

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

WRIT PETITION NO. 4009 OF 2016

Bibhishan Chandrahar Kamble

..PETITIONER

VERSUS

Limbabai Bhagwan Waghmode and Others

..RESPONDENTS

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Mr. A.R. Deokate, Advocate for petitioner.

Mr. K.R. Doke, Advocate for Respondent No.1.

Mr. B.A. Shinde, A.G.P. for Respondent Nos. 2 and 3.

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CORAM : T.V. NALAWADE, J.

DATED : 14th DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the Executing Court on Exhibit 1 in Special Darkhast No. 80 of 2015. Heard both sides.

2. It appears that in land reference, award was made in favour of Chandrahar and for satisfaction of that award, the amount of Rs.16,34,276/- was deposited in the Court of Civil Judge, Senior Division, Bhoom. It appears that present petitioner who claims to be the son of Chandrahar applied to the Executing Court and requested to release the

entire amount in his favour. He actually got released the entire amount in his favour.

3. The application was then moved by present Respondent No.1 – Limbabai Chandrahar Kamble and she sought direction against the present petitioner to deposit the amount of her share i.e. Rs.8,17,138/-. Show cause notice was issued by the Executing Court to the petitioner. Opportunity was given to him and then the order under challenge came to be made. The petitioner is directed to deposit the amount in the Court and the Court has observed that there is possibility that the lady is widow of deceased and by deceiving the Court, present petitioner has got released the entire amount in his favour.

4. There is record like copy of Mutation No. 615 of village Bavi, Tahsil Bhoom which was sanctioned on 19th September, 2008 and it shows that the application was given by present petitioner after the death of Chandrahar. On the basis of his application, his name was entered as son of Chandrahar and name of Limbabai was entered as widow of Chandrahar. Learned Counsel for petitioner submitted that this mutation is now challenged by present petitioner by filing R.T.S. Appeal and that

appeal came to be filed in 2016. There is no explanation whatsoever with the petitioner as to how he did not realise that such mutation was made in the year 2008. The record shows that application was given by petitioner himself. There was no other relative of Chandrahar before the Executing Court. There is clear possibility that present petitioner intentionally did not bring on record the widow of Chandrahar so that he gets the entire amount of compensation.

5. Learned Counsel for petitioner submitted that provisions of Land Acquisition Act needs to be seen. There is no force in this submission. It appears that Chandrahar was dead when reference was decided but award was given in favour of Chandrahar. The petitioner only took steps to get compensation by filing proceeding for execution in the Civil Court.

6. In view of aforesaid circumstance, it cannot be said that award was made only in favour of present petitioner. It needs to be presumed that the award was made in favour of all the heirs of Chandrahar. This Court sees no reason to interfere in the order passed by the Executing Court. Petition stands dismissed.

7. If order is not complied, further steps can be taken by the Executing Court as permissible in law. Learned Counsel for petitioner requests for continuation of interim relief granted by this Court. It is refused. Authenticated copy is allowed to both sides.

(T.V. NALAWADE, J.)

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