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

WRIT PETITION NO.4876 OF 2021

1. Prabhu s/o Bhagwan Ghumre
Age : 70 yrs. Occ. Agri.
2. Govardhan s/o Bhagwan Ghumre
Age 60 yrs. Occ. Agri.
3. Janardhan s/o Bhagwan Ghumre
Age 45 yrs. Occ. Agri.

All r/o Mainda, Tq. And Dist. Beed

..PETITIONERS

VERSUS

1. The Union of India,
Through Dy. Chief Engineer (Construction)
Central Railway, Pune, Dist. Pune
2. The State of Maharashtra
Through the Secretary
Revenue and Forest Department
Mantralaya Mumbai – 32
3. The Divisional Commissioner
Aurangabad Division, Aurangabad
4. The Collector,
Collector office, Beed, Dist. Beed
5. The Land Acquisition Officer,
Jaikwadi Project, Beed
6. Ashruba s/o Atmaram Ghumre
Died through his L.Rs.

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- 6A) Rameshwar s/o Ashruba Ghumre
Age 38 yrs. Occ. Agri.
- 6B) Parmeshwar s/o Ashruba Ghumre
Age 35 yrs. Occ. Agri.
Both r/o Kasba Vibhag Near Water Tank
Dharur, Tq. Dharur, Dist. Beed
7. Jyotiram Atmaram Ghumre
Age major occ. Agri.
Both r/o Mainda, Tq. and Dist. Beed ..RESPONDENTS

Mr. R.G. Hange, Advocate for petitioners;
Mr. Alok M. Sharma and Ms. Sudha S. Chintamani, Advocates for
respondent no.1;
Ms. M.A. Deshpande, A.G.P. for respondent nos.2 to 4;
Mr. P.N. Muley, Advocate for respondent nos.6-A & 6-B;
Mr. H.V. Tungar, Advocate for respondent no.7

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 28th February, 2022

ORDER (Per S.G. Mehare, J.)

1. The petitioners have a case that they and respondent no. 6 (A and B) are the co-owners of field Gut no. 6 of village Mainda, Tq. And District Beed. Land measuring 76 Are out of the total land was acquired for railways by an award dated 01.12.2011 passed by the Land Acquisition Officer/ respondent no.5. The actual work of the railway began in 2016.

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Then the petitioners realized that the acquiring body has paid the compensation for the land measuring 38 Are, only to them. Though the land owned by respondent nos.6 and 7 was not acquired, even then they have received compensation for 38 Are land. The petitioners persuaded the concerned authorities from time to time to make the payment of compensation, by representation, but in vain. Hence, this petition for a direction to pay them compensation for the land measuring 35 Are under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. ("The 2013 Act" for short).

2. The contesting respondent no. 7 by his affidavit in reply submitted that the present writ petition is not maintainable. There is no legal evidence to claim the entire compensation amount. The petitioners had no title and possession over the entire acquired land. The field Gut no.6 was measuring 1H 39 Are. The petitioners have 8 annas share jointly in the said field i.e. 67 ½ Are land. Respondents nos. 7 had share and possession of land measuring 38 ½ Are and the remaining land measuring 30 ¾ Are, was possessed by deceased respondent no.6 as the Karta of joint family. The entries of respective shares are recorded in the 7/12 extract. The petitioners never objected to those entries. More so, the petitioners and the

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respondents have received the compensation under protest and have preferred the separate Land Acquisition References under Section 18 of the Land Acquisition Act 1894. The petitioner Prabhu has collected the compensation amount for himself and other petitioners. By a consent deed dated 02.05.2012, the petitioners and respondents have agreed for their respective shares to be acquired. Besides the consent deed, an affidavit was also executed in favour of respondent no. 5 regarding the receipt of cheques of their shares. The petitioners were never the exclusive owners of the entire acquired land. The petition is devoid of merit. Hence, it may be dismissed with costs.

3. Heard the respective counsels for the parties at dispute and the learned A.G.P. for the State.

4. The consent deed and the affidavits dated 02.05.2012 and 22.05.2012 indicate that the petitioners have accepted their share to the extent of 34 Are and 4 Are potkharab/ uncultivable land and they have also received the compensation amount by separate cheques. The petitioners have not denied these facts. It is also undisputed that after the compensation was received by the petitioners and respondents, they have

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preferred the references separately under section 18 of the Land Acquisition Act 1894. Petitioners have not raised objections to the acquisition and claimed exclusive ownership over the acquired land.

5. The submission of learned counsel for the petitioners that the representation submitted by the petitioners ought to have been considered by respondent no.5 is without any legal basis. Once the award is passed and compensation is accepted under the Land Acquisition Act 1894, no question arises to apply the 2013 Act. Petitioners' counsel would argue that when there is a dispute about the apportionment of the compensation amount, respondent no. 5 had no option but to refer the dispute to the court under Section 30 of the Land Acquisition Act 1894. The documents placed on record establish that after the award was passed, the petitioners and respondents nos. 6 and 7 had agreed on their respective shares and accepted the compensation amount. In these circumstances, the contention that the dispute ought to have been referred to the civil court is devoid of merit. Factually, the petitioners have no cause of action to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

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6. For the above reasons, we do not find any merit in the petition.

Hence, the petition is dismissed.

7. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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