

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

917 WRIT PETITION NO.12841 OF 2022

**DINKAR RANGNATH GUD DIED
THROUGH LRS DEEPAK DINKAR GUD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH THE COLLECTOR AND OTHERS**

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Advocate for Petitioners : Mr. Abhijit S. More
AGP for Respondent – State : Mr. S.B. Pulkundwar
Advocate for Respondent No.5 : Mr. Shoyab Shaikh

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CORAM : SANDEEP V. MARNE, J.

DATE : 15-12-2022

PER COURT :

. By this petition, petitioners have challenged the order dated 15.11.2022 passed by the Civil Judge Senior Division, Paranda deducting the amount of compensation already received by the father of petitioners in the original land acquisition award while distributing enhanced amount of compensation in pursuance to award dated 04.11.2017 passed by the Reference Court.

2. The original amount of compensation determined in the name of the father of petitioners (Dinkar) was Rs.7,44,644/- which was withdrawn by Dinkar. Dinkar filed L.A.R. No.319 of 2014 seeking enhancement in the amount of compensation. In the pending LAR filed by Dinkar, Amol Jagannath Gud and Nagnath Rangnath Gud

intervened and claimed share in the compensation. Their intervention was allowed. The Reference Court has enhanced the compensation amount with a direction that respondent nos.4 and 5 shall be entitled to receive their 1/3rd share each out of the enhanced value of acquired land. It was further directed that the compensation amount already paid be deducted from the awarded amount.

3. Accordingly the Executing Court has distributed the amount of compensation amongst petitioners, Amol Jagannath Gud and Nagnath Rangnath Gud by dividing the entire amount of compensation (Original compensation + enhanced compensation) of Rs.57,70,200/- into three parts.

4. The learned counsel for petitioners submits that the Reference Court has issued a declaration that respondent nos.4 and 5 to L.A.R. are entitled to receive 1/3rd share each 'out of the aforesaid enhanced value of acquired land'. He therefore contends that no share is granted in favour of respondent nos.4 and 5 in the original amount of compensation. He further submits that the Executing Court cannot go beyond the decree and relies upon the decision of the Apex Court in **J&K Bank Ltd and Others Vs. Jagdish C. Gupta, (2004) 10 SCC 568** and **Century Textiles Industries Ltd vs. Deepak Jain and**

another, [2009 (5) Mh.L.J. 591].

5. The learned Counsel for respondent no.5 opposes the petition and supports the order passed by the Executing Court. He submits that the Reference Court itself has issued a direction in para-6 of the operative portion of the order for deduction of the compensation amounts already paid and that therefore it cannot be said that the Executing Court has gone beyond the decree.

6. After hearing the learned counsel for the parties, I find that the stand taken by petitioners is absolutely preposterous. There can be no debate on the proposition that the Executing Court cannot go beyond the decree. However this proposition cannot be overstretched to mean that the litigating parties should be relegated to multiplicity of litigation to claim their rights. In the present case, the Reference Court was concerned only with the issue of enhancement of compensation and has accordingly used words 'out of the aforesaid enhanced value of acquired land' in paragraph-5 of the operative portion of the order. However later in para-6 the Reference Court has also directed that the compensation amount already paid be deducted from the aforesaid awarded amount. In my view therefore the trial Court has not gone beyond the decree while

deducting the amount of compensation already withdrawn by the father of petitioners (Dinkar). The order of the Executing Court appears to be strictly in accordance with the Award passed by the Reference Court.

7. The order of the Executing Court is accordingly upheld. However there appears to be difficulty in the calculations made by the Executing Court. The Executing Court has awarded Rs.21,71,614/- each to Amol Jagannath Gud and Nagnath Rangnath Gud and Rs.16,75,186/- to petitioners. The total of three amounts comes to Rs.60,18,414/-. This appears to be more than the total compensation of Rs.57,70,200/-. Therefore the order dated 15.11.2022 passed by the Executing Court is modified only to the extent of calculations made in para-3 of the order and the execution proceedings are remanded to the Executing Court for making accurate computation of the amount of compensation payable to the respective parties. The exercise be carried out by the Executing Court within a period of six weeks from today.

8. It is clarified that the findings recorded by the Executing Court upto para-14 of the order as well as operative portion in para-1 and 2 of the order are not disturbed and the proceedings are

remanded back only for the purpose of correction in the amount of compensation payable to each parties.

9. With the aforesaid directions, writ petition is disposed of.

No costs.

(SANDEEP V. MARNE, J.)

GGP