

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

**940 CIVIL APPLICATION NO. 12370 OF 2018
IN FA/442/2010**

BALBHIM PRABHU KOTHIMBARE AND ANR ..Applicants
VERSUS
THE STATE OF MAHARASHTRA AND ANR ..Respondents

...

Advocate for Applicants : Shri V.D. Gunale ;
AGP for Respondent No.1 – State : Shri A.M. Phule ;
Advocate for Respondent No.2 - Shri S.S. Dande.

...

CORAM : P.R. BORA, J.

Dated: October 05, 2018

PER COURT :

1. Heard Shri Gunale the learned Counsel appearing for the applicants and Shri Dande the learned Counsel appearing for the MIDC i.e. Acquiring Body and Shri Phule the learned AGP appearing for respondent No.1 – State.

2. The learned Counsel for the applicants submitted that, the appeal filed by the claimants – applicants seeking enhancement in the amount of compensation was admitted by this Court and was pending for to be listed for hearing in chronology. The learned Counsel further submitted that, Hon'ble Division Bench vide order passed on 01.02.2011

admitted the appeal and directed the appellant to file private paper book. However, the said order remained unnoticed by the appellant and since the paper book could not be filed within the stipulated period, the appeal stood automatically dismissed. The learned Counsel submitted that, the Acquiring Body has also filed the appeal against the same Judgment and Award and same is still pending in the Court. In the circumstances, the learned Counsel prayed for restoration of the appeal filed by the original claimants.

3. The learned Counsel for the Acquiring Body and learned AGP, both have opposed for condoning the delay stating that no sufficient reasons are assigned and further pointed out that all the original papers in these matters are destroyed and in that circumstances also, it may be a futile exercise to restore the appeal filed by the original claimants.

4. I have considered the submissions advanced by the learned Counsel appearing for the respective parties. In view of the fact that, the appeal filed by the Acquiring Body is still

pending against the same Judgment and Award, there may not be any difficulty in tagging the present appeal along with the said appeal.

5. It is stated that, the private paper book could not be supplied within the given period and that is the only reason that the appeal automatically stood dismissed. In the circumstances, I am inclined to allow the application. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) First Appeal No.442 of 2010 stands restored to its original file. It be tagged with First Appeal No.713 of 2010.
- (iii) Both these appeals be listed for further consideration after four weeks.

(**PR. BORA, J.**)

...