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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4758 OF 2015

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| 1. Bhanudas s/o Hiraji Dhamal
Age-81 years, Occ-Agri,
Through its GPA holder,
Namdeo s/o Bhanudas Dhamal,
Age-46 years, Occ-Agri.
R/o Nivdunge, Taluka-Pathardi,
District - Ahmednagar | PETITIONERS |
| 2. Narayan s/o Bhanudas Dhamal,
Age-44 years, Occ-Agri.
R/o Nivdunge, Taluka-Pathardi,
District - Ahmednagar | |
| 3. Eknath s/o Bhanudas Dhamal,
Age-42 years, Occ-Agri.
R/o Nivdunge, Taluka-Pathardi,
District - Ahmednagar | |
| 4. Ambubai w/o Bhanudas Dhamal,
Age-76 years, Occ-Household
Through her GPA holder
Namdeo Bhanudas Dhamal
Age-46 years, Occ-Agri.
R/o Nivdunge, Taluka-Pathardi,
District - Ahmednagar | |

VERSUS

Govind s/o Hiraji Dhamal Age-73 years, Occ-Agri. R/o Nivdunge, Taluka-Pathardi, District - Ahmednagar	RESPONDENT
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Mr. P. R. Katneshwarkar h/f Mr.A.G.Ambetkar, Adv for petitioners
Mr. M. R. Sonwane, Advocate for the respondent
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th JUNE, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioners are before this court purporting to be aggrieved by order dated 10th March, 2015 on applications Exhibit-111, Exhibit-114 and Exhibit-120 in Regular Darkhast No. 56 of 1997. Applications Exhibit-111 and Exhibit-114 were moved by the decree holder for issuance of possession warrant in respect of the land under decree in terms of Rule 35, Order XXI of the Civil Procedure Code, which are opposed by present petitioners by filing say. Application Exhibit-120 has been moved by present petitioners – judgment debtors for setting aside evidence close order as well as for appointment of city survey officer and acquisition officer as court commissioners.
3. It appears that hitherto, several rounds have been made to this court by the contesting parties and in the last one, this

court, while deciding civil revision application No. 2 of 2015 has observed in paragraph No.5 of order dated 15th January, 2015 thus-

"5. Impugned order shows that executing court considered evidence and arguments to find that at no point Decree Holder, or the Judgment Debtor as encroacher has parted with the possession. It has been found that there is no evidence that Government has taken over actual possession. Going through the impugned order and looking to the controversy and the fact that the Decree Holder, even if he has to execute decree, would be entitled to execute it strictly as per the Judgment passed in Regular Civil Suit No. 190 of 1987 specifying the 37 R land shown in the map Exhibit-35 in blue colour, there appears to be no substance in the dispute raised by the petitioners. I do not find that there is any illegality or irregularity in the order passed by the subordinate Court. There is no reason to entertain the Revision Application."

4. The executing court, while deciding the applications, referred to hereinabove, has considered that record discloses inquiry about actual possession is complete by order below Exhibit-57. With reference to this court's order in Civil Revision Application No.2 of 2015, the executing court has observed that point of actual possession is set at rest on merits. The contention of the judgment debtors that land in question is in possession of acquisition officer, in the face of aforesaid does not survive. The

executing court further found that in the face of situation that the map has been held to be proved by the trial court and the appellate court, the decree is required to be executed in the spirit of the decree. Authority on which reliance is placed by the judgment debtors has been distinguished. Taking overall stock of the situation, the executing court had declined to accede to the request of the judgment debtors and rejected application Exhibit-120 and allowed applications Exhibit-111 and Exhibit-114.

5. Learned advocates for the respective have parties taken me through relevant record. Though it is the contention of Mr. Katneshwarkar, learned advocate appearing for the petitioners that in all likelihood the decree would be executed in respect of a land which is not decreed under the garb of execution of decree, it appears that this court has already considered similar submission in Civil Revision Application No. 2 of 2015 and has found that the decree will have to be executed as per judgment in Regular Civil Suit No. 190 of 1987.

6. Having regard aforesaid and to the categorical observation of this court in civil revision application No. 2 of 2015, I do not

think that there is any substance in the submissions of the petitioners. Writ petition does not call for exercise of discretion in favour of the petitioners and stands dismissed as such. Rule stands discharged. No costs.

[SUNIL P. DESHMUKH, J.]

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