

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1677 OF 2024

1. **Vitthal Baburao Harpale,**
Age: 69 years Adult,
Occ.: Agriculture,
residing new power house
Phursungi, Taluka – Haveli,
District: Pune.
 2. **Yamuna Vitthal Harpale**
Age 62 years,
 3. **Sandeep Vitthal Harpale**
Age 45 years Occ.: Agriculture
residing at Survey No.180,
behind new power house
Phursungi, Taluka – Haveli,
District: Pune.
(Through their Constituted Attorney
Vitthal Baburao Harpale)
- ...Petitioners

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VERSUS

1. **Sub-Divisional Officer, Haveli,**
Pune Sub-division, having its
office at 7, Nilgiri Bungalow,
Behind Alpabachat Bhavan,
Pune 400 001.
2. **Deputy Superintendent, Land Record**
Haveli, having its office at
New Administrative Building,
2nd floor, Opp. Vidhan Bhavan
Pune 411 001.

3. **Deputy Chief Engineer**
Central Railway
Central Railway (Nirman), Pune,
having its office at RB Mill Road,
Near Pune Railway Station,
Pune 411 001.
4. **Harishchandra Baburao Harpale**
Age: Adult, Occ.: Not known.
5. **Mandakini Harishchandra Harpale**
Age: Adult, Occ.: Not known.
6. **Dada Harishchandra Harpale**
Age: Adult, Occ.: Not known.
Sr.Nos4, 5, 6 having address at
Behind New English School, Village
Phursungi, Haveli, Pune 412 308.
7. **Lilavati Vasant Harpale**
Age: Adult, Occ.: Not known.
8. **Vikas Vasant Harpale**
Age: Adult, Occ.: Not known.
9. **Vijay Vasant Harpale**
Age: Adult, Occ.: Not known.
10. **Lata Vasant Harpale**
Age: Adult, Occ.: Not known.
Sr. Nos.7 to 10 having address -
Adjacent to Marathi School, near
Grampanchayat office, Village
Phursungi, Haveli, Pune 412 308.
11. **Vinayak Dattatray Harpale**
Age: Adult, Occ.: Not known.
12. **Dinkar Dattatray Harpale**
Age: Adult, Occ.: Not known.

13. **Vinayak Dattatray Harpale**
Age: Adult, Occ.: Not known.
14. **Kanta Dattatray Harpale**
Age: Adult, Occ.: Not known.
15. **Laxmi Vinayak Harpale**
Age: Adult, Occ.: Not known.
16. **Kamal Dinkar Harpale**
Age: Adult, Occ.: Not known.
17. **Kavita Kanta Harpale**
Age: Adult, Occ.: Not known.
Sr. Nos. 11 to 16 having their address-
Behind New English School, Village
Phursungi, Haveli, Pune 412 308.
18. **Shivshakti Promoters & Builders**
A partnership firm through it's
Partner Umesh Vitthal Harpale
having its address at D-501,
Green Crest Building,
Bhosale Village, Taluka Haveli,
Pune 412 308. ...Respondents
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APPEARANCES-

Mr Akshay Petkar, *for the Petitioners.*

Mr Akshay Shinde, *'B' panel Counsel, with Ms V R Raje, AGP,
for the Respondent-State.*

Mr NP Shimpi, *with Mr Vivek Tirbumala, for the Respondent
No. 3-UOI.*

Mr SA Sawant, *with Mr Abhishek Matkar, for the Respondent
Nos. 4 to 16.*

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

DATED : 02 January 2025

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned counsel of the parties.
3. The Petitioners claim to be co-owners along with Respondents 4 to 16 of the property surveyed under No. 182/2A, Mauje Fursungi, Taluka Haveli, District Pune, which was the subject matter of acquisition for a railway line. There is no dispute that the acquired portion measures 36 Are.
4. The Petitioners, relying upon the registered deed of partition dated 27 December 1993, contend that the Petitioners were owners of the partitioned portion measuring 9 Are. The Petitioners also accept that Vinayak Dattatray Harpale and others; Lilavati Vasant Harpale and others and Harishchandra Baburao Harpale and others are entitled to 9 Ares each as their partitioned share of the acquired property.
5. The Petitioners have pleaded about writing to the Sub-Divisional Officer (R1) about these shares and the consequent apportionment of compensation in terms of these shares. However, by the impugned communication dated 31 March 2022, the Sub-Divisional Officer (R1) has apportioned the compensation in the following manner: -
 - a. Vinayak Dattatray Harpale and others: 10.01 Are.
 - b. Lilavati Vasant Harpale and others: 9.70 Are.
 - c. Harishchandra Baburao Harpale and others: 10.35 Are

d. Vitthal Baburao Harpale and others (Petitioners): 5.94 Ares.

6. Aggrieved by the above apportionment and the refusal of the Sub-Divisional Officer (R1) to refer the matter to the competent authority in terms of Section 76 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (said Act), the Petitioners have instituted the present Petition.

7. On 19 April 2022, this Court issued notices to the Respondents and directed that the status quo regarding the disbursement of the compensation amount must be maintained until then. On the returnable date, 29 April 2022, the interim order granted earlier was modified and directed to continue in the modified form. In terms of this modification, the status quo was restricted only to the extent of the compensation corresponding to land measuring 9 Ares because the Petitioners' claim was restricted to 9 Ares.

8. This Court's order dated 29 April 2022 is transcribed below for the convenience of reference: -

“1. The learned AGP shall clarify about the joint measurement.

2. According to the Petitioners 36R land is acquired. There are 4 equal shares in the land acquired i.e. each sharer having 9R land.

3. The learned AGP shall clarify on the said aspect.

4. Interim order passed earlier to continue till next date to the extent of 9R land.

5. The Respondent are entitled to withdraw the amount for an area excluding 9R land. The amount of compensation to the extent of 9R land shall not be disbursed to any parties.”

9. Mr Akshay Petkar now submits that in terms of the impugned communication dated 31 March 2022, there is no dispute about the Petitioners being entitled to compensation to the extent of 5.94 Ares. However, it is the Petitioner’s case that they are entitled to compensation for 9 Ares. Mr Petkar, therefore, submits that the real dispute between the parties is whether each of the four sets of co-owners is entitled to compensation corresponding to 9 Ares. Mr Petkar submits that the interim order should be further modified to permit the Petitioners to withdraw compensation in respect of the property admeasuring 5.94 Ares, and the other disputes should be referred to the competent authority in terms of 76 of the said Act read with Section 3(f) and Section 51 of the said Act.

10. Section 76 of the said Act provides that when the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority. Section 3(f) of the said Act defines “Authority” as the Land Acquisition and Rehabilitation and Resettlement Authority established under Section 51.

11. The Petitioners contend that the four sets of co-owners are entitled to compensation for property measuring 9 acres. The Respondents 4 to 16, however, stand by the apportionment in the first Respondent’s communication dated 31 March 2022. Only this dispute will have to be referred to

and decided by the authority constituted under Section 51 of the said Act.

12. Now that the contours of the dispute are reasonably well settled and the three sets of Respondents referred to at a, b and c of paragraph 5 of this order have already withdrawn the compensation corresponding to 9 Ares, such withdrawal need not be disturbed. Similarly, even the Petitioners should now be allowed to withdraw compensation corresponding to 5.94 Ares, and such withdrawals should not be disturbed. The concerned Respondents must allow the Petitioners to withdraw compensation corresponding to 5.94 Ares within two weeks from today.

13. The learned AGP submits that this should be made subject to the Petitioners entering into an appropriate agreement so that the acquisition can proceed. On instructions, Mr Petkar, the petitioners' Counsel, states that the Petitioners will enter into such an agreement without prejudice to their dispute regarding the apportionment of compensation.

14. Accordingly, we direct the concerned Collector or Sub-Divisional Officer to refer the above dispute of apportionment to the authority constituted under Section 51 of the said Act within four weeks from today.

15. The authority constituted under Section 51 of the said Act should determine whether the Petitioners are entitled to compensation corresponding to 9 Are and similarly whether the Respondents are entitled to compensation corresponding to what has been determined by the Sub-Divisional Officer in

his order dated 31 March 2022 or whether even they are entitled to compensation corresponding only to 9 Are. All these rival contentions are left open to be determined by the authority constituted under Section 51 of the said Act.

16. The Collector/Sub-Divisional Officer must refer the apportionment dispute in the above terms within four weeks of today. The authority must grant all the parties full opportunity in support their respective cases. This will include the opportunity to produce necessary documents, evidence, etc. The Petitioners are directed to be permitted to withdraw the compensation corresponding to 5.94 Ares upon executing the required agreement without prejudice to their case about apportionment. The payment of the balance amount of compensation shall ultimately abide by the orders made by the authority.

17. The Rule is made absolute in the above terms without any cost order. The interim orders, as modified in terms of this final order, are made absolute.

18. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)