

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1043 WRIT PETITION NO.8834 OF 2022
WITH CA/13435/2022 IN WP/8834/2022 WITH CA/13436/2022 IN
WP/8834/2022

RAJANI DASHRATH BHALERAO

VERSUS

THE SPECIAL LAND ACQUISITION OFFICER 1
AND OTHERS

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Advocate for Petitioner : Mr Ajeet B. Kale
AGP for Respondent/State : Mr K.N. Lokhande
Advocate for Respondent No. 5 : Mr P.B. Patil

CORAM : SANDEEP V. MARNE, J.
DATE : 10th NOVEMBER, 2022

PER COURT :

1. By this petition, petitioner challenges order dated 01.08.2022 passed by the Civil Judge, Senior Division, Jalgaon rejecting the petitioner's application at Exh. 42. By that application, the petitioner had raised an objection to the execution proceedings filed by the decree holders.

2. It is the case of the petitioner that her grand father Motiram had only two issues namely, Deokabai (petitioner's mother) and Dharma. The petitioner contends that Adhar is not the son of Motiram, and therefore, not entitled to any share in the compensation of property owned by Motiram. On this ground, objection is raised to the execution proceedings.

3. The reference was filed by Motiram and during pendency

thereof, he expired. All three, Deokabai, Dharma and Adhar were brought on record as legal heirs of Motiram. It appears that Deokabai did not question Adhar being brought on record as legal heir of Motiram. The award was passed in the joint names of Deokabai, Dharma and Adhar. There was parallel set of proceedings in the form of Regular Civil Suit No. 156/1993 in which Adhar's status as son of Motiram was questioned. It is common ground that the said proceeding has been decided in favour of Adhar thereby declaring him as legal heir of Motiram.

4. The objection to the execution proceedings came to be filed by the petitioner essentially pleading that the award in the reference was obtained by practicing fraud on the court by Adhar. The executing court has proceeded to reject the petitioner's application on the ground that no material was produced by the petitioner to establish case of fraud. The executing court has also held that petitioner's mother Deokabai has not raised any objection challenging the status of Adhar in the civil suit for partition. This observation appears to be erroneous as Motiram himself has questioned the status of Adhar in the said suit. However, the said error committed by the executing court would not have any effect on the ultimate result in the petitioner's application.

5. In my opinion, no error is committed by the executing court while rejecting the petitioner's application.

6. The petition is devoid of merit. The same is dismissed without any order as to costs.

7. Though not the subject matter of application at Exh. 42, which has been rejected by the impugned order, the petitioner has apparently raised the issue of entitlement of persons claiming to be legal heir of Adhar towards compensation. This is a separate issue to be decided on its own merits in the appropriate proceedings.

8. All pending civil applications are disposed of.

[SANDEEP V. MARNE, J.]

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