

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

**932 REVIEW APPLICATION (CIVIL) NO.12 OF 2021
IN WP/6409/2020**

**M/S LANDMARK DEVELOPERS THROUGH ITS PARTNERS
VERSUS
CITY AND INDUSTRIAL DEVELOPMENT CORPORATION LTD
THROUGH ITS ADMINISTRATOR AND ANOTHER**

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Advocate for Applicants : Mr. Anand Bhandari h/f.
Mr. Ajit B. Gaikwad

Advocate for Respondent No.1 : Mr. A.S. Bajaj
AGP for Respondent / State : Mr. S.W. Mundhe

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CORAM : MANGESH S. PATIL, J.

DATE : 17-03-2022

PER COURT :

. This is an application by original respondent no.1 in writ petition seeking review of the order dated 09-12-2020 whereby while allowing the writ petition, a further direction was issued directing the respondent no.1, who is the applicant in review petition to deposit an amount of Rs.28,77,486/- in the executing court.

2. Admittedly, the review applicant is the decree holder, who had filed execution of award in L.A.R. No.861 of 1997 against the CIDCO. By the order on his application (Exh.47), the executing court directed CIDCO to deposit certain amount towards the balance

amount of award. The order was challenged in the writ petition on which the order under review was passed.

3. I have heard the learned advocates for both the sides. It is a matter of record that since it was an execution of an award passed in a land acquisition proceeding, the dispute was primarily in respect of calculation of amount of the compensation. By the order under challenge in the writ petition, after undertaking certain calculations, the executing court had directed CIDCO to deposit some amount, which according to it was still due and payable to the applicant in the review petition. Apparently, the CIDCO was aggrieved by the direction and had prayed to set it aside.

4. Since the reply was filed by the review applicant, a rejoinder was submitted by the CIDCO to demonstrate that, in fact, the review applicants were overpaid and a request was made to direct its refund. It is quite apparent that the CIDCO was invoking the powers vested in this court under Article 227 of the Constitution of India. The execution was still pending before the executing court. This Court was called upon to examine the legality or otherwise of the order passed by the executing court on the application of the review applicant (Exh.47). It is, therefore, quite clear that though

this Court was called upon to reassess the actual amount that was due and payable if any to the review applicant, the directions under review is clearly an error which needs to be corrected by undertaking its review. The direction clearly proceeded beyond the relief being claimed in the writ petition, albeit a calculation was inevitable. If it was found at the end of the calculations that something more than what was due and payable was already paid to the review applicant, it would have been appropriate to allow the executing court to undertake that exercise, may be in a restitution proceeding under Section 144 of the C.P.C.

5. In the circumstances, the review application is allowed.

6. The order to the extent directing the review applicant to deposit certain amount stated to be overpaid is recalled keeping open the issue to be pondered upon and decided by the executing court.

(MANGESH S. PATIL)
JUDGE

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