

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**LETTERS PATENT APPEAL STAMP NO. 20474 OF 2012
IN
WRIT PETITION NO. 9084 OF 2011**

Mankarnabai W/o Gajaraji Somwanshi .. Appellant

Versus

The State of Maharashtra through
its Secretary and others

.. Respondents

Shri S. V. Gundre, Advocate for the Appellant.

Smt. M. S. Patni, A.G.P. for Respondent Nos. 1 to 7.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 20TH MARCH, 2015.

PER COURT :

. Mr. Gundre, the learned counsel submits that, even today appellant/petitioner is in possession of the writ property. However, the said aspect has not been considered properly by the learned Single Judge. The Hon'ble Minister also failed to consider the said aspect. It ought to have been considered that, there was no final award and compensation has not been paid to the appellant, nor the property has been taken in possession of the Government. Even recently panchanama was conducted by the Tahsildar. It is found that, the present appellant is in possession of the property. As per Sec. 24 of the Right to Fair Compensation Act, the award and acquisition proceedings would

lapse.

2. The learned Assistant Government pleader submits that, even the Civil Court has given finding that the petitioner is not owner and possessor of the suit property and land has already been acquired. The said finding has become final.

3. We have have considered the submissions canvassed by the learned counsel for the respective parties.

4. The decree of the Civil Court has become final. The suit for declaration and injunction was filed by the present appellant. The same was dismissed. The appeal preferred against the said decree is also dismissed. The Civil Court is Court of competent jurisdiction to give dictum on the aspect of the ownership and possession.

5. In the light of the above, the learned Single Judge has not committed any error in dismissing the writ petition. In case the petitioner has accrued fresh right, then the same would be a separate cause of action and which cannot be considered in the present letters patent appeal. The letters patent appeal as such is dismissed. No costs.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]