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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO.549 OF 2021

1. Sau.Kalpana Kashinath Bobhate,
Age 44 years, occupation household,
Resident of Tukdoji Ward No.6,
Tahsil and District Chandrapur.

2. Sumit Mahadeo Derkar,
Aged 27 years, occupation education,
R/o Chandni Nagar, Bahirambaba
Ward, Ghuggus, tahsil and district
Chandrapur.

3. Shri Viju Ramkrushna Bobhate,
Aged 32 years, occupation agriculturist,
R/o Mungoli, post-Sakhara (Ko),
Tahsil-Wani, district-Yavatmal.

4. Sachin Vinayak Garghate,
Aged 26 years, occupation-education,
R/o Jain Layout, Wani, tahsil-
Wani, district Yavatmal.

5. Kashinath Mahadev Bobhate,
Aged 51 years, occupation-service,
Resident of Tukdoji Ward No.6, Ghuggus,
Post Ghuggus, tahsil and district-
Chandrapur.

..... **Appellants.**

:: V E R S U S ::

1.Sau.Chhaya Natthu Balki,
Aged 52 years, occupation-household,
Resident of Paramdoh, tahsil-Wani,
District-Yavatmal.

2. Sau.Maya Jaywant Aswale,
Aged 48 years, occupation-household,
Resident of Kailashnagar (Matholi),
Post-Sakhra Kolgaon, tahsil-Wani,
District Yavatmal.

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3. Ramkrushna Mahadeo Bobhate,
Aged 67 years, occupation-retired,
R/o Mungoli, PO Sakhara Kolgaon,
Tahsil-Wani, district Yavatmal.

4. Smt.Premila Bala Bobhate,
Aged 50 years, occupation-household.

5. Govinda Bala Bobhate,
Aged 28 years, occupation-labour.

Respondents 4 and 5 both resident of
Mungoli,
Post-Sakhra (Kolgaon), tahsil-Wani,
District-Yavatmal.

6. Sau.Rupali Raju Parkhi,
Aged 26 years, occupation-household,
Resident of Nimsala, post-Dahegaon,
Tahsil Warora, district-Chandrapur.

7. Premchand Mahadeo Bobhate,
Aged 45 years, occupation-service,
Resident of Indiranagar
Quarter No.224,
H.P.Gas Complex, post-Indiranagar,
Tahsil and district Chandrapur.

8. Sau.Chandrabhaga Sambhashiv
Deotale,
Aged 64 years, occupation-household,
R/o Nakoda, post-Cement Nagar,
Tahsil and district Chandrapur.

9. Smt.Kamala Wasudeo Thakre,
Aged 69 years, occupation-household,
Resident of Mungoli, post-Kolgaon,
Tahsil-Wani, district-Yavatmal.

10. Sau.Shashikala Sudhakar Bodhane,
Aged 54 years, occupation-household,

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R/o Hatwanjari, post-Buranda,
Tahsil-Maregaon, district-Yavatmal.

11. Sau.Sadhana Vilas Wabhitkar,
Aged 48 years, occupation-household,
R/o Ward No.5 (old) Gadchandur,
Tahsil-Rajura, district-Chandrapur.

12. Smt.Sugandha Dadaji Mashirkar,
Aged 66 years, occupation-household,
Resident of Sidur, post-Pipari, tahsil
and district Chandrapur.

13. Sau.Kantabai Wasudeo Wasade,
Aged 62 years, occupation-household,
R/o Dhanora Pipari, post-Pipari,
Tahsil and district Chandrapur.

14. Sau.Pratibha Shankar Nikhade,
Aged 34 years, occupation-household,
R/o Ekta Nagar, Tukum, tahsil
and district Chandrapur.

15. Sau.Archana Shankarrao Pimpalkar,
Aged 34 years, occupation-household,
R/o Indira Nagar, Hanuman Mandir,
Mul Road, tahsil and district
Yavatmal.

Sau.Archana Shankarrao
Pimpalkar, aged about 34 years,
Occupation household, r/o Indira
Nagar, Hanuman Mandir, Mul
Road, tahsil and district
Chandrapur.

16. Sau.Kalpana Vitthal Rajurkar,
Aged 30 years, occupation-household,
Resident of Kesurli post Mandir
Tahsil and district Yavatmal.

17. Purushottam Bali Balki,

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Aged 74 years, occupation-agriculturist,
R/o Mungoli, post-Sakhara (Kolgaon),
Tahsil-Wani, district-Yavatmal.

18. Regional General Manager,
Western Coalfields Limited, Wani
North Area, Urjagram, post-Tadali,
District-Chandrapur.

19. Area General Manager, Western Coalfields
Limited, Wani Area, Wani,
district Yavatmal.

..... **Respondents.**

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Shri Madhur Deo, Counsel for Appellants.

Shri S.S.Bhalerao, Counsel for Respondent Nos.1 and 2.

Ms Preeti Rane, Counsel for Respondent Nos.18 & 19.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 23/03/2023

PRONOUNCED ON : 31/03/2023

JUDGMENT

1. The appellants in the present appeal have challenged the judgment and award dated 20.9.2021 passed by the Special Tribunal at Nagpur constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 in Compensation Case No.9/2021.

2. Brief facts which are necessary for disposal of the appeal are as under:

Survey No.86 total admeasuring 3.36HR of village Mungoli, V.G.-289, taluka Wani, district Yavatmal was

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originally having survey Nos.9/2, 17/2B, and 22/2 owned by one Nagoba Bobhate. The said gat No.86 was allotted to Mahadeo Nagoba Bobhate and his sister Gondinbai during partition which took place in the year 1964. Accordingly, the names of Mahadeo and his sister Gondinbai were recorded in the revenue records vide mutation entry No.75 effected on 10.6.1969. Mahadeo and Gondinbai sold 1.27HR of land to Kalpana Kashinath Bobhate i.e. appellant No.1 out of survey No.86. The remaining 2.09HR land of survey No.86 was vested with Mahadeo and Gondinbai. 2.09HR land was also sold by Mahadeo and Gondinbai to Kashinath Mahadeo Bobhate i.e. son of Mahadeo on 11.9.2000. Appellant No.5 Kashinath Mahadev Bobhate out of said 2.09HR land, 1.27HR land of survey No.86/1 was sold to Kalpana Kashinath Bobhate and Viju Ramkrushna Bobhate on 11.1.2016. By the sale deed dated 11.1.2016, Kashinath sold 0.82HR land of survey No.86/1 to appellant No.1 i.e. Kalpana Kashinath Bobhate and appellant No.2 Sumit Mahadeo Derkar. On 3.3.2016, Kashinath and Sachin Vinayak Garghate purchased 0.41HR land out of survey No.86/1. On the basis of the above said transaction, Kalpana and Sumit Mahadeo Derkar became

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owners of 0.82HR land bearing survey No.86/1A, Kalpana and Viju Ramkrushna Bobhate became owners of survey No.86/1B and Sachin Garghate and Kashinath became owners of survey No.86/3. Accordingly, their names were recorded in the revenue records of the said survey Numbers.

3. The original owner Mahadeo passed away on 28.3.2016 who was survived by three sons namely Kashinath, Ramkrushna, Premchand, three daughters namely Chhaya, Maya, and Chandrabhaga. One son of Mahadeo namely Bala passed away during the life time of Mahadeo. The legal heirs of Bala are respondent Nos.4 and 5. Gondinbai died on 6.11.2001. She had only one son Wasudeo who also passed away. Legal heirs of Wasudeo are respondent Nos.9 to 11. Gondinbai had three daughters Sugandhabai, Kamalabai, and Vimalabai. Out of them, Vimalabai passed away and survived by legal heirs i.e. respondent Nos.14 to 16. Sugandhabai and Kamalabai are respondent Nos.12 and 13.

4. After the death of Mahadeo, respondent Nos.1 and 2 namely Chhaya Natthu Balki and Maya Jaywant Aswale started claiming their shares in survey No.86 being the

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daughters of deceased Mahadeo. They had also filed civil suit bearing RCS No.33/2016 before learned Civil Judge Junior Division at Wani for declaration, injunction, and partition. As per their contentions, the suit property survey No.86 being ancestral property, they had undivided shares in the said property by virtue of birth and claimed the partition. The appellant No.5 Kashinath appeared in the said suit along with the appellants and respondent Nos.3, 8 to 13 and 17 and denied the contentions of the respondent Nos.1 and 2. They claimed that the property was separate property of Mahadeo and Gondinbai and they had right to dispose of the same.

5. In the mean time, the Central Government issued Notification under Section 9(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for short, "the said Act") dated 22.3.2016 and acquired the land admeasuring 328.72R for Mungoli Nirguda Extension Deep Open Cast Project. After publication of the Notification under Section 9(1), the land was absolutely vested with the Central Government under the provisions of Section 10 for the said Act.

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6. As per the contention of the respondent Nos.1 and 2, out of gat No.86/1 admeasuring 2.08HR owned by Mahadeo was ancestral property. In view of Section 6 of the Hindu Succession Act, 2005, they being coparceners are entitled for their respective shares in view of Section 6 of the Hindu Succession Act, 2005 along with the sons of deceased Mahadeo. They further contended that as the said land is acquired by the Central Government, they are entitled for the compensation amount. They have filed compensation case No.9/2021 for directions to deposit the amount of compensation and payments thereof to them. The Western Coal Fields Limited at Wani had also filed Compensation case No.87/2021 to decide who is the interested person to whom compensation is to be paid.

7. Upon issuance of notices in both these cases, the present appellants who were respondent Nos.2, 3, 8 to 13 and 17 to 21 filed their replies and denied the contentions of the respondent Nos.1 and 2. They have specifically stated that survey No.86 was originally owned by Nagoba. During partition, it was allotted to Mahadeo and Gondinbai. Mahadeo and Gondinbai disposed of the property to the extent of

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1.27HR to Purushottam Balki and balance land admeasuring 2.09R acquired by the Western Coal Fields Limited. The said acquired land was sold by Mahadeo to Kashinath. Kashinath has sold the said land to Kalpana and Viju, the son of Ramkrushna, to the extent of 0.82R. 0.82R land was again sold to Kalpana with appellant No.2 Summit. Thereafter, on 3.3.2016, Kashinath and Sachin purchased 0.41HR land out of survey No.86/1. On 28.3.2016, Ramkrushna purchased some area from survey No.86/1. At the outset, appellant No.1 Kalpana Kashinath Bobhate and appellant No.2 Sumit Mahadeo Derkar were owners of 0.82HR, Kalpana and Viju were owners of survey No.86/1B and appellant No.4 Sachin Vinayak Garghate and appellant No.5 Kashinath Mahadev Bobhate were owners of survey No.86/3. As per the contentions of the appellants, Mahadeo and Gondinbai being the owners in view of the partition have right to sell the property as per their desire.

8. The special tribunal, after hearing both the sides, held that the respondent Nos.1 and 2 Chhaya and Maya are daughters of Mahadeo and in view of Section 6 they have exclusive right in property being coparceners and by relying

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upon the judgment in the case of Vineeta Sharma vs Rakesh Sharma, reported in AIR 2020 SC 3717 held that they are entitled to receive the compensation. The special tribunal directed that the amount of compensation shall be equally divided into two shares due to Mahadeo and Gondinbai. It is further directed that amount of half share of compensation due to Mahadeo shall be subdivided into six shares and 1/6th share shall be paid to Kashinath, Ramchandra, Premchand, and their sisters Chhaya Balki, Maya Aswale, and Chandrabhaga Deotale. The share of Gondinbai was subdivided into four equal shares and directed to be paid to respondent No.9 Kamala, No.10 Shashikala and No.11 Sadhana and No.12 Sugandha. 1/4th share was directed to be divided to respondent No.12 Sugandha, No.13 Kantabai, No.14 Pratibha, No.15 Archana, and No.16 Archana.

9. Being aggrieved and dissatisfied with the order passed by the special tribunal, the present appeal is preferred by the appellants on the ground that the judgment and award passed by the special tribunal is erroneous as the special tribunal exceeded its jurisdiction while deciding compensation case No.9/2021 and No.87/2021. The special tribunal has no

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jurisdiction to decide the title. The appellants are owners of survey No.86 by virtue of sale deeds executed in their favour. The sale deeds executed in their favour have not been set aside by any court of law. The power to set aside the sale deeds is vested with the civil court and till the sale deeds are set aside, the appellants being purchasers to continue as owners of the land. Thus, the right to receive the compensation flows from right to hold the land. The special tribunal failed to consider the aspect and, therefore, the judgment and award passed by the special tribunal is liable to be set aside.

10. Heard learned counsel for respective parties.

11. Learned counsel Shri Madhur Deo for the appellants submitted that there is no dispute regarding the factual position that survey No.86 was originally owned by Nagoba. After his death, the suit property was partitioned in the year 1964 amongst his four children and wife and accordingly, by virtue of the said partition, Mahadeo and Gondinbai became separate owners of survey No.86. During the life time, Mahadeo and Gondinbai sold 1.27HR out of said

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survey No.86 to Purushottam Balki. The remaining 2.09HR of land was sold to Kashinath who is the son of Mahadeo. Said Kashinath sold 1.27HR of survey No.86/1 to Kalpana and Viju and 0.82HR out of survey No.86/1 to Kalpana and Summit. Appellant Nos.4 and 5 Sachin and Kashinath purchased 0.41R out of survey No.86/1. Thus, the appellant Nos.1 and 2 are owners to the extent of 0.82R of survey No.86/1A, appellant Nos.1 and 3 became owners of survey No.86/1B. Appellant Nos.4 and 5 became owners of survey No.86/3. He submitted that in view of first proviso to Section 6 of the Hindu Succession Act, 2005 that the earlier disposition or alienation, including any partition or testamentary disposition of property taken place before the 20th December 2004 would not be affected due to the amendment in Section 6 of the said Act. He further submitted that whenever male ancestral inherits any property from any of his paternal ancestral upto three degrees above him, then his male legal heirs upto three degrees below would get an equal right as coparcenery in that property. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post 1956, if a person inherits a self acquired property from his paternal

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ancestral, the said property becomes his self acquired property and does not remain coparcener property. He submitted that after the partition, the property which came to the share of Mahadeo and Gondinbai becomes their self acquired property and they are at liberty to dispose of the same as per their own desire. He further submitted that the special tribunal had exceeded the jurisdiction as the special tribunal has no right to decide the title.

12. In support of his contention, learned counsel Shri Madhur Deo for the appellants placed reliance on the decision of this Court in the case of Shri Waman s/o Dattuji Malekar and ors vs. Vishwanath s/o Karnuji Sontakke and ors in Writ Petition No.2314/2021 decided on 28.9.2021 wherein it is held that the language of Section 14(5) of the said Act, indicates that in deciding the dispute and making an award, the tribunal has to specify the person or persons to whom the compensation has to be paid and in case there is a dispute as to the same and the tribunal finds that more than one person is entitled to the compensation, it has to determine the apportionment regarding the amount. The entitlement of the tribunal to determine the amount of compensation or the

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person to whom it is to be paid would not mean that the tribunal would have the power and authority to determine the title of the property. Though powers under the CPC have been conferred upon the tribunal under Section 14(8), they are limited in nature, restricted to the collecting of the evidence and enforcing the attendance of the witnesses, for the purposes of determining the compensation and the person to whom *prima facie* it would become payable. The conferment of the above powers of the civil court upon the tribunal are limited to above extent and not otherwise. They do not empower the tribunal to enter into a controversy whereby the dispute raised as to the title of the property could be determined by the tribunal. The expression "or the title to receive it" as occurring in Section 17(2) of the said Act of 1957 has to be read in consonance with the empowerment of the tribunal as contained in Section 14(5) and (6) of the said Act of 1957 and cannot be construed to mean the conferment of a right upon the tribunal to determine the title to the property. He further submitted that it is an admitted position that the proceeding regarding the partition was subjudice before the civil court as the respondent Nos.1 and 2 filed the

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suit in the civil court for partition bearing No.33/2016 which necessarily would involve the issue as to the title and the said decision by the said court would be binding upon the parties as well as the tribunal. Thus, he submitted that in view of the statutory provisions, the tribunal is having right to decide the title of the property. Hence, the judgment and award passed by the tribunal deserves to be set aside.

13. Learned counsel Shri S.S.Bhalerao for respondent Nos.1 and 2 submitted that during the pendency of the appeal amicable settlement took place between the appellants and the respondent Nos.1 and 2 and respondent Nos.1 and 2 withdrawn the suit and relinquished their right and now they stated that appellants are entitled to receive amount of compensation.

14. Learned counsel Ms Preeti Rane for respondent Nos.18 and 19 has no objection to award the compensation amount to the appellants.

15. Having heard learned counsel for respective parties and perused record, I find that admittedly, the respondent Nos.4, 5, and 6 who are legal heirs of the

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deceased son of Mahadeo namely Bala have not contested the application before the special tribunal. Respondent Nos.9 to 12 have also not contested the application before the special tribunal who are legal heirs of Gondinbai. Respondent Nos.18 and 19, which are acquiring body, also not contested of the application. They are added only as a necessary party and no relief was claimed against them.

16. After going through the submissions, there is no dispute regarding the ownership of survey No.86 which was originally owned by Nagoba. It is also not disputed that said survey No.86 was allotted to Mahadeo and Gondinbai during the partition in the year 1964. The appellant No.5 is son of Mahadeo and respondent Nos.1 and 2 are his sisters. There is also not dispute that during the life time, Mahadeo and Gondinbai sold 1.27HR of the said property to respondent No.17 Purushottam. The said sale transaction is not challenged by the legal heirs of Gondinbai. They both have sold 2.09HR land to appellant No.5 Kashinath, which was challenged by respondent Nos.1 and 2. Respondent Nos.1 and 2 claimed that they are having 1/6 share in the compensation. They had also filed suit RCS No.33/2016. During the

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pendency of the appeal, respondent Nos.1 and 2 filed an affidavit to the extent that the appellant No.5 is their brother and due to filing of the suit their relations became strained and to protect the relationship, they have decided to withdraw the suit and did not claim for partition and separate possession of survey No.86. They had filed the pursis before the trial court withdrawing the suit unconditionally. They had accepted the validity of the sale deeds executed in favour of the appellants. They further submitted that the withdrawal of the suit has taken place in view of the family settlement with the appellants by virtue of which the appellants have permitted the respondent Nos.1 and 2 to retain the amount awarded to them by the special tribunal. They have withdrawn their claim in the property and consented that the amount awarded by the special tribunal to the appellants be disbursed to them. Now, they do not have any right to seek any share in any further amount awarded by this Court to the appellants. They have also submitted that now they do not have any share in survey No.86 admeasuring 3.36HR situated at village Mungoli, tahsil Wani district Yavatmal. They further stated in the affidavit that the appellants are entitled to

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receive the entire amount of compensation of acquisition of survey No.86 admeasuring 3.36HR. The appellants are entitled to employment as per R&R Policy of the Western Coal Fields Limited. They have no objection, if the appeal stands allowed. The said affidavit is supported by the copy of the pursis filed by them before learned Civil Judge Junior Division at Wani. Learned Civil Judge Junior Division at Wani had passed a detailed order on the said pursis and allowed the respondent No.1 to withdraw the suit.

17. In the above facts and circumstances, now it is not necessary to discuss the legal issue that whether the order passed by the special tribunal is without jurisdiction or not. It is also not necessary to deal with the issue whether the property was self acquired property of Mahadeo and Gondinbai and whether they are at liberty to sell the said property. In view of the settlement between the appellants and respondent Nos.1 and 2, who have relinquished their compensation right in favour of the appellants, the appeal deserves to be allowed.

18. Insofar as the issue regarding the legal heirs of Gondinbai and Bali is concerned, they have not contested the

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application filed before the special tribunal and claimed any right in a sold out property. They have also not appeared before this Court and contested the appeal filed by appellants who are purchasers.

19. In view of the above facts and circumstances, the appeal deserves to be allowed. The judgment and award passed by the special tribunal is hereby quashed and set aside. The appellants are entitled to receive the compensation for acquisition of survey No.86 as per their shares and ownership in survey No.86. The respondent Nos.18 and 19 shall disburse the compensation amount to the appellants as per their shares.

With this, the first appeal is allowed and disposed of. No order as to costs.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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