

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

WRIT PETITION NO. 13520 OF 2023

1. Mohan Trimbak Aakhade,
Age : 52 years, Occu. : Agri.,
R/o Pargaon, Tq. Washi,
Dist. Osmanabad.
2. Sadhana Trimbak Galande,
Age : 47 years, Occu. : Agril.,
R/o Sukta, Tq. Washi,
Dist. Osmanabad. .. Petitioners

Versus

1. Shrimant Pralhad Kewadkar,
Since deceased through L.Rs.
- 1-A Shobha Shrimant Kewadkar,
Age : 40 years, Occu. : Agril.,
- 1-B Shubham Shrimant Kewadkar,
Age : 19 years, Occu. : Education/Agril.,
- 1-C Sidharth Shrimant Kewadkar,
Age : 17 years, Occu. : Education,
u/g of Respondent No. 1
Shobha Shrimant Kewadkar,

All R/o Donja, Tq. paranda,
Dist. Osmanabad.
2. The State of Maharashtra,
Through Ld. Collector,
Osmanabad. .. Respondents

Shri V. D. Salunke, Advocate h/f Shri Mayur V. Salunke,
Advocate for the Petitioners.
Shri Shoyab Shaikh, Advocate for the Respondent Nos. 1A to 1C.
Shri S. N. Kendre, A.G.P. for the Respondent No. 2.

**WITH
CIVIL APPLICATION NO. 13119 OF 2023
IN
WRIT PETITION NO. 13520 OF 2023**

1. Mohan Trimbak Aakhade
and another .. Applicant

Versus

1. Shrimant Pralhad Kewadkar,
Since deceased through L.Rs.
1-A Shobha Shrimant Kewadkar,
and others .. Respondents

Shri V. D. Salunke, Advocate h/f Shri Mayur V. Salunke,
Advocate for the Applicants.
Shri Shoyab Shaikh, Advocate for the Respondent Nos. 1A to 1C.
Shri S. N. Kendre, A.G.P. for the Respondent No. 2.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 30.10.2023

JUDGMENT PRONOUNCED ON : 04.11.2023

JUDGMENT :

. Rule. Rule is made returnable forthwith. With the consent of parties heard both the sides finally at the admission stage.

2. The petitioners are challenging the common order below

Exhibit 13 and 20 passed on 16.10.2023 by the learned Civil Judge Senior Division, Paranda in Spl. Darkhast No. 110 of 2020. The petitioners are third parties and they are claiming share in the enhanced compensation disbursable in Spl. Darkhast No. 110 of 2020.

3. The petitioners are the heirs of one Sumanbai Trimbak Aakhade. Sumanbai Aakhade and Kamalbai Popat Talekar were real sisters. The respondent No. 1 Shrimant, Ashok, Kalpana, Surekha, Meghmala were the children of Kamalbai Pralhad Kewadkar. Kamalbai Kewadkar happens to be cousin of Sumanbai and Kamalbai. The petitioners' mother Sumanbai and Kamalbai had filed suit R.C.S. No. 40 of 1993 for partition and separate possession against the respondent No. 1 and others. The suit was decreed on 06.11.2001 granting shares to the Sumanbai and Kamalbai in land gut No. 272, 273 and 321. The decree was challenged by the respondent No. 1/Shrimant in R.C.A. No. 26 of 2014. It was confirmed.

4. The joint family lands were acquired and award was passed on 20.08.2007. By that time there was already decree passed in R.C.S. No. 40 of 1993. The petitioners' mother had share along with the respondent No. 1 and others in the amount of compensation. However, it is only the respondent No. 1 who applied for the enhancement of compensation in Land Acquisition Reference No. 42 of 2016. The respondent No. 1 exclusively prosecuted the reference.

5. There was settlement amongst the petitioners' mother, the respondent No. 1, Kamalbai Popat Talekar and Kamalbai Pralhad Kewadkar for receiving compensation. On 12.09.2008, the petitioners' mother Sumanbai executed notarized consent deed on behalf of herself and her sister Kambalbai stating to have received the share as per the decree passed in R.C.S. No. 40 of 1993. As per the settlement the appeal preferred against R.C.S. No. 40 of 1993 was decided to be withdrawn. Accordingly by voucher dated 01.10.2008 an amount of Rs. 2,57,142/- was disbursed to Sumanbai.

6. The respondent No. 1 exclusively prosecuted the reference proceedings and got an enhancement of compensation by award dated 24.04.2018. The reference was filed by the respondent No. 1 exclusively. Spl. Darkhast No. 110 of 2020 is filed by the heirs of the respondent No. 1 exclusively without there being any other member of the family as decree holders. An amount of Rs. 1,53,93,033/- is deposited in the executing court.

7. The petitioners stepped in shoes of Sumanbai after her death on 09.09.2018. They submitted application Exhibit 13 staking their claim to the enhanced amount of compensation, which is being deposited before the executing Court. Whereas an application Exhibit 20 is filed by heirs of Putalabai staking claim in the enhanced amount of compensation. Both the applications are contested by the respondent No. 1. By common order they

are rejected. Being aggrieved the present petition is filed to the extent of rejection of application Exhibit 13.

8. The petitioners have filed application Exhibit 34 and 35 to prohibit the disbursement of the amount in the execution petition. By further order dated 16.10.2023 below Exhibit 07, 34 and 35, the executing Court directed the Assistant Superintendent to disburse the amount to the respondent No. 1-A to 1-C by securing an undertaking. The disbursement is suspended for one week.

9. The learned counsel for the respondent No. 1 has placed on record the pursis at Exhibit 40 submitted by the respondent No. 1 informing that the respondent No. 1 is seeking withdrawal of the execution petition as he is withdrawing the amount deposited in the executing court. Considering the pursis dated 25.10.2023, the execution petition has been disposed of being withdrawn by passing order below Exhibit 01. Therefore the learned counsel for the respondent No. 1 made statement that the petition virtually became infructuous.

10. To verify the situation time was given to the petitioners. They filed Civil Application No. 13119 of 2023 bringing certain events on record and insisting that the amount has not been disbursed so far. The pursis at Exhibit 40 and order dated 25.10.2023 passed below Exhibit 01 have been placed on record. It is contended that the writ petition survives and has to be

decided on merits. It is reiterated that the amount deposited before the executing court is likely to be disbursed to the heirs of the respondent No. 1 at any moment. Considering urgency expressed by the petitioners, present petition is heard finally at the admission stage.

11. The learned counsel for the petitioners submits that the petitioners' mother Sumanbai had filed Spl. C. S. No. 40 of 1993 and secured a decree. She had share in the suit lands which stood acquired. Hence the petitioners are entitled to the compensation as well as enhanced compensation. It is contended by the learned counsel for the petitioners that she was disbursed a compensation of Rs. 2,57,142/- on 01.10.2008, indicates that she is entitled to compensation at further stages and in case of enhancement also. The learned counsel submits that already the recourse is taken by the petitioners by securing a decree from the competent Court for entitlement in the compensation. There is no question of taking recourse to Section 30 of the Land Acquisition Act (for the sake of brevity and convenience hereafter referred as to the "L. A. Act"). He submits that the respondent No. 1 is not exclusive owner of the lands acquired, but a co-sharer along with the mother of the petitioners and others.

12. The learned counsel would submit that due to withdrawal of the execution petition an anomalous situation has arisen as the executing court has become *functus officio* and the amount is lying with executing court. He submits that there is travesty of

justice as his clients hold a decree in Spl. C. S. No. 40 of 1993 indicating their entitlement, but, the respondent No. 1 is likely to get entire enhanced amount of compensation as if he is the exclusive owner.

13. The learned counsel for the petitioners submits that the petitioners have no objection for sharing the enhanced compensation proportionately with the respondent No. 1. The claim of the respondent no. 1 has not been disputed by them. He would criticize the manner in which the executing court passed orders below Exhibit 13, 34, 35 and 01 of Spl. Darkhast No. 110 of 2020.

14. The learned counsel for the respondent No. 1 repelled the submissions of the petitioners. He supports the impugned order. He has pointed out the settlement between the parties and giving up of further interest by mother of the petitioners vide consent deed. He submits that in view of the settlement and the consent deed, the petitioners are not entitled to claim share in the enhanced compensation. The land reference U/Sec. 18 of the L. A. Act has been exclusively prosecuted by the respondent No. 1. He would further point out that the petitioners have filed Spl. C. S. No. 12 of 2020 for partition thereby claiming share in the enhanced amount of compensation. The said suit is pending.

15. The learned counsel for the respondent No. 1 submits that the claim of the petitioners is against Section 30 of the L. A. Act.

The petitioners' mother has been already paid excess amount than her share determined in Spl. C. S. No. 40 of 1993. He has placed on record the copy of plaint in Spl.C.S. No. 12 of 2020. He has also placed on record affidavit of Kamalbai @ Kamal Popat Talekar executed on 25.10.2023. It is part of record in Spl. Darkhast No. 110 of 2020 as Exhibit 38. This affidavit expressly refers to the settlement and giving up of the interest or share of the affiant and the petitioners in further proceedings under the L. A. Act.

16. The learned counsel for the respondent No. 1 relies upon the judgment of this Court rendered in the matter of **Raghunath Dhondur Navde Vs. Pandit Ramchandra Navde and others** reported in **2000(1) Bom.C.R. 129** to buttress the submissions that the application Exhibit 13 is without jurisdiction and cannot be entertained.

17. I have considered the submissions of the learned counsel for respective parties. I have also gone through the documents placed on record.

18. The petitioners' mother executed consent deed on 12.09.2008, which are at page Nos. 38 and 43. It appears that, she entered into settlement with other family members. It was agreed that appeal against decree passed in R.C.S. No. 40 of 1993 was to be withdrawn. She was satisfied with the amount allotted to her towards her share. Accordingly, on 01.10.2008 she

was disbursed with Rs. 2,57,142/-. These facts are fortified by the affidavit of Kamalbai @ Kamalbai Popat Talekar, which is at Exhibit 38 filed in Spl. Darkhast No. 110 of 2020. Sumanbai and Kamalbai have given up their right to claim amount from the compensation in lieu of an amount of Rs. 2,57,142/-. I find substance in the submissions of the learned counsel for the respondent No. 1.

19. L. A. R. No. 42 of 2016 was exclusively filed by the respondent No. 1. During the lifetime of Sumanbai and after her demise, the petitioners did not either participate or object L.A.R. No. 42 of 2016. It was exclusively prosecuted by the respondent No. 1. Ultimately, he succeeded in getting enhanced compensation vide judgment and award dated 24.04.2018. There is every reason to infer that due to the settlement arrived at on 12.09.2008 and disbursement of Rs. 2,57,142/- on 01.10.2008, these two ladies did not claim any share further in the compensation.

20. Though the shares are decided in Spl. C. S. No. 40 of 1993, there is documentary evidence to show that in lieu of Rs. 2,57,142/- right to share in further enhanced compensation has been abandoned. I do not approve the submissions of the learned counsel for the petitioners that just because there is decree in the suit referred above, the petitioners are entitled to share in the enhanced compensation.

21. Interestingly, the petitioners have filed Spl. C. S. No. 12 of 2020 for partition in the enhanced compensation of Rs. 1,53,93,033/-. Had the petitioners been entitled to the share in the enhanced compensation in view of decree in Spl. C. S. No. 40 of 1993, they would not have filed a separate suit for same relief. The petitioners have not secured any orders in the pending suit to restrain the disbursement. Therefore, submissions of the learned counsel for the petitioners cannot be accepted

22. The remedy was available to the petitioners or their mother U/Sec. 30 of the L. A. Act. There is possibility that as there was settlement in the year 2008, even they would not have thought of resorting to Sec. 30 of the L. A. Act. The shares demarcated in Spl. C. S. No. 40 of 1993 enured to the benefit of the petitioners till entering into compromise and receiving compensation in the year 2008. As stated above, I am of the considered view that just because there was decree in favour of the petitioners' mother in Spl. C. S. No. 40 of 1993, the petitioners cannot claim share in the enhanced compensation.

23. The finding recorded by the learned Judge while rejecting application Exhibit 13 that the petitioners did not file reference for enhancement of the compensation and they did not follow the procedure either by resorting to Sec. 30 of the L. A. Act are correctly recorded. I do not find any perversity or patent illegality to interfere in the order passed by the executing Court. The learned judge has taken a plausible view.

24. The submissions of the learned counsel for the petitioners that the execution petition stands withdrawn and simultaneously amount is lying in the executing court which has become *functus officio* cannot be approved. Though the execution petition stands withdrawn on 25.10.2023, there has already been common order below Exhibit 07, 34 and 35 passed on 16.10.2023. The executing Court has taken care in directing to disburse the amount to the respondent No. 1 before disposing of the execution petition. Therefore, the disposal of the execution petition being withdrawn would not be an impediment in disbursing the amount to the persons who are entitled to it.

25. The learned counsel for the respondents has placed reliance on the judgment of this Court rendered in the matter of **Raghunath Dhondu Navde Vs. Pandit Ramchandra Nvde and others** cited supra. He refers to para No. 7 of the said judgment. It is held that if a person is not party to the land acquisition reference, then he cannot appear in the execution proceedings to stake his claim for disbursement of compensation. Such applications before the executing Court would be without jurisdiction. His remedy would be to file suit. The propositions are applicable to the case in hand. In that view of the matter, it is not possible to upset the impugned order.

26. For the reasons recorded above, I do not find substance in the writ petition. The same is dismissed. However, there shall

be no order as to costs. Rule is discharged.

27. The Civil Application No. 13119 of 2023 also stands disposed of.

[SHAILESH P. BRAHME, J.]