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

WRIT PETITION NO.5822 OF 2025

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Kalindibai Bapu Shirsat	... Petitioner
V/s.	
The State of Maharashtra (Through Collector, Solapur) & Ors.	... Respondents

Mr. Hrishikesh S. Shinde for the petitioner.

Mr. Hamid D. Mulla, AGP for the State.

Mr. Anvil S. Kalekar for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 30, 2025

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The present writ petition is filed to challenge the legality and correctness of the Award passed by the learned District Judge, Solapur in Land Acquisition Reference No.3 of 2019. By the said Award, the petitioner has been denied the benefit of compensation arising from acquisition of land, which according to the petitioner, she is rightfully entitled to as a legal heir.
- 3.** The factual background leading to the filing of this writ petition is necessary to be briefly stated to appreciate the controversy involved.
- 4.** It is an admitted position on record that the suit land was granted to the petitioner's father and respondent No.3 under a

certificate issued under Section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "BTAL Act"). Upon the demise of the father, the names of the petitioner, her mother, and respondent No.3 were entered into the 7/12 revenue extract as legal heirs. The land in question bearing Gat No.127 admeasuring 26,600 square metres, situated within the revenue limits of Village Tirhe, Taluka North Solapur, District Solapur, came to be acquired by respondent Nos.1 and 2 for the purpose of four-laning of the National Highway. For the said acquisition, compensation of ₹8,00,58,785/- was awarded.

5. A dispute arose between the legal heirs as to how this compensation should be distributed. As per the mandate of Section 3H(4) of the National Highways Act, 1956, when a dispute arises regarding apportionment, it is required to be referred to the competent civil court. Accordingly, the matter was referred to the District Judge, Solapur and registered as Land Acquisition Reference No.3 of 2019. The petitioner submitted that she was a co-owner of the acquired land by way of inheritance and was, therefore, entitled to her proportionate share in the compensation. However, the learned District Judge, Solapur, by the impugned Award, held that respondent No.3 alone was entitled to receive the entire amount of compensation. Aggrieved thereby, the petitioner has approached this Court.

6. Learned counsel for the petitioner submitted that the land was granted in the name of the petitioner's father under a certificate issued under Section 32M of the BTAL Act, and the father was the exclusive holder of tenancy rights which got

converted into ownership. After his death, the names of the petitioner, her mother, and respondent No.3 came to be recorded as his legal heirs in the revenue record. These facts are not in dispute and hence, prima facie, the petitioner's claim flows from inheritance as per the law of succession.

7. The learned District Judge, however, rejected the petitioner's claim on the ground that she was married prior to the enforcement of the Maharashtra Amendment to the Hindu Succession Act, 1956, which came into force on 22nd June 1994. According to the learned District Judge, since the petitioner was married before the said date, she ceased to have any share in the ancestral property. However, such reasoning appears to be legally flawed. The amendment of 1994 conferred equal rights on daughters in coparcenary property, and even prior to that, under the general law of succession applicable to Hindus, a daughter continues to remain a Class-I heir to her father's estate, irrespective of her marital status. Therefore, the exclusion of the petitioner on the sole ground of her marriage prior to 22nd June 1994 may not stand the test of legal scrutiny.

8. Per contra, learned counsel for respondent No.3 argued that the petitioner was aware of the refusal of her claim even before the reference proceedings began. It was further contended that the petitioner had, in fact, released her rights in favour of respondent No.3, and therefore, she is now estopped from claiming any share in the compensation. However, there is no material on record indicating execution of any formal deed of release or relinquishment by the petitioner, duly registered as required under

law. In absence of such evidence, mere oral assertion of relinquishment or implied waiver cannot defeat the legal rights of a Class-I legal heir. The principle of waiver or estoppel must be based on clear and unambiguous acts or omissions that amount to surrender of a legal right, which is lacking in the present case.

9. Having carefully perused the material placed on record, and having taken into consideration the uncontroverted documentary evidence, it emerges as a matter of record that the ownership of the land in question vested in the petitioner's father until his demise. Thereafter, the names of the petitioner, her mother, and respondent No.3 were duly mutated in the revenue record as legal heirs of the deceased owner. At this stage, it is pertinent to observe that the rights and entitlements of the petitioner are not governed by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 alone, but also by the personal law of succession applicable to Hindus, namely, the Hindu Succession Act, 1956.

10. The Amendment Act of 2005, which came into effect from 9th September 2005, introduced a statutory change of far-reaching consequences. By virtue of the said amendment, a daughter is recognized as a coparcener in her own right in the same manner as a son, and such right is conferred irrespective of whether she was born before or after the amendment. In such a legal landscape, it was wholly impermissible for the learned District Judge to brush aside the petitioner's claim on the anvil of the earlier Maharashtra State Amendment of 1994. The central enactment, being subsequent and occupying the field by virtue of its overriding effect under Article 254 of the Constitution of India, stands as the

prevailing law. The District Judge, Solapur therefore misdirected himself in law in rejecting the petitioner's claim solely on the ground of her marriage prior to 1994.

11. The pronouncement of the Constitution Bench of the Hon'ble Supreme Court in *Vineeta Sharma v. Rakesh Sharma & Ors.*, (2020) 9 SCC 1, places the legal position beyond the pale of doubt. The Court authoritatively held that the amended Section 6 of the Hindu Succession Act confers coparcenary rights on daughters by birth, and that such conferment does not depend upon the survival of the father on the date of amendment. The daughter is to be treated as a coparcener in her own right and enjoys the same rights and liabilities as that of a son. The learned District Judge, Solapur, while dealing with a claim arising post the 2005 Amendment, was bound in law to apply the ratio of the said judgment. The rejection of the petitioner's claim, thus, not only reflects a misreading of the statutory amendment, but also is in teeth of binding precedent rendered by the apex constitutional court. In my considered view, the dictum in *Vineeta Sharma* (supra) squarely governs the controversy at hand and mandates recognition of the petitioner's equal share.

12. The argument advanced on behalf of respondent No.3 that the petitioner was aware of the denial of her right and that she had relinquished the same, must be tested on the anvil of legal evidence. There is no material brought on record in the nature of a registered deed of relinquishment, release, or waiver, as required under Section 17 of the Registration Act, 1908 read with Sections 91 and 92 of the Indian Evidence Act, 1872. Mere awareness of

denial or implied acquiescence cannot, in the absence of a valid legal instrument, extinguish the statutory rights conferred upon the petitioner by virtue of inheritance and operation of law. It is a well-settled principle that rights accrued under a statute cannot be defeated on vague assertions or by conduct that falls short of a clear, unambiguous, and legally binding relinquishment. The contentions of respondent No.3, being unsupported by cogent evidence, deserve no countenance in law.

13. In the light of the above discussion, I find it difficult to sustain the order passed by the learned District Judge, Solapur. The petitioner, being a daughter of the original owner, acquired by operation of law an undivided interest in the suit land and thereby became entitled to her corresponding share in the compensation awarded for acquisition. The rejection of her claim amounts to denial of statutory entitlement, and the impugned Award suffers from a patent error of law warranting interference under Article 226 of the Constitution of India.

14. The writ petition accordingly succeeds. Rule is made absolute in terms of prayer clause (b).

15. It is hereby declared that the petitioner is entitled to an equal share in the compensation amount, at par with respondent No.3, and the disbursal shall be effected by respondent authorities in accordance with this declaration. No order as to costs.

16. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)