

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

980 CA/1624/2016 IN CA/15771/2015
IN FA/3023/2015

NITESH S/O. MARUTI GHODKE & ANR.
VERSUS

PHULABAI KISAN MADLE AND ANR

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Advocate for Applicant : T.M. Venjane

AGP for Respondent No. 5 : R.P. Gaur

Advocate for Respondent No. 4 : S.G. Sangle

Advocate for Respondent Nos. 1 and 2 : P.G. Sontakke

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CORAM : T.V. NALAWADE, J.

DATED : 25th February, 2016.

ORDER :

1. The application is filed for intervention in the appeal by two persons like Nitesh Ghodke and Sow. Sheela Kamble. They are issues of Ayodhyabai. Respondent No. 1 Phulabai is mother of Ayodhyabai and Ayodhyabai is dead. Kisan was husband of Phulabai. Savitabai is the other daughter of Phulabai born from Kisan. It is the case of applicants that the property acquired under Land Acquisition Act was owned by Kisan and after the death of Kisan, as successors of Kisan, Phulabai and her two daughters are entitled to have equal share in the compensation amount which is awarded by the Land Reference Court. The present applicants have filed civil suit against Phulabai bearing No. 19/2015 which is pending in the Court of

Civil Judge, Junior Division, Latur. Submission is made that interim relief came to be granted on 16.12.1915 and it came to be extended from time to time like 14.1.2016, 10.2.2016 and the parties from the suit including Phulabai were prevented from collecting the amount of compensation awarded by Reference Court. It is the case of present applicants that in respect of the aforesaid compensation, Phulabai applied to this Court for permission to withdraw the amount of compensation and in view of the submissions made for Phulabai in C.A. No. 15771/2015, this Court gave direction to release the amount in favour of Phulabai on 11.1.2016. It is contended that on that day, Phulabai had the knowledge that there was the order of aforesaid nature in the suit filed against her and further, present application filed for intervention was also pending in this Court. It appears that on 11.1.2016, present application was not listed before this Court and application of Phulabai was listed before the Court. In Civil Application No. 15771/2015 there is no mention that one civil suit is filed by present applicants and on that day, no submissions were made by the learned counsel appearing for Phulabai that there is such civil suit against Phulabai and there is order of *status-quo* made by the Civil Court against Phulabai. Such material information was concealed from this Court and due to that, this Court made order of release of amount in favour

of Phulabai. All the aforesaid circumstances are sufficient to make out case of breach of order of Civil Court, but for that separate action for civil contempt can be taken by the present applicants.

2. Present application is filed only for allowing the applicants to intervene in the appeal which is filed by Acquiring Body. The learned counsel for Phulabai placed reliance on many cases which are under :-

(i) AIR 1996 (SC) 1513 [Ambey Devi Vs. State of Bihar],

(ii) 2000 (2) Bom. C.R. 100 [Shri. Dattaram Deu Desai & Ors. Vs. Shri. Nirakar Devasthan of Pololem]

(iii) 2000 (1) Bom. C.R. 129 [Raghunath s/o. Dhondu Navde Vs. Pandit s/o. Ramchandra Navde & ors.],

(iv) 2008 (2) Bom. C.R. 517 [Digambar Sambhaji Pused Vs. State of Maharashtra & Ors.],

(v) 2010 (1) Bom. C.R. 58 [Pandurang D. Rane & Ors. Vs. Vijabai V. Rane Sardessai & Ors.],

(vi) 1986 (0) BCI 137 [Govind Narayan Lotikar Vs. Savitribai Raghuvira Lotlikar & Ors.],

3. This Court has gone through the reported cases of Apex Court and this Court. It is laid down that in a proceeding

which is filed under section 18 of the Land Acquisition Act, the provision of Order I, Rule 10 of Civil Procedure Code cannot be used, if the use of such provision is inconsistent with the provision of section 18 of the Act. Admittedly, the land was standing in the name of Phulabai and her brother in law Bhagwan and in view of these circumstances, notices of acquisition were issued to Phulabai and Bhagwan and they were parties to the acquisition proceeding. Admittedly, no proceeding under section 30 of the Act is filed by present applicants. In view of these circumstances and the law laid down by the Apex Court in the cases cited supra, this Court holds that permission cannot be given to the present applicants to intervene in the appeal which is continuation of proceeding filed under section 18 of the Act. So, the application will have to be rejected.

4. Though there is aforesaid position of law, there is circumstance like concealing the material information from this Court by Phulabai. When civil suit is pending, there will be liberty to the present applicants to approach Civil Court for getting proper orders in respect of the amount which is released by this Court. In view of the aforesaid circumstances, the order including orders like attachment of the aforesaid amount cannot be made. There is liberty to the present applicants to take action for civil

contempt of Court. In view of the aforesaid discussion, the application stands disposed of as rejected.

5. This Court has already made order of stay in respect of the amount already withdrawn by Phulabai by order dated 9.2.2016 and this order will continue for one month to give time to present applicants to take proper steps.

[T.V. NALAWADE, J.]

ssc/