

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

**CIVIL APPLICATION NO. 13348 OF 2016
IN
FIRST APPEAL NO. 2192 OF 106**

Subhash Nivrutti Madane,
age : 57 years, Occu.: Agri.,
R/o. Latur, Tq. and Dist. Latur ..Applicant

Vs.

The Maharashtra Industrial
Development Corporation
and others ..Respondents

--

Ms.S.E.Madane, Advocate for applicant
Mr.S.S.Dande, Advocate for respondent no.1
Mr.S.B.Joshi, AGP for respondent nos.2 and 3

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**AND
CIVIL APPLICATION NO. 13263 OF 2016
IN
FIRST APPEAL NO. 2185 OF 2016**

Fulchand Ranglal Loya (died),
Through Lrs.
Kamalbai Fulchand Loya
and others ..Applicants

Vs.

The Maharashtra Industrial
Development Corporation
and others ..Respondents

--

Ms.S.E.Madane, Advocate for applicants
Mr.S.S.Dande, Advocate for respondent no.1
Mr.S.B.Joshi, AGP for respondent nos.2 and 3

--

AND
CIVIL APPLICATION NO. 13265 OF 2016
IN
FIRST APPEAL NO. 2187 OF 2016

Dnyanoba Ganapati Madane (died)
through Lrs.
Smt. Seemabai Dnyanoba Madane
and ors. ..Applicants

Vs.

The Maharashtra Industrial
Development Corporation
and others ..Respondents

--

Mr.S.S.Manale, Advocate for applicants
Mr.S.S.Dande, Advocate for respondent no.1
Mr.S.B.Joshi, AGP for respondent nos.2 and 3

--

AND
CIVIL APPLICATION NO. 13266 OF 2016
IN
FIRST APPEAL NO. 2184 OF 2016

Shankar Yenka Madane (died)
Through L.R's.

1. Arjun Shankarrao Madane,
age : 62 years, Occu.: Agri.,

2. Ramkishan Shankarrao Madane,
age : 55 years, Occu. Agri.,
3. Dhondiram Shankarrao Madane,
Age 50 years, Occu. Agri.,
4. Kondabai Haribhau Sul,
Age : 75 years, Occu.: Agri., & H.H.
5. Rukminbai w/o Kishanrao Kejgir,
Age 72 years, Occu.: Agri., & H.H.
6. Kamlabai Sopanrao Sul,
Age : 70 years, Occu.: Agri., & H.H.
7. Eknath Shankarrao Madane,
Died through L.R's.

1. Smt. Sushilabai Eknath Madane,
Age 50 years, Occu. Agri.,
2. Mangalbai Eknath Madane,
Age : 28 years, Occ. Agri.,
3. Savita @ Nisha Eknath Madane,
Age : 27 years, Occu. Agri.,
4. Shrikant Eknath Madane,
Age 23 years, Occu.: Agri.,
5. Lakhan Eknath Madane,
Age : 21 years, Occu.: Agri.,
6. Akash Eknath Madane,
Age : 19 years, Occu. Agri.,

All R/o Latur,
Tq. and Dist. Latur

..Applicants

Vs.

The Maharashtra Industrial
Development Corporation
and others

..Respondents

--

Mr.S.S.Manale, Advocate for applicant nos.1, 2 and
4 to 7

Mr.A.B.Kale, Advocate for applicant no.7(3)

Mr.S.S.Dande, Advocate for respondent no.1

Mr.S.B.Joshi, AGP for respondent nos.2 and 3

--

AND

CIVIL APPLICATION NO. 13267 OF 2016

IN

FIRST APPEAL NO. 2186 OF 2016

Umakant Baburao Kulkarni
and anr.

..Applicants

Vs.

The Maharashtra Industrial
Development Corporation
and others

..Respondents

--

Mr.S.S.Manale, Advocate for applicants

Mr.S.S.Dande, Advocate for respondent no.1

Mr.S.B.Joshi, AGP for respondent nos.2 and 3

--

AND

CIVIL APPLICATION NO. 13350 OF 2016

IN

FIRST APPEAL NO. 2194 OF 2016

Shivaji Rambhau Madane
and ors.

..Applicants

Vs.

The Maharashtra Industrial
Development Corporation
and others

..Respondents

--

Mr.S.S.Manale, Advocate for applicants
Mr.S.S.Dande, Advocate for respondent no.1
Mr.S.B.Joshi, AGP for respondent nos.2 and 3

--

AND
CIVIL APPLICATION NO. 13351 OF 2016
IN
FIRST APPEAL NO. 2195 OF 2016

Arun Motiram Madane

..Applicant

Vs.

The Maharashtra Industrial
Development Corporation
and others

..Respondents

--

Mr.S.S.Manale, Advocate for applicants
Mr.S.S.Dande, Advocate for respondent no.1
Mr.S.B.Joshi, AGP for respondent nos.2 and 3

--

AND
CIVIL APPLICATION NO. 13352 OF 2016
IN
FIRST APPEAL NO. 2198 OF 2016

Rajaram Ganpati Madane
died through Lrs.
Ganpati Rajaram Madane
and ors.

..Applicants

Vs.

The Maharashtra Industrial
Development Corporation
and others

..Respondents

--

Mr.S.S.Manale, Advocate for applicants
Mr.S.S.Dande, Advocate for respondent no.1
Mr.S.B.Joshi, AGP for respondent nos.2 and 3

--

**AND
CIVIL APPLICATION NO. 13403 OF 2016
IN
FIRST APPEAL NO. 2190 OF 2016**

Laxman Ganpati Madane (died),
through Lrs.
Rajasbai Laxman Madane
died through Ls.
1/1 Smt. Shobhabai Baliram Madane
and ors.

..Applicants

Vs.

The Maharashtra Industrial
Development Corporation
and others

..Respondents

--

Mr.S.S.Manale, Advocate for applicants
Mr.S.S.Dande, Advocate for respondent no.1
Mr.S.B.Joshi, AGP for respondent no.2

--

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : MARCH 06, 2017**

PER COURT :

All these Civil Applications are filed for permission to withdraw the compensation amount deposited by the acquiring body.

2. Heard both sides.

3. It is submitted by both sides that in not a single matter, permission was granted by this Court and so, nothing can be said about the conditions, if any, imposed either by this Court or the Hon'ble Supreme Court. It is submitted that if this Court intends to give permission to withdraw the amount, then the conditions in accordance with the merits of the case, need to be imposed.

4. Firstly, we are dealing with Civil Application No.13266 of 2016, as in this matter, there is serious objection of one of the original claimants viz. legal representatives of deceased – Eknath Shankarrao Madane. Mr.A.B.Kale, learned

Counsel argued this Civil Application on behalf of applicant no.7(3) – Savita @ Nisha Eknath Madane, who is an Advocate and shown as one of the claimants in the matter.

5. The contention is to the effect that there is a dispute about the shares in the family of the claimants. The other contention made by Mr.Kale is that, in the past, when the amount was disbursed by the Special Land Acquisition Officer, the entire amount was collected by Ramkishan, one of the claimants, and he virtually deceived the other claimants. The learned Counsel submits that there are many other properties belonging to this joint Hindu family and the dispute with regard to the other properties of the family needs to be considered by this Court. Argument was advanced on jurisdiction of this Court in view of Sections 11, 18 and 30 of the Land Acquisition Act, 1894 ("the Act", for short).

6. Mr.Manale, learned Counsel for the other claimants submits that right from the beginning, all the successors of deceased – Shankar Yenka Madane were together. He took this Court through the record maintained by the Special Land Acquisition Officer when the amount of compensation determined by him was disbursed. The submissions would show that the acquisition proceedings was started against Shankar, but after his death, all the heirs of Shankar were brought on record including, Eknath. Eknath also died and after his death, his legal heirs were brought before the Special Land Acquisition Officer. Form C.C. shows that the legal representatives of Eknath collected the amount by passing a receipt. Though some legal representatives of Eknath showed that they were acting as next friend of minor legal representatives of the deceased Eknath, when the award was passed and 'E' Statement was

prepared, name of Eknath was shown as legal representative of Shankar.

7. Mr.Manale, learned Counsel submitted that two schemes given under the Act to settle such disputes are different. He submitted that Section 18 of the Act deals with the matters, in which the disputant/legal representatives of the original owner were party to the acquisition proceedings. He submitted that Section 30 of the Act deals with other situation where a person claims share in compensation, but he was not party to the acquisition proceedings. He placed reliance on the judgment in the case of **G.H. Grant Vs. State of Bihar, 1966 AIR (SC) 237**. He took us through paragraph 13 of the said judgment, which reads as under :-

“(13) There are two provisions ss. 18(1) and 30 which invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom

it is payable. By sub-s.(1) of s.18 the Collector is enjoined to refer a dispute as to apportionment, or as to title to receive compensation, on the application within the time prescribed' by sub-s. (2) of that section of a person interested who has not accepted the award. [Section 30](#) authorises the Collector to refer to the Court after compensation is settled under [s.11](#), any dispute arising as to apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable. A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is served under sub-s.(2) of s.12, must, if he does not accept the award, apply to the Collector within the time prescribed under [s.18\(2\)](#) to refer the matter to the Court. But a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing, raise a dispute as to apportionment or as to the persons to whom it is payable, and apply

to the Court for a reference under s. 30, for determination of his right to compensation which may have existed before the award, or which may have developed upon him since the award. Whereas under s. 18 an application made to the Collector must be made within the period prescribed by sub-s.(2) cl.(b), there is no such period prescribed under s.30. Again under s. 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector is under s.30 not enjoined to make a reference: he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award."

He took this Court through paragraph 18 also of the said judgment, which reads as under :-

"(18) The scheme of the Land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act; it

is also intended that disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the persons who are entitled' to receive compensation, and there is nothing in s. 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved."

8. Mr.Manale, learned Counsel further places reliance on the judgment in the case of **A. Viswanatha Pillai and ors. Vs. Special Tahsildar for Land Acquisition No.IV and others, AIR 1991 SC 1996**. He submits that when one of the co-owners is prosecuting the matter for other, the Court cannot deny him opportunity to prosecute the matter and the matter so far as his legal entitlement needs to be decided.

9. On the other hand, Mr.Kale, learned Counsel places reliance on the observations of the Hon'ble Supreme Court in the case of **P.K. Sreekantan and ors. Vs. P. Sreekumaran Nair and ors., AIR 2007 SC 516** and in the case of **K. Kankarathnamma and ors. Vs. State of Andhra Pradesh and ors., AIR 1965 SC 304.**

10. The points involved in the cases cited by Mr.Kale were altogether different in nature. It is laid down that the proceedings under Section 30 of the Act cannot be dealt with jointly with the proceedings under Section 18 of the Act. This Court has already observed that the purposes behind these two provisions are different and this proposition cannot be disputed. The necessity for referring the parties to a Civil Court can arise only when there is a dispute under Section 30 of the Act.

11. Mr.Kale, learned Counsel argued also on the circumstance that when the present application for grant of permission to withdraw the amount was filed, it was contended in the application that the applicant Ramkishan was having General Power of Attorney in respect of some of the heirs of deceased Shankar like legal representative of deceased Eknath. It appears that this contention was then amended and said Ramkishan is not now contending that he is representing others.

12. Now separate Counsels are representing the legal representatives of the deceased Eknath. This Court has already observed that the order which this Court is making will not against the interests of the deceased Eknath.

13. Mr.Kale, learned Counsel also submits that in the application for withdrawal of amount, no specific prayer is made for apportionment of the amount. He has made this submission as he

wants to challenge this order to the Hon'ble Supreme Court.

14. This Court has already observed that it is the duty of this Court to make apportionment as the First Appeal is pending in this Court and this point is covered by the observations made by Hon'ble Apex Court in cases cited supra.

15. Mr.Manale, learned Counsel took us through the contents of the Reference filed under Section 18 of the Act. It was filed by all the legal representatives of deceased Shankar and this circumstance is not disputed by Mr.Kale, learned Counsel. Mr.Kale has also not disputed that his client wants to prosecute or file an appeal against the decision given by the reference Court on the quantum of compensation.

16. The fact remains that in the Reference, there was specific contention of the successors of deceased Shankar, as sons and daughters of

Shankar, that they were entitled to specific shares in the compensation. It is unfortunate that even though there is a scope under Section 18 of the Act for deciding the proportion of shares, the reference Court has not done it. The submissions show that both sides have filed appeals against the decision of the reference Court and therefore, the matters are before this Court. This Court, therefore, holds that this Court needs to do it as compensation proceedings are filed. In view of this circumstance, the entitlement needs to be decided by this Court. As there is no dispute as such, about the relationship and about the circumstance that the properties acquired were ancestral properties of the deceased Shankar, it cannot be said that the present dispute needs to be decided by Civil Court.

17. Admittedly, Shankar died prior to coming into force of the amendments to the Hindu Succession Act, 2005. In view of this

circumstance, it is not at all difficult for this Court to make observations with regard to the extent of shares, which the successors of the deceased Shankar can get. In view of the observations of the Apex Court cited above, it is also the duty of this Court to do it. The points raised by Shri Kale, learned advocate are not at all relevant in the present matter.

18. Thus, apparently, each son of the deceased Shankar will get $8/35^{\text{th}}$ share each and each daughter of the deceased Shankar will get $1/35^{\text{th}}$ share. In that proportion, the amounts which may be released, can be distributed amongst the successors of the deceased Shankar.

19. The learned Counsel for the acquiring body submits that the Special Land Acquisition Officer has granted compensation at the rate of Rs.6,000/- per acre and the reference Court has enhanced the compensation to Rs.3.5 per sq. feet.

30% of the amount was to be deducted towards the development charges.

20. The submissions made would show that in some matters arising out of the same project, when the reference Court had given compensation at the rate of Rs.3/- per square feet, this Court had set aside the said award of the reference Court. Thereafter, the Hon'ble Supreme Court remanded the matter to this Court. The submissions would show that this Court has granted stay in favour of the acquiring body in appeals on the condition of depositing 75% of the compensation amount awarded by the reference Court. Accordingly, the amount is deposited by the acquiring body. Now, it appears that the dispute of quantum is of aforesaid nature.

21. We have gone through the reasoning of the reference Court. It shows that the lands acquired were situated at a distance of hardly one to one

and half kms. from the town. The acquisition was made for the purpose of industrial estate and so, the reference Court has considered the N.A. potential of the lands. Some sale instances were also considered. However, the learned Counsel for the acquiring body submits that from Rs.6,000/- per acre, the amount is increased to Rs.1.2 Lakhs approximately, per acre though 30% of the amount from it can be deducted. Thus increase is by more than 10 times. In view of this circumstance and as 75% amount was deposited by the acquiring body, this Court holds that 50% of 75% amount already deposited in this Court can be allowed to be released on some conditions.

22. Hence, the following order :-

(i) The Applications are allowed.

(ii) In all these applications, 50% of the amount deposited by the acquiring body, be released in favour of the applicants/original

claimants. Out of the amount allowed to be withdrawn, 50% is to be released on furnishing undertaking of the claimants and remaining 50% is to be released on furnishing solvent surety or giving bank guarantee for that amount of any nationalised or scheduled bank.

(iii) Remaining 50% amount which will be lying in this Court, be properly invested as per the guidelines already given.

(iv) The applications stand disposed of accordingly.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]