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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 168 OF 2015

Smt. Gangubai W/o Bhagurao Tambe ...PETITIONER

VERSUS

The State of Maharashtra and others ...RESPONDENTS

Mr A.P. Bhandari, holding for Mr S.K. Barlota, Advocate for petitioner.
Mrs. V.N. Patil, Asstt. Government Pleader for respondent No.1
Mr S. S. Dande, Advocate for respondent No.2.

CORAM : N.W. SAMBRE, J.

DATE : 17th July, 2017

ORAL ORDER

Present applicant claims to be owner of land Gat Nos. 14, 16 and 46 situated at village Shendra Taluka and District Aurangabad, and initiated suit being Regular Civil Suit No. 1201 of 1996 for declaration, possession, injunction and maintenance. The said suit came to be dismissed, against which Regular Civil Appeal No. 338 of 2003 came to be preferred before the learned District Judge, Aurangabad. The said appeal being R.C.A. No. 338 of 2003 came to be allowed on August 17, 2005, wherein the suit of present applicant

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came to be decreed, declaring her to be owner of the suit property, and it was further declared that the applicant is entitled to receive the compensation.

2. It is case of the applicant in the present revision that instead of taking recourse to the Land Acquisition proceedings, the respondent-acquiring body has negotiated with third person, who had no title to the property, which has resulted into passing of the award in question. According to applicant, she was never party to such negotiations and her right being owner of the suit property, is already crystallized on August 17, 2005, by the judgment and decree passed by the learned I Adhoc District Judge, Aurangabad, in the aforesaid appeal.

3. The appellant thereafter approached the respondent Collector by moving application under Section 18 of the Land Acquisition Act, seeking enhanced compensation and for forwarding such reference to the learned Civil Court. On the said application, the District Collector passed order impugned on August 14, 2007, by observing that since the award pursuant to the provisions of the Maharashtra Industrial Development Rules 1961 was passed on negotiations, reference is not maintainable. It is also observed in the said order that the applicant has extended her consent for the award under Section 11 of the Land Acquisition Act, to be passed by negotiations.

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As such, this revision.

4. Shri Bhandari, learned Counsel for the applicant, would urge that revision is maintainable in the light of provisions of sub-section (3) of Section 18 of the Land Acquisition Act. According to him, though earlier petitioner filed writ petition, the orders passed by the Division Bench on September 20, 2013, and October 23, 2013 granting liberty to convert Writ Petition into revision application. He would then urge that the present applicant was never party, neither she authorized anybody on her behalf much less other respondents to the appeal or in suit in question, to negotiate for award of compensation. According to him, the order passed by the learned Authority under section 18 of the Land Acquisition Act is not sustainable as such powers to determine the tenability of the reference are not vested in District Magistrate pursuant to the provision of Section 18 of the Land Acquisition Act.

5. Per contra, Mrs. Patil, learned Assistant Government Pleader would support the order of the Collector. According to her, the order is speaking in accordance with the provisions of section 18 of the Land Acquisition Act as the Land Acquisition Officer/District Magistrate from the record has drawn conclusion that award against

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which enhancement is sought, was passed by negotiations. She would then urge that the issue of limitation was also to be required to be considered.

6. Considering rival submissions, at the outset, it is required to be noted that the appellant/applicant herein was able to establish her title and entitlement to receive compensation pursuant to the Judgment and decree dated August 17, 2005, passed by the I Adhoc Additional District Judge, Aurangabad, in Regular Civil Appeal No. 338 of 2003 and also Special Civil Suit No. 1201 of 1996, decided by the Civil Judge (Senior Division), Aurangabad.

7. It is then to be noted that the issue as to whether the present appellant/applicant has entered into negotiations with the acquiring body before the Land Acquisition Officer, is at all not gone into and findings to that effect are not recorded by the learned District Magistrate, when the order impugned is passed. Apart from above, in my opinion, the issue as to whether the District Magistrate/Collector in exercise powers under Section 18 can record finding as regards the tenability of reference (apart from issue of limitation), is also an issue, which is required to be appreciated.

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8. It is then to be noted that but for observations by the Collector that the acquisition was by private negotiations and the applicant has extended her consent, no details are furnished in the impugned order. As such, in my opinion, case of failure to exercise jurisdiction is made out. As such, the revision is required to be allowed.

9. The order impugned dated August 14, 2007, questioned in the present revision, passed by the learned Deputy Collector/Sub-Divisional Officer, Aurangabad, is hereby quashed and set aside. The revision stands allowed.

10. The matter stands restored on the file of the said Authority, who is directed to decide the issue afresh, after hearing the applicant and acquiring body, on the issue of consent being extended by applicant or not. The said Authority, while doing so, shall have regard to Judgment in Regular Civil Suit No. 1201 of 1996.

11. In view of disposal of the Civil Revision Application, pending Civil Application does not survive and same stands disposed of.

(N.W. SAMBRE, J.)