

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11639 OF 2017

WAMANSING MOHANSING PATIL DIED LRS GANSING WAMANSING
PATIL AND OTHERS
VERSUS

MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION
THROUGH ITS AREA MANGER AND OTHER

...
Advocate for Petitioners : Mr. Tripathi Sushilkumar H.
Advocate for Respondent No.1 : Mr. S.S. Dande
AGP for Respondents 2 to 4: Mr. S.N. Kendre
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CORAM : V. K. JADHAV, J.
DATED : 2nd NOVEMBER, 2017

PER COURT:-

1. Being aggrieved by the order dated 29.7.2017 passed below Exh.1 in (day application) NRJE No. 25 of 2016, by the learned Joint Civil Judge, Senior Division, Bhusawal, the original applicants have preferred this writ petition.

2. Brief facts giving rise to the present writ petition are as follows:-

a) The agricultural land situated at village Khadki, Tq. Bhusawal, district Jalgaon came to be acquired by the M.I.D.C. and the Land Acquisition Officer has passed award and granted compensation. Being aggrieved by inadequate compensation, awarded by the S.L.A.O., deceased Wamansing had filed L.A.R. No. 52 of 2014

seeking enhancement in the compensation amount. During pendency of L.A.R. No. 52 of 2014, Wamansing died and accordingly the present petitioners substituted in his place as his legal heirs. The Joint Civil Judge, Senior Division, Bhusawal, by its judgment and order dated 27.10.2014 partly allowed the said reference and enhanced the compensation amount to some extent.

b) Being aggrieved by the same, the present petitioners as well as the M.I.D.C. approached to this court by filing separate first appeals and those appeals are still pending. During pendency of those appeals, the respondent M.I.D.C. has deposited enhanced compensation amount, as awarded by the reference court, in this court and the petitioners at the time of withdrawal of the said compensation amount realized that their names are not correctly mentioned as per I.D. proof in the judgment and award passed by the reference court. Consequently, the petitioners had approached the reference court by filing NRJE application No. 25 of 2016. The learned Joint Civil Judge, Senior Division, Bhusawal by its impugned order dated 29.7.2017 partly allowed the said application. The learned Judge has directed to correct the description of potkharaba land, however, not considered the request of the present petitioners to make correction in the names. Hence, this writ petition.

3. Learned counsel for the petitioners submits that there is no dispute that the petitioners are legal heirs of deceased Wamansing Mohansing Patil. After death of said Wamasning Patil, during pendency of reference petition, petitioner No.1 Gansing has given names of all legal heirs to the counsel appearing for them, however, inadvertently the names are not correctly mentioned while substituting the present petitioners in place of deceased Wamsnsing as his legal heirs. The trial court has declined to correct the names only on the ground that scope of section 152 of C.P.C. is limited and only clerical and arithmetical error can be corrected. The mistake in the names of petitioner Nos. 2 to 6 is apparent on the face of record. The learned Judge of the trial court by invoking the powers under Section 151 of C.P.C. should have allowed the NRJE No. 25 of 2016 in its entirety. Learned counsel submits that though the names of petitioner Nos. 2 to 6 are mentioned, however, there are mistakes in the following nature:-

Sr.No.	Name in LAR/Record	Name as per ID proof
1	<u>Usha</u> Wamansing Patil	<u>Ushabai</u> Wamansing Patil
2	<u>Minakshi</u> Ishwarsing Patil	<u>Meena</u> Ishwar Patil
3	Shobha <u>Sanjaysing</u> Patil	Shobha <u>Sanjay</u> Patil
4	Ujwala <u>Deepsing</u> Patil	Ujwala <u>Dipak</u> Rajput
5	Swati Shailendrasing <u>Patil</u>	Swati Shailendrasing <u>Jadhav</u>

4. Learned counsel for the petitioners submits that even though the petitioners are legal heirs of deceased Wamansing, however, because of incorrect names mentioned in the original reference petition and consequently in the judgment and award passed by the reference court, the petitioners may not be getting fruits of the award passed by the reference court.

5. I have also heard the learned counsel for the respondent M.I.D.C., who supported the order passed by the court below.

6. It is not disputed that the petitioners are legal heirs of deceased Wamansing Mohansing Patil and deceased Wamansing died during pendency of reference petition. Though the names of the petitioners were brought on record as legal heirs of deceased Wamansing in the said reference petition, inadvertently mistake occurred in mentioning their full names. It further appears that though the names of petitioner Nos. 2 to 6 are mentioned, however, there are certain mistakes in the names and surnames, as somewhere Sing is mentioned which is not required and surname is incorrectly mentioned. The petitioners are not permitted to withdraw the compensation amount, as there appears some difference in their names in the I.D. proofs and in the names as mentioned in the reference petition and consequently in the judgment and award

passed by the reference court. The learned Judge of the trial court could have invoked the powers under section 151 of C.P.C. to correct the aforesaid mistakes so as to prevent the abuse of process of court and to meet the ends of justice. In view of above, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned order passed by the Joint C.J.S.D. Bhusawal dated 29.7.2017 below Exh.1 in NRJE No. 25 of 2016 is hereby quashed and set aside to the extent of refusing to correct the names of the applicants.
- III. The NRJE No. 25 of 2016 is hereby allowed in terms of its prayer clauses and names of the petitioners are directed to be corrected, as mentioned in the prayer clauses of NRJE No. 25 of 2016.
- IV. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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