

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

917 CIVIL APPLICATION NO.6168 OF 2021
IN FAST/9103/2019 WITH CA/4711/2019 IN FAST/9103/2019
WITH CA/4712/2019 IN FAST/9103/2019

SAYED MUMTAZ HUSSAIN (DIED) THR LRS. JOHRA/
JOHERA JABEEN (DIED) SAYED RIYAZ AHMED AND OTHERS
VERSUS
THE EX. ENGINEER, SINCHAN DIVISION,
Z.P. AURANGABAD AND ANR

Mr M.P. Kale, Advocate for Applicants
Mr D.B. Pawar, Advocate for Respondent No. 1
Mr Y.G. Gujarathi, A.G.P. for Respondent No. 2

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 28th JULY, 2021

PER COURT:-

1. Leave granted to correct the figures.
2. This is an application moved by the applicants for modification of the order dated 3rd July, 2021 passed by this Court in Civil Application No. 4757 of 2021.
3. On the last date, this Court has directed to Mr D.B. Pawar, learned counsel for respondent No. 1/Acquiring Body to go through the application for modification more particularly, para No. 4 regarding apportionment made by applicants and verify the position and make statement regarding prayer for modification made by the applicants.

4. Heard Mr Kale, learned counsel for the applicants and Mr D.B. Pawar, learned counsel for respondent No.1/ Acquiring Body.

5. Mr D.B. Pawar, learned counsel for respondent No. 1/Acquiring Body strongly opposed to modify the order. He submits that such kind of apportionment is not permissible. He invited my attention to the judgment passed by the reference court more particularly, para No. 20 and submits that the application for modification of order needs to be turned down.

6. On the other hand, Mr Kale, learned counsel for the applicants submits that applicant No. 1 died during pendency of the proceedings. His legal heirs according to the Muslim law are entitled to get their share from the amount of compensation and accordingly, it is necessary to modify the order so that respective legal heirs may get their share out of the compensation amount.

7. It is undisputed position that applicant No. 1 died during pendency of the proceedings and his legal heirs certainly stand in the shoes of applicant No. 1. The parties are governed by Mohammedan Law and learned counsel for the applicants has made apportionment accordingly.

8. At this stage, it is not necessary to verify what is the exact share of each legal heir. The parties are giving undertaking in respect of the withdrawal of amount and as such, no prejudice would be caused to the Acquiring Body/respondent No. 1 if order is modified. If order is not modified, applicants may not get the amount of compensation.

9. Having regard to the above reasons and discussion, it is necessary to modify the order passed earlier by this Court on 3rd July, 2021. Hence, I proceed to pass the following order :-

ORDER

- (I) The application moved by the applicants for modification of order passed by this Court dated 3rd July, 2021 is hereby allowed.
- (II) The following shall be the apportionment regarding payment of compensation amount :-
- 1.2. Sayed Riyaz Sayed Mumtaz shall get Rs. 2,00,000/-
 - 1.3. Sayed Naser Sayed Mumtaz shall get Rs. 2,00,000/-
 - 1.4. Ajara Jabeen @ Malekha Sikandar Kahn shall get Rs. 1,00,000/-
 - 1.5. Asma Tahseen @ Shahejan Sayed Fariuddin @ Anwar Biyabani shall get Rs. 1,00,000/-

Whereas, the respondent No. 2 shall get remaining amount of Rs. 37,34,000/-

- (III) Registry of this Court is directed to make payment to the applicants in view of the aforesaid apportionment made by this Court and applicants to furnish usual undertaking with the Registry and to the satisfaction of the Registrar (Judicial).
- (IV) The application stands disposed of accordingly.

**(SHRIKANT D. KULKARNI)
JUDGE**

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