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

**WRIT PETITION NO.1476 OF 2014
WITH
CIVIL APPLICATION NO.1315 OF 2014**

Smt. Sonabai Jagannath Sarode and Ors.

... Petitioners

Vs.

State of Maharashtra and Ors.

... Respondents

Mr. Balasaheb Ramchandra Deshmukh, for the Petitioners/Applicants.

Mr. V.S. Gokhale, AGP, for Respondent Nos.1 and 2.

CORAM : A.S. OKA & A.P. BHANGALE, JJ

DATED : 13th APRIL, 2015

P.C.

. Heard the learned counsel appearing for the Petitioners and the learned AGP for the Respondents. An application was made by the Petitioners purporting to be an application under sub-section (1) of Section 48 of the Land Acquisition Act, 1894 (for short "the said Act") in the year 1989, praying for release of the land claimed by the Petitioners from acquisition. The acquisition commenced on 22nd June, 1961 by a notice under sub-section (4)(1) of the said Act and an Award was made on 15th March, 1965.

2. The learned counsel appearing for the Petitioners pointed out that by the impugned order dated 14th July, 2010, the Additional Commissioner, Pune Division, Pune, did not decide the application made by the Petitioners under sub-section (1) of Section 48 but disposed of the same by calling for the report from the Special Land Acquisition Officer.

3. He submitted that the Petitioners may be permitted to amend the Petition as the impugned order shows that the possession of the land claimed by the Petitioners was not taken over in accordance with the said Act.

4. We have carefully perused the order dated 14th July, 2010. From the impugned order, it is apparent that though an Award was made on 15th March 1965, the application was made by the Petitioners under sub-section (1) of Section 48 of the said Act in the year 2008. The only conclusion recorded by the Additional Commissioner is that on the basis of the available material on record, he was unable to come to any conclusion whether the possession of the land in question was taken over under the said Act. In view of sub-section (1) of Section 48, the prayer for release of land for acquisition can be considered before the possession of the acquired land is taken over under the said Act. In

this context, he directed the Special Land Acquisition Officer to make an enquiry and submit a report to him. It is true that the operative part of the order indicates that the application made by the Petitioners was disposed of. However, it is apparent from the order that the Additional Commissioner called for the report from the Special Land Acquisition Officer to enable him to decide the application made by the Petitioners under sub-section (1) of Section 48 of the said Act on merits. From the impugned order, it appears that the Additional Commissioner has not even decided the issue whether possession of the acquired land was taken over under the said Act.

5. Hence, at this stage, it is not necessary to interfere in writ jurisdiction under Article 226 of the Constitution of India. However, a direction will have to be issued to the Additional Commissioner to finally decide the application made by the Petitioners.

6. Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) We clarify that by the impugned order dated 14th July, 2010, the application made by the Petitioners under sub-section (1) of Section 48 of the said Act has not been finally disposed of and the same is pending on the file of

the Additional Commissioner, Pune Division;

- (ii) If the Special Land Acquisition Officer has not yet submitted the report in terms of order dated 14th July, 2010, he shall submit the report within a period of two months from today. A copy of the said report shall be made available to the Petitioners. The Petitioners can raise appropriate objections to the report which may be submitted by the Special Land Acquisition Officer;
- (iii) Within a period of two months from the date on which the report is received by the Additional Commissioner, Pune Division, he shall pass final order on the application made by the Petitioners under sub-section (1) of Section 48 of the said Act;
- (iv) We make it clear that we have kept open all the contentions raised by the Petitioners including the contentions based on Repeal of the said Act and applicability of the new Land Acquisition Act;
- (v) We direct the Petitioners to produce an authenticated copy of this order in the office of the Additional Commissioner, Pune Division on or before 30th April, 2015 to enable the Additional Commissioner to issue consequential directions;

- (vi) The Petition is disposed of on above terms;
- (vii) All concerned to act upon an authenticated copy of this order;
- (viii) Civil Application does not survive and the same is disposed of.

(A.P. BHANGALE, J)

(A.S. OKA, J)