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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9922 OF 2015

Rajesh Hanumant Kshirsagar & Others

PETITIONERS

VERSUS

The State of Maharashtra & Another

RESPONDENTS

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Mr. G. K. Naik (Thigale) Advocate for the petitioners

Mr. V. G. Shelke, AGP for respondent No. 1- State

Mr. R.N.Dhorde, Sr.Advocate i/b Mr. S.H. Joshi, Adv. for R-2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th OCTOBER, 2015

ORDER :

1. Heard learned advocates for the parties.
2. Mr. Thigale, learned advocate appearing for the petitioners submits that an application referable to section 17 of the Indian Telegraph Act, 1885 had been moved while work had been in progress and that the same has been cursorily dealt with without calling upon the petitioners for hearing. The impugned order, as such, has been passed without following the noble principles of natural justice and has been rendered vulnerable on all accounts and as such, seeks indulgence of this court in its discretionary powers. He submits that other remedies are being prosecuted for

different purposes and have no bearing as far as application dated 21st September, 2015 is concerned.

3. Mr. Dhorde, learned senior advocate submits that in the first place, the application itself is not maintainable and no cause has arisen for invoking section 17 of the Act, since admittedly, work had been going on. It is further being referred to that the work now stands completed. Mr. Dhorde, learned senior advocate urges me not to exercise discretion in favour of the petitioners, on various grounds, primarily that the petitioners are influential and powerful people and have strong presence in the local politics and have created a scene on the site while work was going on. He further refers to writ petition pending before division bench of this court, in which this court had refused to grant any interim relief, having regard to work in progress being of national importance.

4. Learned senior advocate refers to order of division bench of this court in writ petition No.9597 of 2015, contending it was at the behest of the present petitioners and that immediately after the order has been passed, on 21st September, 2015 the application had been moved before the authority purportedly under section 17 of the Act. He further refers to order in writ

petition No. 3745 of 2014 and other writ petitions dated 18th March, 2015, contending that since an appellate remedy is provided, it would be legitimate to go before appellate forum. He places heavy reliance on the order of the Supreme Court reported in (2006) 9 SCC 233 “*H. P. Electricity Regulatory Commission V. H. P. State Electricity Board*”.

5. Mr. Dhorde, learned senior advocate further refers to section 111 of the Indian Electricity Act, contending that alternate forum is now available for adjudication of the grievance of the petitioners against the impugned order. He further refers to that in absence of notice referable to section 19-A of the Act, proceedings under section 17 of the Act are not maintainable and are void.

6. The impugned order refers to that present respondent corporation has been empowered and permitted to carryout work under section 16 (1) of the Act and further that the corporation has been directed to carry out work causing as little damage as possible with reference to section 10 (d) of the Act. Learned District Magistrate further observed in the impugned order that the work had been in progress and section 17 of the Act would come into play after the work has been completed.

7. In the present case, it appears that the District Magistrate appears to have passed order on 22nd September, 2015 on the very next day after the application had been moved. It appears that the phraseology used in section 17 of the Act purports a different authority for considering the application referable to section 17 of the Act. In the circumstances, the District Magistrate would be required to pass appropriate orders.

8. Having regard to aforesaid, I deem it appropriate that the parties be heard and the matter be decided in accordance with law and facts, without getting bogged down by any other considerations save legal and factual ones including *inter alia*, about maintainability. As such, application dated 21st September, 2015 is restored, to be decided afresh, after granting opportunity of being heard to the parties concerned. All the contentions of the parties are kept open.

9. With these observations, writ petition stands disposed of.

[SUNIL P. DESHMUKH, J.]