

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

Writ Petition No. 08831 of 2017

District : Jalgaon

1. Ganpat s/o. Hiranman Chavan,
Deceased through L.Rs.,
 - 1-A) Arunabai Bhaulal Rathod,
Age : Major,
Occupation : Household.
 - 1-B) Kaushalyabai Padam Jadhav,
Age : Major,
Occupation : Household.
 - 1-C) Sanjay Ganpat Chavan,
Age : Major,
Occupation : Agriculture.
 - 1-D) Sangitabai Anil Rathod,
Age : Major,
Occupation : Household.
 - 1-E) Sunil Ganpat Chavan,
Age : Major,
Occupation : Agriculture.
 - 1-F) Akkabai Kashinath Rathod,
Age : Major,
Occupation : Household.
 - 1-G) Anitabai Gorakh Pawar,
Age : Major,
Occupation : Household.
 - 1-H) Tatya Ganpat Chavan,
Age : Major,
Occupation : Agriculture.

All above (1-A) to (1-H) are
R/o. Kargaon,
Taluka Chalisgaon,
District Jalgaon.

2. Popat Babu Chavan,
Age : 50 years,
Occupation : Agriculture,
R/o. Kargaon,
Taluka Chalisgaon,
District Jalgaon.
3. Kisan Hiranman Chavan (Vanjari),
Deceased through his L.R.,
 - A. Kalabai Kisan Chavan (Vanjari),
Age : 66 years,
Occupation : Labour.
 - B. Parasibai Ramesh Rathod,
Age : 40 years,
Occupation : Labour.
 - C. Namobai Suganchand Rathod,
Age : 38 years,
Occupation : Labour.
 - D. Anil Kisan Chavan (Vanjari),
Age : 32 years,
Occupation : Labour.
 - E. Himmat Kisan Chavan (Vanjari),
Age : 28 years,
Occupation : Labour.
 - F. Netalbai Dagadu Rathod,
Age : 27 years,
Occupation : Labour,
R/o. Tarwade,
Taluka & District Dhule.

Nos. 3A for herself and
General Power of Attorney for
nos. 3B to 3F.
All R/o. Kargaon,
Taluka Chalisgaon.
Dist. Jalgaon.

.. Petitioners.

versus

1. The District Magistrate,
Jalgaon,
Taluka & Dist. Jalgaon.

2. Special Land Acquisition Officer No.1,
Jalgaon, Taluka & Dist. Jalgaon.

3. The Executive Engineer,
Public Works Department,
Jalgaon,
Taluka & Dist. Jalgaon.

Bhaskar Kalu Chavan,
Deceased through his L.Rs.
i.e. Respondents no.4 to 9.

4. Indubai Bhaskar Chavan,
Age : 48 years,
Occupation : Agriculture.

5. Tulshiram Bhaskar Chavan,
Age : 28 years,
Occupation : Agriculture.

6. Kailas Bhaskar Chavan,
Age : 26 years,
Occupation : Agriculture.

7. Vilas Bhaskar Chavan,
Age : 24 years,
Occupation : Agriculture.

8. Vaishali Bhaskar Chavan,
Age : 23 years,
Occupation : Household.

9. Kaushalya Bhaskar Chavan,
Age : 20 years,
Occupation : Household.

10. Battibai Shankar Chavan,
Age : Major,
Occupation : Household,

All R/o. Karegaon,
Taluka Chalisgaon,
District Jalgaon.

11. Bharatibai Tatya Rathod,
Age : 26 years,
Occupation : Nil,
R/o. Karegaon,
Taluka Chalisgaon,
District Jalgaon.

.. Respondents.

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Mr. Sanket S. Kulkarni, Advocate, for petitioners.

Mr. S.P. Tiwari, Asst. Government Pleader, for respondents no.01 to 03.

Mr. Ajit B. Kale, Advocate, for respondents no.04 to 09.

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 12TH JULY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. Heard learned Counsel appearing for the parties by consent finally.

02. Petitioners who had been unsuccessful in their attempts to intervene in Regular Darkhast proceedings bearing no. 442 of 2009 are before this court purporting to be aggrieved by order on applications - exhibits 179 and 190 whereunder withdrawal by present respondents of the amount of compensation of land acquisition deposited by the State, has been allowed.

03. Acquisition proceedings in respect of land Gut No.204 situated at Karegaon, Taluka Chalisgaon, District Jalgaon, are stated to have been initiated around 1989 and had culminated into an award in 1992. Possession of the land had also been taken over by

acquiring body in November, 1992. Against the award, Bhaskar Kalu Chavan had filed Land Acquisition Reference bearing no. 1468 of 1998 which in the course of time, came to be allowed under order dated 15-01-2009 along with several other land acquisition references in respect of same notification under section 04 of the Land Acquisition Act, 1894.

04. A suit came to be filed bearing no. 506 of 2012 by the present petitioners against present respondents claiming declaration of ownership and the declaration that the acquired land bearing Gut no. 204 is their ancestral property and they have share in the land acquisition compensation. In said suit, plaintiffs had applied for temporary injunction in the nature of restraint on withdrawal by defendants - respondents of the compensation amount deposited in the court. Said application had been rejected by the trial court and was confirmed by dismissal of appeal therefrom at the instance of present petitioners. A writ petition against the same had been moved before this court bearing writ petition no. 10202 of 2015. Hon'ble single judge had dismissed the writ petition by judgment dated 24-01-2017 observing in paragraph no.03 therein as under :-

" On perusal of the impugned order, I find that this is the case wherein extraordinary writ jurisdiction of this Court should not be exercised. Impugned orders have been passed after giving thoughtful consideration to the submissions of petitioners that the

suit property was an ancestral property. Both the Courts have rendered concurrent findings of fact that petitioners have failed to establish any prima facie case in their favour in the sense that they have not successfully raised any issue as regards the status of the suit property. In fact, there is a finding recorded by the Executing Court to the effect that the suit property is not an ancestral property. This finding now has attained finality when, writ petition filed by petitioners, being Writ Petition No. 4091/2015, challenging the said finding, was withdrawn by them. Even otherwise, leaving aside what is found by the Executing court, petitioners ought to have placed on record some material to show that the suit property was an ancestral property, which on perusal of the paper book of the petition, could not be found anywhere. This Court also asked quite a number of times the learned counsel for petitioners to demonstrate as to how petitioners would be able to show existence of prima facie case in their favour. But, in vain. "

05. While this is the situation of the proceedings initiated at the instance of petitioners, on the other side, it appears that their movement in Regular Darkhast bearing No.442 of 2009 to intervene had not been successful. Their application to get impleaded in the Darkhast proceedings had been rejected under the order dated 11th March 2015. It appears that the matter was taken before this Court under Writ Petition No. 04091 of 2015 and same came to be withdrawn with liberty to prosecute alternate remedy.

06. It appears that during pendency of the land acquisition

reference, original claimant died and thereafter the land acquisition reference came to be decided along with other land acquisition references under a common judgment.

07. Mr. Kulkarni, learned counsel appearing for petitioners, vehemently submits that clear position emerges that Order XXII of the Code of Civil Procedure, 1908, is applicable to land acquisition reference. He has placed reliance on a judgment of this court in the case of *Special Land Acquisition Officer (2) Vs. Harichandra Ramji Patil* [2000(1) Mh.L.J. 256]. It was a case wherein upon death of the claimant, his legal representatives had applied for bringing themselves on record. A decision has been rendered finding that Order XXII of the C.P.C. would be applicable and the application has to be made by the party interested in contesting the proceedings and in whom the right to sue survives. It has been further held that the reference technically cannot be amended by the court or by the claimant and that can be done by the Collector himself or the Land Acquisition Officer.

08. Apart from above, learned counsel for petitioners purports to refer to that several applications were made and all applications have been decided by giving similar reasons.

09. On the other hand, Mr. Kale, learned counsel for

respondents no.04 to 09, purports to submit, while writ petition no. 10202 of 2015 was being prosecuted, one of the contentions therein had also been that the land acquisition reference stood abated for want of bringing legal representatives of deceased claimant on record having regard to Order XXII of the Code of Civil Procedure, 1908, claiming its applicability to land acquisition reference.

10. However, the matter concerned in the present petition is the order on Exhibits 179 and 190 in which the executing court has observed as under:-

" The State has deposited an amount of Rs. 1,12,81,871/- on 03.03.2014 vide "C" No.179/5. The said amount has been kept in FDR.

The third party applicants namely Popat Babu Chavhan, Ganpat Hiranman Chavhan, Kisan Hiranman Chavhan and Ramesh Shankar Chavhan have raised the objection for giving payment to the claimants on the ground that the acquired property was ancestral property and Regular Civil Suit bearing No. 506/2012 is pending. Also the review petition bearing C.A.No.4660/2017 is pending in the Hon'ble High Court.

It is seen from the record that the disputed property has been acquired by the SLAO in the year 1992. Thereafter claimant Bhaskar Kalu Chavhan filed L.A.R. No.1468/1998 before the Joint C.J.S.D., Jalgaon. That has been decided on 15.01.2009. Thereafter present darkhast has been filed on 21.08.2009. Thereafter on 09.02.2012, the third party applicants have filed Regular Civil Suit No.506/2012 for declaration and permanent injunction. In the said suit the third party applicants are seeking declaration that the

acquired property was ancestral property and they have share in the same and the decree holders be permanently restrained from withdrawing the compensation amount. The temporary injunction application Exhibit 6 filed by the third party applicant in the suit has been rejected by the Court on 30.07.2015. The appeal preferred against the said order bearing Misc. Civil Appeal No.60/2015 has also been dismissed on 14.09.2015 by the Hon'ble District Court. Against the said order of the Hon'ble District Court, Writ Petition bearing No. 10202/2015 has been preferred by the third party applicants before the Hon'ble High Court has also been dismissed.

Further the objections raised by the third party applicants in the present Darkhast vide Exhibits 12, 17, 22, 104 has been rejected by the Court on 11.03.2015. Against the said order, Writ Petition bearing No.4091/2015 has been preferred before the Hon'ble High Court. That has also been withdrawn on 11.08.2015. Hence the third party applicants have no right to participate in the present Darkhast. The State has also filed appeal against the judgment of this Court in LAR No.1468/1998. However presently there is no stay to the present Darkhast.

As per third party applicants, Review Petition bearing C.A.No.4660/2017 in Writ Petition No. 10202/2015 is pending before the Hon'ble High Court. However, there is no stay to the present Darkhast. Moreover it will take considerable long time for disposal of the R.C.S.No. 506/2012. Because there are 39 cases are 10 year old and 1320 cases are five years old pending in this Court. As per the directions of the Hon'ble High Court & Hon'ble District Court, five & ten year old matters are required to be disposed of at the earliest. Further if the third party applicant succeed in the suit, they can recover the amount from the decree holders. Moreover in the present matter the possession of the acquired property has been taken by the acquiring body in the year 1992. The Land Acquisition Reference filed by the claimants

has been decided on 15.01.2009. Darkhast is also pending since year 2009. The State has also deposited the compensation amount on 03.03.2014. Hence in these facts and circumstances, the decree holders cannot be denied the fruits of the decree. Hence they are entitled to receive the payment of compensation amount. "

11. While applications - Exhibits 179 and 190 for withdrawal of the amount were being prosecuted, present petitioners who are referred to as third party applicants had raised objection to withdrawal of the amount by legal heirs of the claimant on the ground that the acquired property was their ancestral property and Regular Civil Suit no. 506 of 2012 is pending and also that a review application has been filed in respect of order dated 24-01-2017 in writ petition no. 10202 of 2015. Said objections came to be rejected by 3rd Joint Civil Judge (Senior Division), Jalgaon, under order dated 01-07-2017. It is against this order, present petition has been moved.

12. Having regard to that in the substantive civil proceedings petitioners have not been able to secure any relief, while as on the date at least the petitioners have not been able to *prima facie* show their strong nexus to the property concerned or for that matter to the compensation.

13. Their *locus standi* is rather on a inchoate platform.

Besides, it would be worthwhile to consider that since 1989, acquisition proceedings were pending. Till 2012, there had been no movement whatsoever on their behalf. It is only after the execution proceedings had been initiated by the claimant's legal heirs, some movement has been made.

14. So far as present matter is concerned, it appears that during the pendency of land acquisition reference, the claimant is stated to have died and thereafter the decision has been rendered. It is a common decision enhancing land acquisition compensation in respect of lands acquired under the same notification. The contention that, Order XII of the C.P.C. would apply will have to be appreciated in the context of the facts and the observations of the court in the case of *Special Land Acquisition Officer (2) (supra)*. It does not appear therefrom that it would carry forward any case for the petitioners or in the present matter, any benefit can be said to enure to the petitioners by citing said judgment nor it appears to be a case on that count any objection had ever been taken by the State or for that matter, observations as were made would affect execution proceedings filed by the claimant's legal heirs.

15. Learned assistant government pleader purports to oppose the request for withdrawal but for the reason an appeal is already preferred against the decision in land acquisition reference

which is pending in the high court. However, it emerges that there is no restraint on withdrawal of amount by the claimant's legal heirs. The objection to the withdrawal is not on the ground which is sought to be taken before this court in the present petition which is stated to have been taken as one of the grounds in writ petition no. 10202 of 2015. In the circumstances, it is not a case wherein exercise of discretion is called for in favour of the petitioners.

16. The petition stands dismissed. Rule is discharged. There shall be no order as to costs.

17. Needless to refer to that the observations appearing under this order are for decision of the writ petition and shall not have any binding or influential effect elsewhere.

(Sunil P. Deshmukh)
JUDGE

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