



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO. 14831 OF 2023

BHAGINATH HANUMANTA TUPE AND ANOTHER
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER AND OTHERS

WITH
CIVIL APPLICATION NO. 12840 OF 2024
IN WP/14831/2023

...
Advocate for petitioners : Mr. Anand Bhandari h/f.
Mr. D.A. Bide and Mr. T.C. Sonawane
AGP for the respondent – State : Ms. D.S. Jape
...

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 07 JANUARY 2026

PER COURT :

Heard learned counsel for the respective parties.

2. By way of present petition, the petitioners / original decree holder nos. 6 and 7 are challenging the orders dated 28.11.2023 passed below Exhibit – 25 and 39 by the learned 8th Joint Civil Judge, Senior Division, Aurangabad in LAR.RD No. 412 of 2017.

3. The application below Exhibit-25 was filed by petitioners / original decree holder nos. 6 and 7 for raising an objection against withdrawal of amount by respondent nos. 3 to 7 / original decree holder nos. 1 to 5. Whereas applications below Exhibit-28 and 39 were filed by respondent nos. 3 to 7 / original decree holder nos. 1 to 5 for withdrawal of amount.

4. Mr. Bhandari, learned counsel for the petitioners / original decree holder nos. 6 and 7 points out that earlier to the impugned

order, an application below Exhibit - 28 was filed by the respondent nos. 3 to 7 / decree holders no. 1 to 5 and the learned executing Court, by its order dated 02.05.2023, rejected the said application. Thereafter, within a span of two months, i.e. on 15.07.2023, another application below Exhibit - 39 came to be filed. Mr. Bhandari submits that as there was no change in the circumstances, the executing Court ought not have allowed the application when the executing Court had already rejected the same by considering all the material aspects of the matter.

5. Per contra, learned counsel for respondents no. 3 to 7 / original decree holder nos. 1 to 5 submits that petitioners / original decree holder nos. 6 and 7 have no *locus standi* to object the withdrawal of the amount by respondent nos. 3 to 7 / decree holder nos. 1 to 5. Therefore, he supports the orders passed by the learned executing Court.

6. Having heard learned counsel for the petitioners and the respondents and after going through the orders, there is no dispute that the application below Exhibit - 28 was filed with a prayer to withdraw the amount. The said application was filed on 10.04.2023 and it was contested by the petitioners / original decree holder nos. 6 and 7. The said application was rejected on merits by the learned 8th Civil Judge, Senior Division, Aurangabad, by order dated 02.05.2023, with an observation that Regular Civil Suit no. 114 of 2023 which was filed for declaration, was pending before Civil Judge, Senior Division, Soygaon and the rights of the parties were yet to be decided in the said Suit.

7. Surprisingly, on 15.07.2023, another application below Exhibit – 39 was filed with a similar prayer. The petitioners / decree holders no. 6 and 7 filed Say thereon and contended that in absence of change in circumstances, the application deserves to be rejected.

8. After going through the order passed below Exhibit – 39, it reveals that the learned executing Court has not recorded any finding in respect of change in circumstances. The Executing Court, in paragraph no. 4 of the order passed below Exhibit - 28, has recorded a finding that the application could not be allowed as the rights of the parties were yet to be decided in RCS No. 114 of 2023 and, therefore, respondent nos. 3 to 7 / decree holders no. 1 to 5 could not be allowed to withdraw the amount. No any change in circumstnaces was brought to the notice before executing Court so executing Court ought not have considered the similar prayer afresh in absence of change in circumstances. Therefore, order below Exhibit-39 cannot be sustained in the eyes of law. Therefore, I am inclined to allow the present petition partly, by setting aside the order passed by the executing Court below Exhibit - 39.

9. In view thereof, the Writ Petition is partly allowed. The order dated 28.11.2023 passed below Exhibit - 39 by the learned 8th Joint Civil Judge, Senior Division, Aurangabad in LAR. R.D. No. 412 of 2017 is quashed and set aside.

10. In view of setting aside of order below Exhibit 39, the order below Exhibit 25 is also quashed and set aside by giving liberty to the petitioners / decree holders no. 6 and 7 to file fresh application before the executing Court.

11. In view of disposal of the writ petition, Civil Application No. 12840 of 2024 also stands disposed of.

[SIDDHESHWAR S. THOMBRE]
JUDGE

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