



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

Writ Petition No.5951 of 2023

Shailesh s/o Arun Jichkar Vs. State of Maharashtra through its Collector, Amravati
and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.D. Dharmadhikari, Advocate for the Petitioner/s
Ms M.A. Barabde, AGP for the Respondent/State
Shri A.A. Dhawas, Advocate for the respondent Nos.5 to 8

CORAM : ANIL S. KILOR, J.
DATED : 27.09.2023

1. Heard.
2. In the present petition, the order dated 21.08.2023 passed by 11th Jt. Civil Judge Senior Division, Amravati, rejecting the application below Exh.27 filed by the petitioner/objector under Order XXI Rule 16 Code of Civil Procedure (CPC) for direction to the Judgment Debtors (JDs) to pay 35 % of the decretal amount i.e. Rs.14,99,908.03/- along with future interest @ 15 % per annum, to the petitioner, is under challenge.
3. It is the case of the petitioner that, he is a close relative of the respondent Nos. 5 to 8/Decree Holders (DHs), who are the owners of the land in question, which was acquired for the project of Minor Irrigation Work and since the respondent Nos. 5 to 8 were not in a position to handle the matter, they gave power of attorney to the petitioner and executed a deed of assignment of actionable claim, under which, according to the

petitioner, the respondent Nos.5 to 8 agreed to pay 35 % share in the enhanced amount of the compensation.

4. In light of the deed of assignment of actionable claim, the petitioner filed an objection in the execution proceedings and thereby, sought direction to the JDs to pay 35 % of the decretal amount to the petitioner.

5. Even if the deed of assignment of actionable claim and its contents are considered, at the most, the petitioner is entitled to claim 35 % of his share in the enhanced compensation after the respondent Nos.5 to 8 receive the amount of compensation.

6. Even if the clause which permits the petitioner to claim 35 % share in the decretal amount in the execution proceedings, the respondent Nos.5 to 8 have categorically denied execution of such deed of assignment.

7. Even otherwise, this deed of assignment is between the respondent Nos.5 to 8 (DHs) and the petitioner and hence, it is not binding on the JDs, whereas by way of objection, the petitioner is seeking direction against the JDs to pay 35 % share in the decretal amount.

8. In the circumstances, as the petitioner has a remedy to claim 35 % share in the decretal amount by establishing the fact of execution of deed of assignment, I am not inclined to interfere with the impugned order. Accordingly, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]