

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 11988 of 2019****With****CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2021****In****R/SPECIAL CIVIL APPLICATION NO. 11988 of 2019****With****CIVIL APPLICATION (FOR WITHDRAWAL/DISBURSEMENT  
OF AMOUNT) NO. 2 of 2021****In****R/SPECIAL CIVIL APPLICATION NO. 11988 of 2019****FOR APPROVAL AND SIGNATURE:****Sd/-****HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**MADHUKANTABEN D/O SOMABHAI SHANKARBHAI PATEL**

**Versus****STATE OF GUJARAT****Appearance:****MR PARESH A. PATEL(5456) for the Petitioner(s) No. 1  
for the Respondent(s) No. 4,5****MR AKASH K. CHHAYA, AGP for the Respondent(s) No. 1****GOVERNMENT PLEADER for the Respondent(s) No. 1,2****MR.PRASHANT B SHARMA(7028) for the Respondent(s) No.  
5.1,5.2,5.3**

MRS NISHA M PARIKH(2397) for the Respondent(s) No. 4.1  
NOTICE SERVED for the Respondent(s) No. 5.1,5.2,5.3  
UNSERVED WANT OF TIM for the Respondent(s) No. 3

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**CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

**Date : 09/06/2022**

**ORAL JUDGMENT**

1. **Rule.** Mrs. Nisha M. Parikh, learned advocate waives service of notice of rule for the contesting respondent No. 4.1, who is the only contesting respondent so far as decision of this petition is concerned. Mr. Akash K. Chhaya, learned AGP waives service of notice of rule for and on behalf of respondent - State.

2. This petition under Article 227 of the Constitution of India filed by the petitioner - Madhukantaben D/o Somabhai Shankarbhai Patel, challenging the order passed by Principal Senior Civil Judge, Viramgam dated 10.06.2019 rendered in Execution Application No. 4 of 2017, under application Exhibit-24 tendered by the petitioner claiming her share to the extent of 50% towards the compensation awarded for the properties acquired by the acquiring authority, which belonged to her father.

3. From the petition, it appears that certain parcels of agricultural land belonging to the father of the petitioner - Somabhai Shankarbhai Patel, came to be acquired, for which he preferred reference before the competent Court for enhancement of the compensation awarded by the land acquisition officer, which was ultimately registered on transfer from other Court as Land Acquisition Case No. 22 of 2008 in the Court of Principal Senior Civil Judge, Ahmedabad (Rural) at Viramgam. However, during the pendency of the reference case, since the original claimant i.e. father of the applicant died

on 25.02.2000, the respondent No. 4.1 herein, who is real brother of the petitioner, looking after the reference proceedings, applied along with present petitioner to be brought on record of that reference case as heirs and legal representatives of the claimant - Somabhai Shankarbhai Patel, without any objection.

4. As it appears from the record, she remained to be a claimant along with her brother - respondent No. 4.1 herein, throughout the reference case till the conclusion thereof. At no point of time, respondent No. 4.1 i.e. brother of the petitioner, who willingly joined her as heir and legal representative along with him in the reference proceedings, objected to her entitlement of the compensation awarded by the reference Court.

5. It further appears that respondent No. 4.1, pursuant to an order by the reference Court, filed Execution Application (Special) No. 4 of 2017 for getting the amount of compensation. However, the authorities concerned have already deposited the amount but the petitioner, who was also a party to the reference case, having come to know about the execution proceedings filed, requested the executing Court to be joined in the execution proceeding as she is also one of the claimant in the reference case, which came to be allowed.

6. During the pendency of execution proceedings, the petitioner applied vide Exhibit-24 for her share to the extent of 50% from the amount deposited and which had come to the share of her father, which was objected to by the respondent No. 4.1 herein on the ground that the petitioner had waived her right to the properties, which were acquired, in the year 2011 by way of an affidavit.

7. After hearing the parties, the executing Court rejected the Application Exhibit-24 vide order dated 10.06.2019, which is challenged in this petition.

8. Heard Mr. Paresh A. Patel, learned advocate for the petitioner and Mrs. Nisha M. Parikh, learned advocate for the contesting respondent No. 4.1. Though there are other respondents in this petition, for decision of the controversy involved, their presence or participation in this proceeding is not required.

9. Mr. Paresh A. Patel, learned advocate for the petitioner submitted that her right to compensation has been objected to by the real brother on the ground that petitioner has relinquished her right in the properties acquired, for which compensation is awarded. However, as per Section 17(1)(b) of the Registration Act, 1908 (hereinafter referred to as "the Act"), waiving/relinquishing/extinguishing right in the said property, value of which is not disputed to be more than Rs.100/-, requires registration compulsorily.

10. According to his submission, in view of Section 49 of "the Act", any documents which requires compulsory registration, if not registered, it cannot affect any immovable property comprised therein and the said document cannot be received as evidence of any transaction affecting such property or conferring such power. Therefore, according to his submission, even if the case of the respondent No. 4.1 is to be believed, as such the said relinquishment deed itself is disputed by the petitioner, it cannot be taken into consideration, being an inadmissible document for determining the rights of the parties in this proceeding. Therefore, he has submitted that since the

petitioner is entitled to the share in the compensation as a party to the reference, the impugned order be quashed and set aside by recognizing the right of the petitioner to have the compensation to the extent of her share in it.

11. As against that, Mrs. Nisha M. Parikh, learned advocate for the contesting respondent No. 4.1 submitted that not only by affidavit, she has relinquished her right in the property, which is acquired by the acquiring authority and compensation thereof is determined by the reference Court, there are other documents to show that after relinquishing her right, she herself applied for removing her name from the revenue record and pursuant thereto, necessary entries were also mutated for the lands, which are acquired under the present acquisition proceedings. Therefore, according to her submission, it is the voluntarily act by the petitioner to forego her right in the property, and therefore, she cannot claim any amount, which has been awarded because of acquisition thereof by the acquiring authority. सत्यमेव जयते

12. She has further submitted that while the land acquisition officer awarded the amount, she has also given an authority letter in favor of the respondent No. 4.1 to receive that compensation on her behalf, which is suggestive of the fact that she has foregone her right in the property. Therefore, according to her submission, the petitioner is not entitled to the 50% of the amount as claimed by her out of the compensation awarded for the acquisition of the land in question. Therefore, she has requested that the petition be rejected.

13. Having heard the learned advocates for the contesting parties as also considering the material placed on record of this

petition, it is clear that the affidavit claimed to have been sworn in by the petitioner relinquishing her right in the properties acquired by the Railways, is disputed by the petitioner herself and entry proceedings are also *sub judiced* before the Collector, as contended by the learned advocate for the petitioner.

14. Considering the value of the property, which is not even disputed to be more than Rs.100/-, if any right therein is to be relinquished or extinguished, it requires compulsory registration before the registering authority under "the Act". In view of Section 49 of "the Act", the said document cannot be received as an evidence of any transaction affecting such property. If that is so, the respondent No. 4.1 cannot place reliance on such document claiming that the petitioner has relinquished her right in the property, and therefore, she is not entitled for the compensation awarded by the reference Court for the acquisition of the said properties. Even if it is presumed that the document can be pressed into service for collateral purposes if it is out of a family arrangement for all the properties together, which requires no registration as such. However, the document i.e. affidavit, relinquishing right in specific properties, does not reflect that she has relinquished her right to all the properties of her father, which is inherited by her nor it is a document in respect of any family arrangement being made between the parties, the registration thereof is not required. Thus, the document on which reliance is placed by the respondent No. 4.1 to deny her right to compensation for her share, cannot be taken into consideration at all. If that is so, there is an inevitable conclusion that she is entitled to her share in the property, which is acquired under the present acquisition proceedings, and therefore, the impugned judgment

and order passed by the executing Court, refusing to recognize her 50% share in the compensation awarded, is required to be quashed and set aside and it is hereby quashed and set aside.

Reference Court is directed to consider her share and pass appropriate order in the execution proceedings thereafter.

In view thereof, this Special Civil Application is disposed of as allowed. Rule made absolute.

Direct service is permitted.

**ORDER IN CIVIL APPLICATION NO. 1 of 2021 & CIVIL APPLICATION NO. 2 of 2021**

In view of the disposal of the main petition, both the Civil Applications stand disposed of.

Sd/-

(UMESH A. TRIVEDI, J.)

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THE HIGH COURT  
OF GUJARAT

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