



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

CIVIL APPLICATION NO. 4020 OF 2023  
IN FAST/25258/2020

Annapurna Babu Pawar (Died)  
through his L.Rs.

1. Gunabai Abhiman Pawar,
  2. Santosh Abhiman Pawar,
  3. Manisha Abhiman Pawar,
  4. Ganesh Abhiman Pawar
- All R/o. Pandhrewadi, Tq. Paranda  
District Osmanabad .. Applicants

Versus

1. The State of Maharashtra through  
The Collector, Osmanabad
2. The Deputy Collector, Land Acquisition  
Officer, Minor Irrigation Division,  
Osmanabad
3. The Executive Engineer,  
Osmanabad Medium Project, Division,  
District Osmanabad .. Respondents

...  
Mr. Abhijit S. More, Advocate for Applicants;  
Mr. A. S. Shinde, A.G.P. for Respondents No.1 and 2;  
Mr. Mukul S. Kulkarni, Advocate for Respondent No.3;

...  
WITH  
CIVIL APPLICATION NO. 7441 OF 2023  
IN FAST/25258/2020

Sita Vitthal Wayase and another .. Applicants  
Versus  
Gunabai Abhiman Paar and others .. Respondents

...  
Mr. Shaikh Shoyab, Advocate for applicants in CA/7441/2023  
...

**CORAM : S. G. MEHARE, J.**

**DATE : 19-01-2024**

**PER COURT :-**

1. Heard the learned counsel for the applicants and the learned counsel for respondent No.3/acquiring body.
2. The sisters who have waived the share in the lands, have filed application under Order I, Rule 10 of the Code of Civil Procedure.
3. Learned counsel for the proposed applicants/sisters submits that they have share in the compensation. Hence, they may be added as parties.
4. Per contra, the learned counsel for the respondent No.3 submits that Order I, Rule 10 of the C.P.C. is not applicable to the reference, as observed by this Court in the case of *Machindra s/o. Santaram Kutwad Versus Sharad s/o. Khanderao Survase and others*, 2012(6) Mh.L.J. 688.
5. He also added that out of total compensation, 60% amount has been deposited. Therefore, the interest of sisters have already been protected. He also submits that during the entire inquiry of the award, the sisters never raised the objection. They had filed a suit claiming their share, however, it was dismissed for want of prosecution.
6. Mr. Shaikh, learned counsel for the applicants/sisters submits

that another suit is filed. Present applicants appeared in that suit. It was prayed that the applicants should not be allowed to withdraw the deposited amount. He also submitted that the acquiring body has preferred the appeal. Therefore, if the amount of the compensation is reversed, the applicants/sisters would suffer irreparable injury. In the circumstances, the applicants are not entitled to withdraw entire 60% of the amount.

7. The dispute is between the brothers and sisters. They are fighting for share. The brothers have a case that both sisters have waived their right. Whether the waiver is legal or not, is a question of fact. It may be adjudicated before the appropriate court. However, the relationship is not denied. Only 60% of the compensation is deposited. The compensation would be subject to the decision of the appeal. Considering the admitted relationship, it would not be appropriate to allow the applicants to withdraw the entire amount deposited in this Court. Hence, the order;

- i) Civil Application No.4020 of 2023 is partly allowed.
- ii) The applicants are permitted to withdraw 40% of the amount deposited in this Court, with proportionate accrued interest thereon, on furnishing undertaking that they will re-deposit the amount, if the impugned judgment and award is reversed.

**( S. G. MEHARE )**  
**JUDGE**