

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1065 OF 2016

Surekha Hemant Mahajan (Wagh)

..... Petitioner

VERSUS

Yashwant Pandurang Gaikwad & Ors.

..... Respondents

Mr.Ravindra Adsure, i/b. Mr.Sidheshwar Biradar for the Petitioner.

Mr.P.N.Joshi for the Respondent nos. 1 and 3.

Ms.G.V.Shinde, A.G.P. for the Respondent no.10.

Mr.Rupesh Lanjekar, i/b. Mr.Murlidhar Patil for the Respondent no. 11.

CORAM : R.D. DHANUKA, J.

DATE : 3rd SEPTEMBER, 2018

P.C.

By this writ petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 3rd November, 2014 below application dated 23rd April, 2014 passed by the learned Civil Judge, Senior Division, Nashik to the extent of denying payment of Rs.95,93,947/- to the petitioner and directing the the same to be deposited in the fixed deposit of a nationalized bank.

2. The petitioner is the original decree holder no.6 in Darkhast No.18 of 2013 on the file of the learned Civil Judge, Senior Division, Nashik. The suit land belonged to Mr.Mahadu Gaikwad. The genealogy of the said Mr.Mahadu Gaikwad is given in paragraph (2) of the writ petition. The petitioner is daughter of Mr.Pandurang Gaikwad. The branch of Dattu Gaikwad was entitled to ½ share whereas the branch of Pandurang Gaikwad was entitled to another ½ share in the said property of the

Mahadu Gaikwad. The respondent nos. 1 to 3 are the legal heirs of Pandurang Gaikwad along with the petitioner whereas the respondent nos. 4 to 9 are the heirs of Dattu Gaikwad.

3. Pursuant to the land acquisition award, the Government has deposited the amount payable as per award in respect of the said land of Mahadu Gaikwad.

4. A perusal of the record indicates that it is not in dispute that the petitioner is daughter of Pandurang Gaikwad and grand-daughter of Mahadu Gaikwad. The contesting respondents filed an application before the learned 2nd Joint Civil Judge, Senior Division dated 13th January, 2014 in L.R. No.132 of 2002 and LRD No.18 of 2013 for enhancement of the amount of compensation and for distribution of the amount deposited. This court had directed the authority to pay the compensation amount to be deposited in court. By an order dated 12th February, 2014 passed by the learned 2nd Joint Civil Judge, Senior Division, Nashik, it was ordered that the claimant no.1 and his branch and claimant no.2 and its branch including the petitioner herein would be entitled to be paid ½ portion of the enhancement compensation on their due identification and subject to furnishing adequate bank guarantee of a nationalized bank of like amount.

5. pursuant to the said order, the contesting respondents applied for an order of deposit of the enhanced amount before the Executing Court. A notice of the said application was issued to the petitioner. The petitioner also made a separate application *inter alia* praying for withdrawal of the said amount coming to her share on furnishing a bank guarantee. Both the said applications were heard by the Executing Court. Insofar as the

application of the present petitioner is concerned, the Executing Court rejected the said application made by the petitioner on the ground that the Executing Court has no jurisdiction to decide the $\frac{1}{4}$ share of the petitioner and directed the office to invest the said amount in the fixed deposit.

6. A perusal of the documents annexed to the petition clearly indicates that there is no dispute that the petitioner is a daughter of the Pandurang and grand-daughter of Mahadu Gaikwad whose land was acquired by the Corporation.

7. During the course of the arguments, Mr.Joshi, learned counsel for respondent nos. 1 and 3 would submit that insofar as the petitioner is concerned, the petitioner was married long back and various amounts were spent on her marriage and thus she may be entitled to some amount but not to the extent of $\frac{1}{4}$ th.

8. A perusal of the application made by the contesting respondents on which the order came to be passed by the learned Joint Civil Judge, Senior Division indicates that both the parties were entitled to equal share in the said compensation deposited by the Corporation. Admittedly, the applicant was one of the name mentioned in the said order which order is not impugned by any of the parties.

9. Though the learned Executing Court has permitted the other members of both the branches to withdraw the amount deposited by the Corporation according to their entitlement in said compensation, insofar as $\frac{1}{4}$ th share of the petitioner is concerned, the withdrawal is rejected on the ground that the Executing Court could not adjudicate her claim.

10. A perusal of the record referred to aforesaid clearly indicates that the 1/4th share of the petitioner is admitted by all the parties and thus did not require any adjudication as erroneously held by the learned Executing Court. If the other members of the branches are held entitled to the amount, in my view the order refusing to permit the petitioner to withdraw her 1/4th share shows perversity.

11. It is not in dispute the other parties who have been allowed to withdraw respective share has already furnished bank guarantees in respect of the amount allowed to withdrawn in view of the pendency of the proceedings filed by the Corporation and have withdrawn the amount.

12. In my view the petitioner also thus deserves to be permitted to withdraw the said amount directed to be invested in the fixed deposit of a nationalized bank by Executing Court on the same terms and conditions. The petitioner shall furnish bank guarantee on the same terms within four weeks from today. Upon such bank guarantee, the learned Executing Court shall permit the petitioner to withdraw the amount deposited with the fixed deposit with accrued interest if any.

13. Writ petition is allowed in the aforesaid terms. No order as to costs.

14. The parties as well as the Executing Court to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]