

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

Writ Petition No.1282 of 2014

* Bhagwat Budha Bhoi,
Age 67 years,
Occupation : Agriculture,
R/o Khatgaon, Taluka Jamner,
District Jalgaon. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai - 32.
- 2) The District Collector, Jalgaon.
- 3) The Special Land Acquisition
Officer, Jalgaon.
- 4) Nagabai Narayan Bhoi,
Age 70 years,
Occupation: Labour.
- 4-A) Manik Narayan Bhoi,
Age 53 years,
Occupation : Labour.
- 4-B) Dnyaneshwar Narayan Bhoi,
Age 46 years,
Occupation : Labour.
- 4-C) Pandit Narayan Bhoi,
Age 42 years,
Occupation : Labour.
- 4-D) Chindhabai Madhukar Bhoi,
Age 35 years,
Occupation : Labour.

5) Sakhubai Kadu Bhoi,
Age 67 years,
Occupation : Labour.
All R/o Khadgaon,
Taluka Jamner, District Jalgaon.

5-A) Sushilabai Subhash Bhoi,
Age 40 years,
Occupation : Labour.
R/o Khadgaon,
Taluka Jamner, District Jalgaon.

6) Kesharbai Budha Bhoi
Died through legal
representatives :

6-A) Budha Motiram Bhoi,
Age 85 years,
Occupation: Labour.

6-B) Suklal Budha Bhoi,
Age 48 years,
Occupation: Labour.

6-C) Babulal Budha Bhoi,
Age 46 years,
Occupation: Business.

6-D) Sanju Budha Bhoi,
Age 32 years,
Occupation : Business,
All R/o Pimprala,
Taluka & District Jalgaon.

6-E) Kamalbai Suresh Bhoi,
Age 52 years,
Occupation: Household,
R/o Yawal, Taluka Yawal,
District Jalgaon.

6-F) Yashodabai Nana Bhoi,
Age 50 years,
Occupation: Business,

R/o Bornar,
Taluka and District Jalgaon.

6-G) Kavita Ganesh Bhoi,
Age 32 years,
Occupation: Business,
R/o Ainapur, Taluka Raver,
District Jalgaon.

6-H) Anjanabai Devidas Bhoi,
Age 40 years,
Occupation: Household,
R/o Mehonda,
Taluka Muktai Nagar,
District Jalgaon.

6-I) Kamini Devidas Bhoi,
Age 25 years,
Occupation: Household,
R/o Mehonda,
Taluka Muktai Nagar,
District Jalgaon.

7) Kasturabai Dhanraj Bhoi,
Age 47 years,
Occupation : Labour,
R/o Dongarkheda,
Post Ghodasgaon,
Taluka Muktai Nagar,
District Jalgaon.

.. Respondents.

Shri. A.B. Kale, Advocate, holding for Shri. T.M. Tandale,
Advocate, for petitioner.

Shri. S.R. Yadav, Assistant Government Pleader, for
respondent Nos.1 to 3.

Shri. A.I. Deshmukh, Advocate, for respondent Nos.4, 5-A
and 7.

CORAM: T.V. NALAWADE, J.

DATE : 1st SEPTEMBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.

2) The petition is filed to challenge the order made on Exhibit 23 in Regular Darkhast No.224/2006 by the learned Joint Civil Judge Senior Division, Jalgaon. This proceeding is filed for execution of the judgment and award of one Land Acquisition Reference proceeding in which present petitioner was the claimant. Compensation amount is deposited in the executing Court by the acquiring body. The executing Court has allowed the petitioner to withdraw the amount of compensation but it has directed petitioner to furnish bank guarantee in respect of this amount of compensation and so the petitioner is feeling aggrieved.

3) The submissions made and the record show that Special Civil Suit No.227/2001 was filed by the present petitioner for relief of declaration against the present respondents, who have raised objection in the

execution proceeding, that these respondents have no concern with the compensation amount awarded in favour of the present petitioner. The said suit is decreed and further relief is given to the petitioner which is to the effect that he is entitled to recover the amount which is already awarded by Reference Court.

4) To challenge the decision of the aforesaid special civil suit, respondents have filed Regular Civil Appeal No.61/2013. In that appeal, application for stay was filed by the present respondents and following order is made.

"Application is partly allowed.

Execution and operation of order passed in Special Civil Suit No.227/2001 by Joint Civil Judge S.D., Jalgaon dated 11-10-2012, to the extent of defendant nos.1 to 5 to pay the amount of Rs.17,230/- each, total Rs.86,150/- to plaintiff, is hereby stayed till final decision of appeal, subject to respective defendants furnishing bank guarantee of the respective amount or any of defendant furnishing undertaking & Bank guarantee of total amount of Rs.86,150/-.

So also, learned Court shall take appropriate bank guarantee from plaintiff, while disbursing payment of compensation of Rs.1,43,571/- from him."

5) The aforesaid order made by the District Court shows that stay is granted only in respect of the right of the decree holder to recover the amount already collected by the judgment debtor. Stay is not granted in respect of remaining part of the decree. Admittedly, the acquiring body or the State has not challenged the decision of the Reference Court and no stay was obtained to the award of the Reference Court. In view of this circumstance, there was no power with the executing Court to impose any such condition on the decree holder. There was one option open to the judgment debtor of the aforesaid civil suit, to obtain some orders on the basis of their so called right from the District Court but they have failed in doing so. In view of these circumstances, this Court holds that the condition imposed by the executing Court cannot sustain. Such power was not there with the executing Court.

6) In the result the petition is allowed. The aforesaid condition is quashed and set aside. Entire amount is to be paid to the petitioner. Rule is made absolute in aforesaid terms.

(T.V. NALAWADE, J.)

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