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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 75 OF 2016

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| 1. | Karbhari Pandharinath Dighe
Age - 68 years, Occ - Agriculture | APPLICANTS |
| 2. | Shantaram Gajanan Dighe
Age - 70 years, Occ - Agriculture | |
| 3. | Appa Yeshwant Dighe
Age - 74 years, Occ - Agriculture | |
| 4. | Babasaheb Pandharinath Dighe
Age - 71 years, Occ - Agriculture | |
| 5. | Bhausahab Bhika Dighe
Age - 65 years, Occ - Agriculture | |
| 6. | Ganpat Pandharinath Dighe (Died)
Through legal representative
Damodhar Ganpat Dighe
Age - 68 years, Occ - Agriculture | |
| 7. | Ashok Gangadhar Dighe
Age - 51 years, Occ - Agriculture | |
| 8. | Nana Baburao Dighe (Died)
Through legal representative
Annasaheb Nana Dighe
Age - 55 years, Occ - Agriculture | |

All R/o Junegaon (Talegaon)
Taluka - Sangamner, District - Ahmednagar

VERSUS

- | | | |
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| 1. | The State of Maharashtra
Through Deputy Collector,
Land Acquisition @ Special Land
Acquisition Officer, No.3,
Ahmednagar | RESPONDENTS |
|----|--|-------------|

2. Executive Engineer,
Urdhava Pravara Right Cannel,
Ghulewadi, Sangamner
District- Ahmednagar

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Mr. P. B. Shirsath, Advocate for the applicants
Mr. S. W. Munde, AGP for respondent No.1 - State
Mr. A. M. Gaikwad, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 13th FEBRUARY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.

2. It is in very peculiar facts and circumstances, the revision applicants, whose lands, as have been referred to in the memorandum of revision application, have been acquired for Urdhva Pravara Right Canal and an award around 2005 had been passed, are before this court challenging communication / order dated 21st April, 2016 passed by Special Land Acquisition Officer No.3, Ahmednagar thereunder communicating disposal of their applications for making land acquisition reference.

3. Not being satisfied with the award passed by the Collector, it appears that by lodging applications in 2005 itself, the

applicants had requested the Special Land Acquisition Officer to make reference to civil court pursuant to section 18 of the Land Acquisition Act, 1894, complying with the requirements as referred to under said provision. Applicants, while filing the applications, had made it clear that the reference cases been lodged without payment of court fee, since they were not in receipt of the award amount. Correspondingly, the officer concerned appears to have thought that the applications for reference being lodged without payment of court fee, it may not be within his authority to send the applications for onward consideration by civil court. It is under the circumstances, it appears, a communication had been issued to advocate of the applicants in 2010, which has been appended to in the affidavit in reply filed on behalf of respondent No.1, directing that in case of failure to deposit court fee, the applications would be rejected.

4. In response to a request made on behalf of the applicants, it has been communicated on 21st April, 2016 that the applications under section 18 of the Land Acquisition Act, have been disposed of for want of court fee, since the deficiency had not been removed pursuant to the communication in 2010 to the advocate.

5. Learned advocate Mr. Shirsath contends that as a matter of fact, the Supreme Court has considered that no court fee is required to be paid on application for reference under section 18 of the Land Acquisition Act, placing reliance on a decision in the case of *“Kashiram Namdeo V/s State of Maharashtra”* reported in 1996 (1) *Mh.L.J.* 652. However the same is countered by learned advocate for the respondents, referring to an order reported in 1998 (9) *SCC* 723, wherein the Supreme Court has clarified that order being relied on i.e. 1996 (1) *Mh.L.J.* 652, shall not be construed to mean that it overrides the effect of Article 15 of the Schedule I of the Bombay Court Fees Act, 1959 in cases where that provision applies.

6. It emerges from further hearing in the revision that there has been judgment of the Division Bench of this Court in the case of *“Sambhaji Manaji Chate V/s State of Maharashtra”* reported in 2003 (2) *Mh.L.J.* 661, wherein the court has considered that a person preferring application under section 18 of the Land Acquisition Act is required to pay court fee. The division bench further appears to have considered, thus -

“9. On perusal of Section 18 of the Land Acquisition Act, it is seen that Section 18 (1) entrusts to the SLAO a statutory duty to make reference on the fulfillment of the conditions laid down therein. Hence once the necessary conditions under Section 18 have been complied with by the applicant/petitioners, the S.L.A.O. ought to have forwarded the reference. A written application makes it incumbent on the Collector to make a reference

provided that the necessary conditions are fulfilled. The four essential requisites for reference under Section 18 are:

- (a) The reference is to be asked for by the party aggrieved not accepting the award or has accepted the award under protest.*
- (b) It must be an application in writing with a request to make a reference.*
- (c) It should contain the grounds of objection in clear terms.*
- (d) The application was made within time.*

In the present case the petitioners have complied with all the essential requisites and thus the S.L.A.O. ought to have forwarded their application for reference to the Civil Court by giving some time to the petitioners for removing the deficiency regarding the payment of Court fees either before him or before the reference Court.

7. The position as it emerges in the present matter is that communication dated 17th March, 2010 had been to the advocate. It is not the case that said communication had further found its way to the revision applicants. Although the communication had been made to advocate, however, thereafter, no further action appears to have been taken or action, if any, had ever been communicated either to the advocate or to the revision applicants. As such, it appears that it would sub-serve cause of justice if an opportunity is made available to parties.

8. Mr. Shirsath, learned advocate, on instructions states that his clients have informed that instead of obfuscating the matter to other things, they would waive interest for the period during 17th March, 2010 to 21st April, 2016.

9. In the circumstances, it would be quite fair and expedient and it would not be subversive if communications dated 21st April, 2016 impugned in present revision application along with that of 17th March, 2010 are set aside and the matter is remitted to the officer concerned for letting an opportunity to the applicants to pay up the court fees and send references to the civil court for adjudication and / or pass conditional order as envisaged by division bench in the judgment in case of “*Sambhaji Manaji Chate*” (*Supra*) under paragraph No.10.

10. At this stage, Mr. Shirsath, learned advocate, on instructions states that his clients are ready to pay the court fees before the officer concerned.

11. As such, impugned communications / orders dated 21st April, 2016 issued by Deputy Collector (Land Acquisition No.3) Ahmednagar and dated 17th March, 2010 issued by Special Land Acquisition Officer No.3, Ahmednagar are set aside. The applicants may appear before the officer concerned on 2nd March, 2017 and may pay/deposit appropriate court fees on their land acquisition reference applications and thereon the officer shall pass appropriate orders of remittance of land acquisition references to the civil court. Land acquisition references be

proceeded with expeditiously taking into account statement made by Mr. Shirsath, learned advocate made on instructions that the revision applicants would not demand or insist on and shall waive interest, if the amount of award is enhanced, for the period which has been consumed from 17th March, 2010 till 21st April, 2016.

12. Civil Revision Application as such stands allowed. Rule is made absolute in above terms. Civil Revision Application accordingly stands disposed of.

[SUNIL P. DESHMUKH, J.]