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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4339 OF 2021

Savitra Bagwan Haridas and Others

PETITIONERS

VERSUS

The State of Maharashtra and Another

RESPONDENTS

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Mrs. Kavita Bhale h/f Mr. S. V. Gundre, Advocate for petitioners
Mr. S. N.Kendre, AGP for respondent - State
Mr. Anand P. Chawre a/w Ms. Vandana Sadawarte, advocates for
respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th OCTOBER, 2023

ORDER :

1. Petitioners – Decree Holders, are aggrieved by order dated 11th October, 2019 passed by learned District Judge-1, Latur below payment application and application Exhibit-29 in Regular Darkhast No. 71 of 2011, thereby rejecting prayer of petitioner No.1 for withdrawal of the award amount of her share deposited by the acquiring body.

2. Facts, leading to this petition, can briefly be stated thus -

Land of petitioners *ad measuring* 9 Hectare 42 R out of Gut No. 142, situated at village Pangaon, was acquired and Award was passed. Being dissatisfied with the quantum of

compensation, petitioners filed Land Acquisition Reference No. 1044 of 2000, which was allowed by the Reference Court on 24th November, 2010. Petitioners then filed Execution Petition bearing RD No.71 of 2011 for execution of the award passed by the Reference Court. On deposit of amount by the acquiring body, petitioners have withdrawn an amount of Rs.23,14,649/- in terms of the order passed by District Court on 27th June, 2016, on furnishing undertaking. By the order passed below Exhibit-19, petitioners were further permitted to withdraw an amount of Rs.13,88,789/-, vide order dated 22nd July, 2016. Accordingly, petitioners have withdrawn the said amount.

3. Petitioners filed application Exhibit-29 contending that the acquired land jointly stood in the name of petitioner No.1 and her father in law Bhanudas Sanga Haridas. Bhanudas is father in law of petitioner No.1, however, during land acquisition proceedings, name of husband of petitioner No.1 is inadvertently mentioned as Bhanudas (i.e. her father in law's name). The Award amount was withdrawn by petitioners as per the said name. In the Award also, name of her husband of petitioner No.1 is wrongly mentioned. Land Acquisition Reference No.1044 of 2000 is filed in the said name only and it is decreed. After filing of Regular Darkhast, since decree holder No.2 – father in law of

petitioner No.1 – Bhanudas expired, his legal heirs, namely wife – Bhagirathi and two sons Bhagwan and Laxman are taken on record. The amount deposited in the execution proceedings is withdrawn thrice by the petitioners. Now an amount of Rs.10,42,708/- is deposited, for withdrawal of which, the petitioners sought permission of the executing court. Along with the said application, affidavit of petitioner No.1 that name of her husband is wrongly mentioned in the Land Acquisition Reference and her husband's name is Bhagwan and not Bhanudas, is filed. Similar affidavit is filed by Bhagirathibai, wife of Bhanudas Haridas. She has also reiterated that Bhanudas is her husband and petitioner No.1 Savitra is her daughter in law and her son Bhagwan is husband of Savitra. Executing Court has permitted petitioners No.2/1 to 2/3 to withdraw the amount on furnishing indemnity bond, however, has not permitted petitioner No.1 to withdraw the amount of her share. Hence, this petition.

4. Heard learned advocate for petitioners. Learned Assistant Government Pleader for respondent No.1 and learned advocates for respondent No.2 – acquiring body. Perused the memo of writ petition, its annexures and the impugned order.

5. There appears substance in the contention of petitioner No.1 that name of her husband is Bhagwan and Bhanudas is her

father in law. Copies of Aadhar Cards, placed on record by the petitioners confirm the said fact. Along with copy of Aadhar Card of petitioner No.1, copies of Aadhar Cards of Bhagirathibai, Bhanudas, Laxman and Bhagwan are also placed on record.

6. Executing Court ought to have considered the fact that contentions raised by petitioner No.1 are supported by affidavits filed by her mother in law, brother in law so also other two relatives, which clearly state that name of husband of petitioner No.1 is Bhagwan and Bhanudas is her father in law.

7. Record further reveals that earlier, thrice amount was permitted to be withdrawn by petitioner No.1. In that view of the matter, Executing Court ought to have permitted petitioner No.1 to withdraw the amount of award of her share, on certain conditions.

8. For the aforesaid reasons, the impugned order cannot be sustained and the petition deserves to be allowed. Hence, the following order:

ORDER

- A. Writ petition is allowed.
- B. Petitioner No.1 is permitted to withdraw the amount of award passed in Land Acquisition Reference No.1044 of

2000 of her share, on the same terms and conditions as are imposed on other petitioners by the Executing Court.

[NITIN B. SURYAWANSHI]
JUDGE

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