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

**CIVIL APPLICATION NO.6162 OF 2018
IN
FIRST APPEAL(ST.) NO. 31171 OF 2015**

Shri Tuljabhavani Temple Trust,
Tuljapur, Tq. & Dist. Osmanabad
Through the Chairman,
Shri. Radhakrishna s/o Vitthalrao Game,
Age: 55 years, Occu: Service,
R/o. Tq. & Dist. Osmanabad ..APPLICANT

VERSUS

Vilas Shivdas Padwal,
Age: 61 years, Occu: Agri. & ors. ..RESPONDENTS

Mr P. P. Mandlik, Advocate for applicant;
Mr V. D. Salunke, Advocate for respondent Nos.1 to 5;
Mr A. S. Shinde, A.G.P. for respondent Nos.6 & 7

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 8th August, 2018

ORAL ORDER:

By this application, the applicant Tuljabhavani Temple Trust, Tuljapur, Dist. Osmanabad prays for permission of participating in the proceedings as a party in First Appeal (St.) 31171 of 2015. By the prayer clause, the applicant prays for its addition as an intervener in the First Appeal (St.) No.3171 of 2015.

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2. On hearing Mr Mandlik, learned Counsel appearing on behalf of applicant, we have passed the order on 13th June, 2018, thereby directing the learned A.G.P. and Mr Dande, learned Counsel appearing on behalf respondent No.8 to file detailed reply to the application in view of our prima facie observations in the order.

3. On 25th July, 2018, Mr Dande, learned Counsel for respondent No.8 as well as learned A.G.P. sought for time to file reply and accordingly time was granted.

4. Mr Dande submitted that the reply to the application is filed. He invited our attention to paragraph No.24 of the judgment and order dated 30th April, 2015, passed by the learned Civil Judge Senior Division, Osmanabad, challenged in the appeal. He also invited our attention to Clause No.5 of the said order, which reads thus:

“5. By submitting written statement (Exhs.12 & 13) the respondents No.1 to 3 have resisted the claim on raising several grounds that proper opportunity was given to the claimants and award came to be passed. Thereafter respondents officer visited the site in order to consider the material factors for determination of the market value of the land and considered the proximity, fertility productivity and quality of the land and determined the true and correct market value of the land. Hence it is alleged that the compensation so awarded is just, proper and adequate on all counts. The respondents have denied the fact that the land so acquired was possessing agricultural as well as NA potentiality. In fact the same was not fit for the said purpose. The reference is barred by limitation. No claim is filed in response to notice u/sec.9 of the Act. The

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case made out buy the claimants is totally false. The acquired land was meant for dry crops.

a) It is specifically alleged by respondent No.1/acquiring body that none of the adjacent land of the acquired land was being used for industrial purposes. Of course, there might be some projects in village Uple (M) but those are situated sufficiently away from the acquired land. No Co-operative Housing Society has purchased land for residential house which is situated at close distance from the acquired land which was even not useful for horticulture, poly house etc.. On these grounds respondents have prayed for dismissal of the petition with costs”

5. It was submitted before us by Mr Mandlik, learned Counsel for applicant that the appellant Mr Vilas Shivdas Padwal and others filed First Appeal (St.) No.31171 of 2015 in this Court and Mr Vilas also filed appeal in this Court. Mr Mandalik submitted that as per his instructions an exercise of conducting enquiry was undertaken by the competent Court, in view of Clause No.5 of the order dated 30th April, 2015 of learned Civil Judge Senior Division, Osmanabad in Lar No.130/2014. This exercise was under challenge in this Court by way of Writ Petition No.14582 of 2017 (Vilas Padwal Vs. State of Maharashtra & ors.). Learned Counsel for the applicant submits that interim order is also passed in the said writ petition.

6. Learned Counsel for the appellant and learned A.G.P. as well as Mr Dande, learned Counsel for respondent No.8 have no objection for adding applicant to the proceedings as an intervener.

7. In view of the submission of Mr Mandlik, learned Counsel for applicant and in view of the reply filed by Mr Dande as well as on perusal of

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the judgment and order passed by learned Civil Judge Senior Division, Osmanabad and more particularly paragraph No.24 of the judgment and order and the Clause No.5 of the order, we allow the application in terms of prayer clauses (B) and (C) of the application.

8. The applicant to take necessary consequential steps within a period of two weeks from today.

9. It was informed to us by Mr Mandalik, on instructions that in the Writ Petition No.14582 of 2017 filed by Mr Vilas Padwal, the State Government and the acquiring body are also party. If that is so, we hereby direct the learned A.G.P. and Mr Dande, learned Counsel for acquiring body to bring to notice of the Court taking up the said Writ Petition No.14582 of 2018 these factual aspects, which we have referred to in our order, whenever the said petition is posted for consideration before appropriate Court. The application is accordingly disposed of.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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