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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.164 OF 2016

Ramkrishna Ambadas Madake (Died) Through LRS PETITIONER

1. Urmilabai w/o Ramkrishna Madake
Age - 54 years, Occ - Agriculture & Household
2. Vidhyanand s/o Ramkrishna Madake,
Age - 32 years, Occ - Agriculture
3. Vivekanand s/o Ramkrishna Madake
Age - 30 years, Occ - Agriculture

All R/o Nitali, Taluka & District - Osmanabad

VERSUS

1. The State of Maharashtra RESPONDENTS
Though Collector, Osmanabad
2. Gauri d/o Ramkrishna Madake,
Age - 13 years, Occ - Agriculture
3. Meena w/o Ramkrishna Madake,
Age - 35 years, Occ - Household
(Respondent No. 2 is minor and under
guardianship of her mother Meena
i.e. respondent No. 3)

Both R/o Nitali, Taluka & District - Osmanabad
At present Balaji Nagar, Shekapur
Taluka and District - Osmanabad

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Mr. Vivekanand V. Ingale, Advocate for the petitioners
Mr. P. N. Kutti, AGP for respondent State
Mr. S. B. Chaudhari, Advocate for respondent No. 3

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 8th AUGUST, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.
2. Petitioners are before this court aggrieved by order dated 19th November, 2014 upon an application Exhibit-11 in Special Darkhast No. 640 of 2011.
3. Special Darkhast No. 640 of 2011 has been prosecuted for realization of land acquisition compensation in Land Acquisition Reference No. 84 of 2002 which had been preferred by deceased Ramkrishna Madake. The execution is pending before Civil Judge, Senior Division at Osmanabad.
4. Application Exhibit-11 has been moved by present respondents No. 2 and 3 claiming to be daughter and wife of deceased Ramkrishna Madake. Ramkrishna Madake died on 24th September, 2011.
5. Application Exhibit-11 makes reference to that having regard to aforesaid, names of respondents No. 2 and 3 be shown as legal heirs of deceased Ramkrishna in aforesaid execution proceedings. Other legal heirs who have been prosecuting the execution proceedings, have concealed fact of respondents No. 2

and 3 being legal heirs of deceased Ramkrishna.

6. Learned advocate for the petitioners has pointed out that application went uncontested.

7. Learned advocate for the petitioners disputes claimed position and further refers to that advocate appearing in execution proceedings had not filed any say nor had been intimating anything about lodging of application Exhibit-11.

8. He submits that as a matter of fact, Urmila, the first wife is alive, which is not disputed and in such a case, application Exhibit-11 could not have been granted and second wife has no legal status under the Hindu law.

9. In the circumstances, learned advocate for the petitioners urges for restoration of application Exhibit-11 to its position as had been subsisting before passing of the impugned order dated 19th November, 2014.

10. Whereas, learned advocate for the respondents contends that, there had been no contest before executing court. There is no substance in the contention of petitioners. He further submits, it may not be a case wherein it can be said that respondent No. 2 would not have any case at all.

11. Perusal of the order also depicts that it has been passed since there had been no say filed by decree holders and since Exhibit-11 shows respondents No. 2 and 3 to be legal heirs, the application has been allowed. It appears that the court had not applied its mind to the status of execution petitioners, who also claim to be wife, sons and daughters of deceased Ramkrishna. In view of the same, it appears that it would be expedient if petitioners are allowed an opportunity to address themselves on application Exhibit-11, albeit subject to costs, since approach of the petitioners calls for imposition of costs, which depicts some element of casualness in conduct of execution proceedings. Since the order is of 2014 and the writ petition has been filed after almost a year, request of the petitioners would be considered subject to payment of costs to other side.

12. In the circumstances, writ petition stands allowed, impugned order dated 19th November, 2014 on Exhibit-11 in Special Darkhast No. 640 of 2011 is set aside. Application Exhibit-11 stands restored to its position as was subsisting before 19th November, 2014, subject to payment of costs of Rs.5000/-. Executing court shall, upon hearing parties, pass appropriate orders. Rule is made absolute in aforesaid terms.

Deposit of costs within a period of six weeks from today in executing court is a condition precedent. Upon deposit of costs, the same be disbursed to respondents No. 2 and 3 equitably.

[SUNIL P. DESHMUKH, J.]

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