors have deposited certain amount in the court and accordingly the same has been paid to the respondent-decree holder. However, the trial court has given weightage to application Exh.29 and passed the impugned order in absence of learned A.G.P. appearing for the petitioners-judgment-debtors.

6. In view of above, the matter is required to be remanded to the executing court for deciding afresh after giving opportunity of being heard to both the parties. Hence, the following order:-

O R D E R

- I. The writ petition is hereby partly allowed. No costs.
- II. The impugned order dated 16.11.2004 passed below Exh.43 in Regular Darkhast No. I-32 of 1993 passed by the learned Civil Judge, Senior Division, Parbhani is hereby quashed and set aside, with the following directions:-

The executing court shall decide the application Exh.43 afresh after giving opportunity of being heard to both the parties, as expeditiously as possible, preferably within three months from the date of receipt of this order.

- III. Writ petition is disposed of accordingly. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/