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

WRIT PETITION NO.8512 OF 2013

Konkan Railway Corporation Ltd.	...Petitioner
v/s.	
The State Government of Maharashtra and Ors.	...Respondents.

Ms.Kiran Bagalia, i/b Mr.Krishna Kelkar, for the petitioner.
Mr.V.S.Gokhale, AGP for respondent nos.1 to 3.
Mr.Saurabh Butala i/b Mr.Harshad Bhadbhade, for respondent nos.4 to 17.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 10th JUNE, 2015.

P.C.

Not on board. Taken on board.

1. The papers are produced at the instance of the learned counsel representing the respondent nos.4 to 17.

2. Learned Counsel for the respondent nos.4 to 17 tenders across the bar an affidavit/undertaking of the respondent no.6. He states that the said affidavit/undertaking has been filed by the respondent no.6 for himself and on behalf of respondent nos.4, 5 and 7 to 17. He reiterates on

instructions, that the said respondents have no objection for setting aside the impugned award dated 20th May, 2013. He states that after giving an opportunity of being heard to the petitioner, the third respondent will have to make a fresh award in terms of Section 11 of the Land Acquisition Act, 1894. He states on instructions that the respondent nos.4 to 17 shall not claim before the Land Acquisition Officer that the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are applicable to the acquisition in question. We accept the statements made in the affidavit/undertaking as well as the statements made across the bar by the learned counsel appearing for the respondent nos.4 to 17, on instructions.

3. Perusal of the order dated 15th January, 2015, passed by this Court shows that even according to the case of the petitioner, a sum of Rs.24,55,451/- is admittedly payable by way of compensation to the respondent nos.4 to 17. A sum of Rs.10,00,000/- has been deposited by the first to third respondents in this Court.

4. Learned Counsel appearing for the petitioner states that the remaining amount of Rs.14,55,451/- is lying deposited with the third

respondent and the petitioner has no objection if the entire amount of Rs.24,55,451/- is withdrawn by the respondent nos.4 to 17. Learned Counsel appearing for the respondent nos.4 to 17 states that the amounts be disbursed to the respondent nos.4 to 17, after determining their respective shares and the said exercise will have to be done by the third respondent.

5. Considering the procedural difficulty in the way of direct transfer of the sum of Rs.10,00,000/- deposited in this Court to the account of the third respondent, we propose to direct the Registry to transfer this amount to the District Court at Ratnagiri with a direction to the third respondent to withdraw the said amount and distribute it to the respondent nos.4 to 17 as per their respective shares.

6. In view of the settled law, as the petitioner was not given an opportunity of being heard by the third respondent, by setting aside the impugned award, a direction will have to be issued to the third respondent to make a fresh award.

7. Accordingly, we dispose of this petition, by passing the following order:-

ORDER

- i) The final award dated 20th May, 2013, which is impugned in this petition, is hereby quashed and set aside ;
- ii) We direct the petitioner and the respondent nos.4 to 17 or their authorized representatives to appear before the third respondent on Monday, 29th June, 2015 at 11.00 a.m., for the purposes of fixing the schedule of enquiry ;
- iii) After holding an enquiry in accordance with the provisions of the Land Acquisition Act, 1894 and after giving an opportunity to the petitioner to produce the material/evidence before him as regards the market value, the third respondent shall make a fresh award, in accordance with Section 11 of the Land Acquisition Act, 1894 ;
- iv) We make it clear that the proceedings for acquisition initiated under the Land Acquisition Act, 1894, shall continue to be legal and valid ;
- v) In view of the statements made on oath by the respondent nos.4 to 17 and the statements made across the bar, we make it clear that it will not be open for the respondent nos.4 to 17 to raise a contention that the provisions of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, are applicable to the acquisition;

- vi) The sum of Rs.14,55,451/- deposited with the third respondent shall be distributed by the third respondent to respondent nos.4 to 17 according to their respective shares ;
- vii) The Registry shall transfer the amount of Rs.10,00,000/- lying deposited in this Court to the District Court at Ratnagiri. Even the interest, if any, accrued on the said amount shall be transferred to the District Court at Ratnagiri ;
- viii) The third respondent shall withdraw the amount transferred to the District Court at Ratnagiri and shall distribute the amount of Rs.10,00,000/- with interest accrued, if any, thereon to the respondent nos.4 to 17 as per their respective shares ;
- ix) It is made clear that the petitioner will be entitled to claim set off amount of Rs.24,55,451/- from the compensation which is made payable under the fresh award which may be made by the third respondent ;
- x) We direct the third respondent to make a fresh award as expeditiously as possible and in any event, on or before 31st October, 2015;

- xi) All contentions on the issue of market value of the acquired land are kept open.

8. Rule is partly made absolute on the above terms.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)