

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9679 OF 2014

Union of India

Through the Central Excise Department : Petitioner.

Versus

Mr. Deepak Kudale

Constituted Attorney of Owners

Tejas, Sahajivanagar, Pune & anr. : Respondents.

**Mr. S R Rajguru a/w Ms. J N Pandhi i/b Mr. J B Mishra for the Petitioner.
Mr. Bhavik Manek a/w Mr. S T Dighe a/w Miss Kausar Banatwala i/by Mr.
Tushar Goradia for the Respondent No.1.**

CORAM : R. M. SAVANT, J.

DATE : 21st August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 15/03/2015 passed by the learned District Judge-12, Pune by which order the Application (Exhibit 138) filed by the Respondent No.1 herein came to be allowed and the Respondent No.1 was permitted to lead further Examination-in-Chief to prove the following documents :- 1] two power of attorneys 2] two supplementary power of attorneys/ratifications, 3] indemnity bond 4] authority letters, and 4] receipts of compensation.

2 The impugned order has been passed in Land Reference No.13/1994 filed by the Respondent No.1 for enhancement of compensation. The Respondent No.1 claims to be the power of attorney holder of the original

owners of the land in question pursuant to the power of attorneys executed by the original owners and pursuant to the powers granted in the said power of attorneys. In so far as the Petitioner is concerned, the Petitioner can be said to be an acquiring body within the meaning of the Land Acquisition Act, 1894. On the lands in question it seems that the staff quarters of the Petitioner have been constructed way back after the lands were acquired in the year 1994. Initially to the reference proceedings the Petitioner was not arrayed as a party. It appears that pursuant to the application made by Respondent No.1 that the Petitioner was joined as a party being the acquiring body. The said impleadment was in the year 2000. It appears that prior thereto the Examination-in-Chief of the Respondent No.1 was recorded. After the Petitioner was impleaded as a party, the Petitioner raised an issue as regards the locus standi of the Respondent No.1 which issue the Petitioner sought to raise by questioning the two power of attorneys on the basis of which the Respondent No.1 is prosecuting the instant reference proceedings. Thereafter certain intervening events have taken place which are not material in so far as the adjudication of the above Petition is concerned. However, it is required to be noted that the Court Commissioner was appointed to record the evidence and at present, the cross examination of the Respondent No.1 is underway before the Court Commissioner. It is in view of the objection raised by the Petitioner to the locus standing of the Respondent No.1 to prosecute the said reference proceedings which was reflected in the cross examination which was

carried out on behalf of the Petitioner that the Respondent No.1 had filed the instant Application (Exhibit 138) for being permitted to lead further Examination-in-Chief.

3 The Respondent No.2 in the said reference proceedings i.e. the Petitioner herein filed the Applications Exhibits 1 and 137 by invoking the inherent powers of the Court for deferring the cross examination and for directing the Respondent No.1 to lead further Examination-in-Chief so as to prove his locus standi and thereby calling upon him to prove the said five documents which have been referred to herein-above. The said Applications filed by the Petitioner were allowed by the Trial Court by the order dated 26/07/2012. However, it seems that the matter remained dormant and thereafter the instant Applications (Exhibits 138 and 139) have been filed by the Respondent No.1 for being permitted to lead further Examination-in-Chief so as to prove the said five documents. The said applications, as indicated above, have been allowed by the Trial Court by the impugned order dated 15/03/2014.

4 The Trial Court was of the view that since the Respondent No.2 after its impleadment has questioned the locus standi of the Respondent No.1 to prosecute the said reference proceedings and which locus standi is hinging upon the power of attorneys, the Trial Court observed that it is the prerogative

of the party concerned to prove the execution and truthfulness of the power of attorneys by producing relevant oral evidence. The Trial Court further observed that the judgments on which reliance was placed by the Petitioner before the Trial Court would have application at the stage of hearing of the arguments in the proceedings and cannot be called in aid at the stage at which the Application (Exhibit 138) was filed. The Trial Court was of the view that the parties can be put to terms by restricting the right to lead evidence or to undergo cross examination on those points. As indicated above, it is the said order dated 15/03/2014 passed by the learned District Judge-12, Pune which is taken exception to by way of the above Writ Petition.

5 The learned counsel appearing on behalf of the Petitioner Shri Rajguru sought to raise contentions as regards the locus standi of the Respondent No.1 to prosecute the reference proceedings in question. The learned counsel would contend that it was necessary on the part of the Respondent No.1 to prove the said power of attorneys at the inception and cannot be permitted to do so now. The learned counsel would also contend that the reference proceedings are also suffering from delay and laches and therefore would have to be dismissed on the said ground. The learned counsel would contend that the evidence can only be led in the sequence contemplated under Section 138 of the Evidence Act. It is also the submission of the learned counsel for the Petitioner that in the midst of the cross examination, the

Respondent No.1 cannot revert back so as to lead Examination-in-Chief.

6 In my view, it is not possible to accept any of the contentions raised on behalf of the Petitioner by learned counsel Shri Rajguru. As indicated above, the Petitioner was impleaded as the Respondent No.2 in the reference proceedings in the year 2000 and it is prior thereto that the Examination-in-Chief of the Respondent No.1 was recorded in the Trial Court. After the Petitioner was impleaded, the Petitioner has questioned the locus standi of the Respondent No.1 and thereby has questioned the power of attorneys on the basis of which the Respondent No.1 is prosecuting the reference proceedings. It is required to be noted that the Special Land Acquisition Officer had not questioned the power of attorneys nor did the Special Land Acquisition Officer question the locus standi of the Respondent No.1. Hence when the Petitioner is seriously questioning the locus standi of the Respondent No.1 which is reflected by the line of cross examination which the Petitioner had adopted before the Court Commissioner, then the Respondent No.1 was entitled to file the application to prove the five documents on which his right to prosecute the said reference proceedings hinges. In fact the Petitioner itself had filed two Applications (Exhibits 1 and 137) in the Trial Court calling upon the Respondent No.1 to prove the said documents which applications were allowed by the order dated 26/07/2012. In my view, since it is well settled that rules of procedure are the handmaid of justice and have to be utilized to further the

cause of substantial justice rather than oppress it, since in the instant case, the locus standi of the Respondent No.1 is questioned, the Respondent No.1 would undoubtedly have to be given an opportunity to prove the documents upon which he relies. In my view, therefore, no case for interference is made out in the writ jurisdiction of this Court. The above Writ Petition is accordingly dismissed. However, it would be open for the Petitioner to file an application if it is their case that the issue of limitation in the instant case is a pure question of law and which can be tried under Order XIV Rule (2) of the Code of Civil Procedure. Needless to state that if any such application is filed by the Petitioner, the same would be considered by the Reference Court on its own merits and in accordance with law. Since the reference proceedings are of the year 1994, the same are expedited.

[R.M.SAVANT, J]