

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10413 OF 2023

Gena Murlidhar Chaware and Anr.

.. Petitioners

Versus

Bharati Narayan Chavare and Anr.

.. Respondents

-
- Mr. Bhushan Raut a/w. Mr. Vaibhav Lavande, Advocates for Petitioners.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 21, 2024.

P.C.:

- 1.** Heard Mr. Raut, learned Advocate for Petitioners.
- 2.** By virtue of the impugned order passed below Application dated 17.11.2022 filed by the Applicant - Gena Murlidhar Chavare, the amount standing deposited under Section 30 of the Land Acquisition Act, 1894 (for short "**the said Act**") in the apportionment Reference filed in the Reference Court was claimed by the Applicant for disbursement. In support of Applicant's claim, Applicant has referred to the judgment of the Reference Court in Land Acquisition Reference No.286 of 2000 dated 24.11.2016. I have perused the judgment.
- 3.** Admittedly the land which was acquired, originally stood in the name and possession of the Non Applicant No.3 – Murlidhar Dada

Chavare as referred to in the said judgment. However the Application under Section 30(1) of the said Act was filed by one Sou. Bharati Narayan Chavare claiming that on the basis of a relinquishment deed dated 04.11.1992, she had become the owner of the subject land which was acquired and therefore as a person interested she is entitled to the compensation declared under the Award by the Land Acquisition Officer No.7, Mohol.

4. Considering the dispute, the Land Acquisition Officer No.7 referred the matter under Section 30 for apportionment Reference to the Reference Court. Before the Reference Court, both parties appeared and led evidence and pleaded their respective cases. The question as to whether the release or surrender deed would have any authority or entitlement in law was the question and therefore it was contended by Non Applicant No.3 that he had infact never executed any surrender deed and that he was cheated. In so far as the claim of Non Applicant Nos.4 and 5 is concerned, the same was comprehensively dismissed by the Reference Court. The Reference Court after analysing the evidence led by Non Applicant No.3B – Gena Murlidhar Chavare concluded that his evidence had remained unchallenged and uncontroverted and thus declared Murlidhar Dada Chavare as the sole owner of the disputed property and Non Applicant Nos.3A to 3C as legal heirs of Non Applicant No.3. One of the said legal heirs is the Applicant who has filed the Application dated

17.11.2022 seeking disbursement of the Award amount to the legal heirs of Murlidhar Dada Chavare.

5. Mr. Raut has specifically drawn my attention to paragraph Nos.12 and 13 of the judgment dated 24.11.2016 and would contend that the Reference Court in the Section 30 apportionment reference has categorically concluded that Non Applicant Nos.1 to 3 are the legal heirs of deceased Murlidhar Dada Chavare and are entitled for getting the compensation. Next he would point out that while answering issue No.6, the learned Reference Court has also returned a categorical finding that Non Applicant Nos.3A to 3C are entitled to the compensation amount.

6. In view of the above, he would submit that the reasoning given by the learned Reference Court in the order dated 05.12.2022 rejecting the claim of the Applicant is therefore unsustainable. After perusing the order dated 05.12.2022, it is seen that the learned Reference Court has held that while disposing the Land Acquisition Reference, the Presiding Officer has rejected the said Application and further no direction of disbursement of the amounts as compensation awarded to the present Applicant is given.

7. The power of the Government to acquire lands under the power of eminent domain as exercised under the said Act is a mandatory power. When such eminent domain powers are exercised,

lands are acquired against the wishes of the original owner for public purposes and therefore payment of compensation is allowed by the statutory provisions as a matter of right. Such payment of compensation has to be made quickly, immediately and without any delay, once the Award stands delivered. In the present case, acquisition is of the year 1990 and in 2024, the legal heirs of the original owner of the land are still fighting for receiving the compensation.

8. The reasoning given by the learned Court in the impugned order that there are no directions to disburse compensation to the present Applicant cannot be countenanced at all. All that was required for the Reference Court was to read the determination of compensation provided in the Section 30 apportionment judgment dated 24.11.2016 as also the names of the Non Applicant No.3 and his legal heirs as appearing therein who are the very Applicants before the Reference Court in Application dated 17.11.2022. The order dated 05.12.2022 does not stand to scrutiny in view of the judgment dated 24.11.2016.

9. Mr. Raut has drawn my attention to the family tree of Murlidhar Dada Chavare wherein Gena Murlidhar Chavare is his wife since deceased on 11.11.2014 in the interregnum. He has further drawn my attention to the cause title of the Writ Petition and would

submit that Kerabai Raghunath Gaikwad is Petitioner No.2. Petitioner Nos.1A to 1E are the legal heirs of Kerabai Raghunath Gaikwad as she is also deceased.

10. There can be no impediment whatsoever to allow disbursement of the amounts in view of the clear and unambiguous judgment passed by the learned Reference Court in the Section 30 apportionment Reference dated 24.11.2016. The impugned order dated 05.12.2022 stands quashed and set aside. Application dated 17.11.2022 stands allowed.

11. Amount of compensation deposited vide Receipt No.1087 and all accrued interest thereon is directed to be immediately paid over to the legal heirs of deceased Murlidhar Dada Chavare i.e. Petitioner No.1 to the extent of 50% and Petitioner Nos.2A to 2E to the extent of balance 50% proportionately. The amount which stands deposited in the Reference Court shall be paid over by the Reference Court on production of an authenticated copy of this order without insisting on any further Application whatsoever by any of the Applicants for release of the said amount.

12. Once the order of this Court is placed before the Reference Court, Reference Court shall without any delay whatsoever, shall immediately pass order for release of the above amounts alongwith all accrued interest thereon and shall ensure that the Petitioners receive

the same in their bank accounts within a period of one week positively from the date of production of an authenticated copy of this order. All 6 Petitioners shall provide details of their respective bank accounts alongwith an authenticated copy of this order to the Trial Court and it shall be ensured that the compensation amount alongwith interest shall be received by them as directed above within one week positively.

13. Liberty to apply.

14. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE

Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2024.02.21
20:08:17 +0530