

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

**WRIT PETITION NO.243 OF 2021
WITH WRIT PETITION NO.1874 OF 2021**

**SUREKHA BIBHISHAN PANCHAL ALIAS SUTAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Nileshsingh J. Patil
AGP for Respondents – State : Mr. S. N. Kendre
Advocate for Respondents No. 5 & 6 : Mr. S. A. Mulla
Advocate for Respondent No.3 : Mrs. K. M. Daskhedkar h/f
Mr. R. C. Patil
Advocate for Respondent No.4 : Mr. Apparao Yengure

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 05th AUGUST, 2022

PER COURT :

1. Challenge in this petition is to the order dated 23/11/2020 passed by learned 2nd Joint Civil Judge Senior Division, Osmanabad, below Exhibit-13 in Special Darkhast No.289/2020.
2. Petitioner filed application Exhibit-13 as a third party contending that the land Block No.9, admeasuring 0 H 75 R situated at village Tadvla, Taluka Tuljapur, District Osmanabad, has been acquired by the State for the purpose of Hangarga Storage Tank, by passing award on 10/01/2008. The petitioner, decree holder Vatsala Sutar, Sulan Sutar and Shamal Sutar are real sisters. According to the petitioner, said acquired land is maternal joint family property of the sisters. Name of the decree holder was mutated in ownership

column as she is the elder sister and names of other sisters have been entered in other rights column.

3. As the compensation amount was not adequate, the decree holder filed L.A.R. No.254/2012 for enhancement of compensation, which came to be allowed. Execution petition is filed by the decree holder to recover amount of Rs.39,64,198/-. The decree holder filed application for withdrawal of said amount. The petitioner, therefore, claimed that $\frac{1}{4}$ th share of amount of total compensation i.e. Rs.9,91,050/- be awarded to her. Application filed by the petitioner was resisted by the decree holder contending that the petitioner does not have any share in the compensation and the Court has already granted permission to the decree holder to withdraw entire amount and accordingly she has given indemnity bond and undertaking. Execution Court cannot go behind the decree. Execution Court has rejected the application holding that after filing of the indemnity bond and undertaking by the decree holder, execution petition was disposed of on 11/09/2020, as the decree was fully satisfied. Thereafter, on 21/09/2020 application Exhibit-13 was filed by the petitioner.

4. Admittedly, petitioner has filed Special Civil Suit No.44/2020 seeking share in the compensation amount. In the said suit, temporary injunction application was filed by the petitioner on

24/11/2020. The same, as per instructions of learned advocate for petitioner, is still pending.

5. Taking into consideration the fact that the decree is passed in favour of decree holder i.e. respondent No.4 and after respondent No.4 decree holder has filed undertaking and indemnity bond, execution petition is disposed of as the decree is fully satisfied, in my opinion Execution Court is justified in rejecting the application filed by petitioner. It is settled legal position that Execution Court cannot go behind the decree.

6. In that view of the matter, the petitioner, if succeeds in the suit, is entitled to recover amount of share from respondent No.4. Interest of the petitioner is already protected as undertaking and indemnity bond is taken from respondent No.4 decree holder.

7. There is no merit in the writ petition. Writ petition is, therefore, dismissed.

8. Accordingly, Writ Petition No.1874/2021 also stands disposed of.

(NITIN B. SURYAWANSHI, J.)