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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8463 OF 2014

Ramprasad s/o Vitthalrao Late
Age – 78 years, Occ – Agriculture
R/o Deola, Taluka – Partur,
District - Jalna

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Collector, Jalna
2. The Special Land Acquisition Officer,
(M.I.W.), Jalna
3. The Executive Engineer,
Lowe Dudhana Project,
Division, Sailu, District – Parbhani

RESPONDENTS

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Mr. D. M. Kakade & Mr. R. P. Survase, Advocates for petitioner
Mr. S. G. Sangle, AGP for respondent State
Mr. B. R. Survase, Advocate for respondent No.3

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 9th JULY, 2015

ORAL JUDGMENT :

1. Leave to amend. Amendment be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
3. Controversy in the present case is placed in a very narrow compass and the situation can be referred to as no longer *res*

integra. A Land Acquisition Reference in respect of award dated 22nd July, 1999 had been filed on 3rd April, 2000, which had been re-numbered as Land Acquisition Reference No. 705 of 2010. Subsequently, an amendment application to the reference had been moved, which came to be allowed on 28th July, 2014. The petitioner is stated to have paid requisite court fees on the enhanced amount upon amendment as per Bombay Court Fees (Amendment) Act, 2000, which was brought into effect with effect from 3rd March, 2000. However, it appears that the office report insisted upon payment of court fees as per Bombay Court Fees (Amendment) Act, 2002, which was brought into effect from 1st October, 2001.

4. As such, question with regard to payment of court fee had been considered under Exhibit-24 by the Joint Civil Judge, Senior Division, Jalna.

5. It appears that the petitioner relied upon on *2001 (3) ALL MR 1 "Bipin Dalpatbhai V Vasanben"*. However, the court thought that it is difficult to go with said authority, being different on facts.

6. Learned advocate for the petitioner states that the court had been in oblivion in respect of the law governing the amendments. He submits that the amendments once granted without any condition and restrictions generally relate back to the date of institution of proceedings or unless application of doctrine of

relation back is specifically excluded. He thus, contends that insistence on to pay court fee as per amendment to Bombay Court Fee Act, 2002 is uncalled for and improper and not tenable. He, for said purpose, relies on *AIR 2001 SC 2896 "Siddalingamma V Mamtha Shenoy"*, *2014 (1) Mh. L. J. 610 "Prithi Pal Singh V. Amrik Singh"* and also refers to a decision of Karnataka High Court reported in *AIR 2013 Karnataka 126 "Ravindrakumar V. The State of Karnataka"*, wherein reference has been made to as to what date would be relevant for assessment of court fees. Relevant extracts from said judgments are reproduced herein below for ready reference.

[2014 (1) Mh.L.J. 610)]

"From the ratio of the aforesaid judgments, following points emerge:

- (a) Merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment;*
- (b) The dominant purpose of the amendment is to minimize the litigation;*
- (c) The amendment once allowed and incorporated relates back to the date of the initial institution of the suit;*
- (d) The Court, however, in appropriate case may restrict the application of the doctrine of relation back and permit the application of the amendment from the date the amendment is allowed,*

This principle has been enunciated by the Hon'ble Apex Court in the case of "Siddalingamma and Anr V. Mamtha Shenoy (2001) 8 SCC 561 wherein the

court observed -

10. On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the Court excludes the applicability of the doctrine in a given case, the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition.”

[AIR 2013 (Karnataka) 126]

“On amendment being permitted additional Court Fee for relief of declaration came to be paid and memo of calculation came to be objected by defendants therein contending that Court Fee on the market value of the suit property should be calculated as on the date of allowing the amendment of the plaint or on the date of application of the plaintiff and accordingly Court Fee has to be paid. Said contention was negated which was carried before this Court by defendants in W. P. 821/2009. While rejecting the writ petition this Court has made an observation that in the event of Trial Court itself had specified the date of amendment to take effect from a particular date, only in such circumstances, the Court fee could be demanded from the plaintiff by determining the market value as on said date to be the effective date and not from the date of filing of the suit and not otherwise.”

[Writ Petition No. 821 of 2009 (Karnataka High Court) “The Executive Officer, Karnataka State hai Commitete V. Sri Syed Mohammed”]

“It is well established principle of law that whenever an amendment of the plaint is permitted, it relates back to the date of the institution of the suit, unless the Court otherwise specify a date from which it has to come into effect. So far as the amendment granted in favour of the Plaintiffs in this suit, it appears that there is no such specific date mentioned by the Court from which date the amendment would take effect. In such circumstances,

when the amendment relates back to the date of the institution of the suit, the Court fee will have to be paid by the plaintiffs on the market value as on the date of the suit.”

7. Learned AGP and Mr. Survase, learned advocate for respondent No.3, acquiring body, being officers of the court, fairly concede to aforesaid position.

8. Provisions of Bombay Court Fee Act, as amended in 2002 do not show that the court fee to be deposited with retrospective effect.

9. Having regard to observations, which have been relied on from aforesaid citations, the impugned order passed on 12th September, 2014 on Exhibit-24 in Land Acquisition Reference No. 705 of 2010 passed by Joint Civil Judge, Senior Division, Jalna is set aside. If court fee is paid according to the rates as were prevailing on the date of institution of Land Acquisition Reference on the amended enhanced amount, payment of additional court fee be not insisted upon as per amendment to Bombay Court Fee Act enforced on 1st October, 2001. Writ petition accordingly stands allowed. Rule is made absolute in aforesaid terms with no order as to costs.

[SUNIL P. DESHMUKH, J.]