



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11693 OF 2022

Mr. Dhanraj Dattu Chaudhari

Age : 50 years, Occu. Agri,

R/o. Godri, Tq. Jamner, Dist. Jalgaon

... PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary
Department of Irrigation,
Mantralaya, Mumbai.

2. The Collector,
Jalgaon, Dist. Jalgaon.

3. The Special Land Acquisition Officer,
Minor Irrigation Development,
Jalgaon.

4. Superintendent Engineer,
Tapi Irrigation Development,
Jalgaon.

5. The Executive Engineer,
Minor Irrigation Division,
Jalgaon.

... RESPONDENTS

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- Mr. Ajeet B. Kale, Advocate for the Petitioner
 - Mr. V. M. Chate, AGP for Advocate Nos. 1 to 3
 - Mr. Ajay D. Pawar. Advocate for Respondent No. 5
 - Mr. Vinod P. Patil Advocate for Respondent Nos. 6 to 8
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CORAM : ROHIT W. JOSHI, J.

DATE : 16th JUNE, 2025

JUDGMENT:

1. The present petition takes exception to order dated 05.11.2022 passed by the learned 4th Jt. Civil Judge (S.D.), Jalgaon on application at Exhibits 21, 26 and 39 in Regular Darkhast No. 449 of 2020. The said execution proceedings arise out of judgment and award dated 19.01.2019 passed by the learned Civil Judge (S.D.), Jalgaon in L.A.R. No. 673/2012. The petitioner and respondent nos. 6 to 8 are applicants in the said reference case. The petitioner and respondent nos. 7 and 8 are children of respondent no. 6, who is their mother. The said land acquisition reference application was filed seeking enhancement of compensation for the suit property i.e. land bearing Gut No. 34 admeasuring 4.04 HR situated at Village Godri, Tq. Jamner, Dist. Jalgaon. The learned Reference Court has enhanced the compensation to Rs. 74,34,172/- vide judgment and award dated 19.01.2019. The petitioner and respondent nos. 6 and 7 filed execution proceeding being Regular Darkhast No. 449 of 2020 for execution of the said judgment and award passed by the learned Reference Court.

2. In the execution petition, initially, the petitioner and respondent nos. 6 to 8 filed an application vide '**Exhibit 21**' for disbursement of the amount. Respondent Nos. 6 to 8 thereafter filed separate application vide '**Exhibit 26**' seeking disbursement of amount in

equal proportion i.e. for remittance of 1/4th amount each to the petitioner and respondent nos. 6 to 8. The petitioner filed an application vide '**Exhibit 39**', praying that the amount of compensation for the said land should not be disbursed. It is his contention that the acquired land was allotted to his share in a partition *inter se* between himself and respondent nos. 6 to 8.

3. Vide order dated 05.11.2022, the learned Executing Court has rejected the application at '**Exhibit 39**' filed by the petitioner and has allowed the petitioner and respondent nos. 6 to 8 to receive 1/4th amount of compensation each as prayed by the respondent nos. 6 to 8 vide their application at '**Exhibit 26**'. The said common order dated 05.11.2022 is challenged in the present petition.

4. Mr. Ajeet B. Kale, the learned counsel for the petitioner contends that the learned Executing Court has committed a jurisdictional error inasmuch as the execution proceedings arise out of a reference for enhancement, in which apportionment of compensation *inter se* between the land owners ought not to have been done by the learned Executing Court for the first time. His contention is that the learned Executing Court cannot adjudicate apportionment *inter se* between the parties for the first time and, as such, the learned Executing Court has acted beyond

its jurisdiction while passing the impugned order.

5. Per contra, Mr. Vinod P. Patil, the learned counsel for respondent nos. 6 to 8 contends that the parties have jointly filed an application seeking enhancement of compensation. It was never contended by the petitioner that respondent nos. 6 to 8 had ever given up their right to receive compensation for the acquired land. He states that there is absolutely no material on record to demonstrate that respondent nos. 6 to 8 had given up their right to receive compensation of the acquired land.

6. Mr. Ajeet B. Kale has also drawn attention of this Court to the plaint in Special Civil Suit No. 207 of 2022 filed by the petitioner seeking declaration of ownership of the acquired land along with another property and partition and separate possession with respect to some other properties.

7. However, it will be pertinent to mention that the said suit was filed on 15.11.2022 i.e. after 05.11.2022, which is the date on which the impugned order is passed. Perusal of paragraph 3 of plaint in the said suit will indicate that according to the petitioner, there was an agreement *inter se* between the petitioner and respondent nos. 6 to 8

during the lifetime of father of the petitioner in terms whereof it was allegedly agreed that the petitioner alone will be entitled to receive entire compensation of the acquired land. The particulars of the alleged oral agreement have not been mentioned in the plaint. This Court is refraining from commenting on the merits of the suit since it may have adverse effect in due adjudication thereof.

8. However, one thing is absolutely clear that while the reference was being decided neither party contended that the petitioner alone was entitled to receive compensation or there was any dispute pertaining to apportionment. It *prima facie* appears that all the four are entitled to 1/4th compensation each, except of course, if it is proved that such oral agreement was arrived at between the parties. Whether such oral agreement will be enforceable or not is also a question, which will have to be decided on its own merits.

9. In such circumstances, in the considered opinion of this Court, ends of justice would be subserved by maintaining the order and permitting the petitioner and respondent nos. 6 to 8 to withdraw the amount of compensation in equal proportion, as has been done under the impugned order. However, in order to safeguard the interest of the petitioner, it is directed that respondent nos. 6 to 8 shall withdraw the

amount of compensation on furnishing solvent surety to the satisfaction of the learned Executing Court with respect to the amount they withdraw. The petition is disposed of with no order as to costs.

10. The civil application, if any, stands disposed of.

11. By way of abundant caution, it is reiterated that the present order shall not affect the adjudication of the suit filed by the petitioner.

[ROHIT W. JOSHI]
JUDGE