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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5287 OF 2014

Tukaram Kana Joshi and Ors.

..Petitioners.

V/s.

The State of Maharashtra and Ors.

..Respondents.

Mr.S.N. Gawade i/b. Shree and Co. for the petitioners.

Mr.V.S.Gokhale, AGP for respondent Nos.1 to 5.

Mr.Roopadaksha Basu i/b. the Law Point for respondent Nos.7 to 9.

Ms.Lachani Chandka for respondent Nos. 10 to 16.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 19TH OCTOBER, 2015

P.C. :-

1. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for respondent Nos.10 to16, the learned counsel appearing for respondent Nos.7 to 9. We have also learned AGP for respondent Nos.1 to 5. Notice for final disposal had been already been issued.

2. The learned counsel appearing for the petitioners has invited our attention to the judgment and order dated 2nd November, 2012 passed by the Apex Court in Civil Appeal No.7780 of 2012 which was filed by the petitioners and invited our attention to the possession receipt at pages 32 to 37 of the petition. The learned counsel appearing for the petitioners submitted that even the lands subject matter of the Civil Appeal before the Apex Court

were taken over under the subject possession receipt. It also includes the land bearing Survey No.282/3 of Village Shiravane, Taluka and District Thane admeasuring 13 gunthas which was allegedly held by the Predecessor of the petitioners and which is the subject matter of this petition. He urged that the State Government has acted upon the decision of the Apex Court in Civil Appeal No.7780 of 2012 by issuing a notification under section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act of 1894') on the basis of which the award under Section 11 of the Act of 1894 was made on 13th March, 2013.

3. The learned AGP states that the entire record of the case is not available. Therefore, he is unable to make a statement whether the facts of the present case are similar to the facts of the case before the Apex Court. He submitted that a detailed scrutiny of record will be necessary.

5. Considering the facts on record, the scrutiny of record will be necessary. Hence, we dispose of the petition by passing the following order:-

(i) We direct the petitioner, the City Industrial Development Corporation of Maharashtra (for short 'CIDCO') and the Maharashtra Industrial Development Corporation (for short 'MIDC') to appear before the Divisional Commissioner, Konkan Division, Navi Mumbai, District Thane on 23th November,

2015 at 11.00 a.m.;

- (ii) We direct the first to fifth respondents to produce all available record before the Divisional Commissioner;
- (iii) The Divisional Commissioner to examine whether the case of the petitioners in this petition is similar to the petitioners before the Apex Court in Civil Appeal No.7780 of 2012;
- (iv) It is obvious that if the Divisional Commissioner finds that the facts of the present case are similar to the facts of the case subject matter in Civil Appeal No.7780 of 2012, the directions issued by the Apex Court shall be implemented in this case as well;
- (v) After examining the record and after hearing the parties, the Divisional Commissioner shall pass appropriate order as expeditiously as possible and in any event on or before 30th April, 2016;
- (vi) It will be open for the Divisional Commissioner to call for the available record with both CIDCO as well as MIDC;
- (vii) All issues are kept open to be decided by the Divisional Commissioner;
- (viii) The petition is disposed of subject to above directions;
- (ix) All concerned, including the Divisional Commissioner shall act upon an authenticated copy of this judgment and order.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)