



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

FIRST APPEAL NO. 481 OF 2021

APPELLANTS :

PETITIONERS

1. Shri Ramprasad s/o Bhagvan Wankhede (Dead) through legal heirs,
 - a] Gautam s/o Ramprasad Wankhede
 - b] Subodh s/o Ramprasad Wankhede
 - c] Sou. Vishakha w/o Nageshwar Rahate
 - d] Sou. Karuna w/o Anil Nagdevte
 - e] Smt. Mayabai w/o Ramprasad Wankhede
Aged about 66 years, Occu. Nil.
2. Shri Rajhans s/o Bhagvan Wankhede,
Aged about 65 years, Occu. Retired.
3. Shri Anand s/o Bhagvan Wankhede,
Aged about 63 years, Occu. Private,

All are r/o Mouza Shripur, Post Shripur,
Tahsil - Umrer, District - Nagpur.

VERSUS

RESPONDENTS :

1. The Manager (Mining),
Project & Planning,
Western Coalfields Ltd.,
Umrer Area, District - Nagpur
Maharashtra - 441204.
2. Smt. Gayabai w/o Bhaskar Dhanvijay,
Aged about 83 years, Occu. Household,
R/o Near Buddha Vihar Kawrapeth,
Umrer, Tahsil Umrer, District - Nagpur.

Shri Pavan S. Sahare, Advocate for appellants.

Mrs. Smita Deshpande, Advocate for respondent No.1.

Shri C. N. Deshpande, Advocate for respondent No.2.

CORAM:- SANJAY A. DESHMUKH, J.
DATED : 04/09/2024.

ORAL JUDGMENT :

1. This appeal is preferred against the order passed by the Special Tribunal, Nagpur constituted under Section 14(2) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 below Exh.1 in Compensation Case No.126/2017 dated 21/07/2019.

2. The appellants have preferred this appeal on the ground that there was decree of Civil Court passed in Regular Civil Suit No.126/1988 dated 08/06/1998 wherein 1/5th share in all the properties of the Hindu joint family of the appellants and respondent No.2, etc. was granted. Thereafter, Respondent No.2 has filed Regular Civil Appeal No.396/1998 (Exh.16) and appellants have filed Regular Civil Appeal No.97/1999. These appeals were decided by learned District Judge-1, Nagpur by common Judgment dated 05/01/2008. In the said Judgment, it is held that disputed property bearing Old Survey No.74 which is reformed as Block No.241 admeasuring 0.38 HR is of the plaintiffs and defendants. They have equal i.e. 1/5th share in it.

3. Learned advocate for the appellants pointed out that by the decisions of the Trial Court as well as First Appellate Court, the rights of the parties are finalised in all the properties in question. The 1/5th share each was granted to the appellants and respondent No.2 and others in the said civil proceedings. It is not challenged by the respondent No.2. However, because of application forwarded by the respondent No.2 to the Tahsildar, she got entire Block No.241 admeasuring 0.38 HR illegally. It is decision against the Judgments of Civil Courts. The said order was challenged before the Sub-Divisional Officer, Umred, Dist. Nagpur. However, that appeal was dismissed. The Special Tribunal did not consider that in all the properties, 1/5th share is granted to the appellants as well as respondent No.2 and others by the Civil Courts and it cannot be defeated by Revenue Authority. He submitted to allow the appeal and set aside the impugned order.

4. Learned advocate for the respondent No.2 submitted that the rights of the parties are decided by the Tahsildar and Sub-Divisional Officer before whom right of the respondent No.2 as to the Block No.241 were decided on merit. Block No.241 was allotted to respondent No.2. The appellants have no concern with it. In Para No.6, the Special Tribunal, Nagpur has discussed all

these facts and concluded that respondent No.2 alone is entitled for compensation for Block No.241 admeasuring 0.38 HR. He submitted that there is no substance in the grounds of objections of this appeal. He lastly submitted to dismiss the appeal.

5. Perused the impugned order.

6. The points emerged for determination which are answered with the reasons and findings as follows :-

	<u>Points</u>	<u>Findings</u>
1.	Was the Special Tribunal, Nagpur illegal and incorrect in deciding the claim between the appellants and respondent No.2 and others ?	Yes
2.	What order ?	Appeal is allowed.

REASONS

7. The relationship between the appellants and respondent No.2 is not disputed. Fact of filing of Civil Suit for partition and thereafter, the decision of two appeals is not disputed. The 1/5th share was granted to the appellants and respondent No.2 and others by those Judgments and decrees of Civil Courts is also not disputed fact. However, it appears that Tahsildar had allotted entire Block No.241 to the respondent No.2.

But it is not pointed out as to how respondent No.2 alone is entitled for compensation of Block No.241 admeasuring 0.38 HR. There is no any legal justification for it. This aspect was not considered by the Sub-Divisional Officer in Revenue Appeal preferred before him.

8. It is settled law that effecting of the partition is ministerial act and in execution of partition decree, the Revenue Authority cannot go beyond the decree. There is no any legal or factual justification of it. Once the civil rights are decided by the Civil Court, the Revenue Authority cannot go beyond the said Judgment and decree. The Special Court failed to consider that decision of Civil Court will prevail over the decision of Revenue Authority. They have no legal power to decide rights when Civil Court had already decided it on merit. Their all such orders are nullity and not sustainable. It can be shown illegal in any proceedings in view of Section 44 of the Indian Evidence Act, 1872 under the caption of incompetency of the Court. This important aspect was not considered by the Special Tribunal, Nagpur. The Special Tribunal grossly erred in law in this regard and failed to decide the shares of compensation of the appellants and respondent No.2 and others, as per the decree of the Civil Court and First Appellate Court.

9. The Special Tribunal grossly erred in law and facts and wrongly relied upon the decision of Revenue Authority instead of decision of Civil Court. Therefore, the impugned order of the Special Tribunal, Nagpur deserves to be quashed and set aside. The appeal deserves to be allowed.

10. For the reasons discussed above, the argument of the learned advocate for respondent No.2 is not accepted. Thus, Point No.1 is answered in the affirmative.

11. Learned advocate for the appellants submitted that amount of compensation of Block No.241 is withdrawn by the respondent No.2. Hence, it is necessary to give directions to her to deposit 1/5th share of the appellants with 9% interest per annum from the date of withdrawal till its realization.

12. Considering the peculiar set of facts, the appellants were compelled to file the appeal without any justification. The appellants must have incurred some expenses for this appeal. The Respondent No.2 must pay compensatory costs to the appellants which is quantified as Rs.10,000/-. Hence, the following order :-

ORDER

i] The appeal is allowed.

ii] The impugned order passed by Special Tribunal, Nagpur in Compensation Case No.126/2017 dated 21/07/2019 is quashed and set aside.

iii] The Special Tribunal, Nagpur is directed to disburse the amount to the appellants, respondent No.2 and others by giving $1/5^{\text{th}}$ share to each of them along with interest accrued thereon in respect of Block No.241 (Old Survey No.74).

iv] If the amount of compensation is paid / withdrawn by the respondent No.2, the respondent No.2 is directed to deposit the same in the Special Tribunal, Nagpur and the Special Tribunal, Nagpur shall pay that $1/5^{\text{th}}$ amount to the appellants accordingly with 9% interest on it from the date of withdrawal of that amount.

v] If the said amount is not deposited within three months, appellants are at liberty to proceed as per law for recovery of it.

13. The appeal is disposed.

[SANJAY A. DESHMUKH, J.]