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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL WRIT PETITION NO.4742 OF 2017

Dashrath Ganpatrao Dhure and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr.G.N.Salunke a/w Mr.S.R.Pawar, for the Petitioners.

Mr.S.H.Kankal, A.G.P for the Respondent Nos.1 to 4 and 16.

Mr.M.A.Patil, for the Respondent Nos.5, 6(a), 6(b), 7, 13(a) and 13(b).

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd SEPTEMBER, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned AGP waives service on behalf of Respondent Nos.1 to 4 and 16. Learned Counsel, Mr.Patil, waives service on behalf of Respondent Nos.5, 6(a), 6(b), 7, 13(a) and 13(b).

3. By this Petition, the Petitioners have impugned the order dated 19th September, 2016, passed by the learned Additional Commissioner, Pune Division, Pune, in Appeal No.48 of 2013.

4. Learned Counsel for the Petitioners submitted that the Petitioners were never issued any notification, under the provisions of the Land Acquisition Act nor was the Petitioners' lands included in the Award made by the Land Acquisition Officer. He submitted that however, after the Award was made by the Land Acquisition Officer, the Authority wrongly included the lands of the Petitioners, at the time of taking measurement. The Petitioners relied on the document, which is at page 38, Exhibit – 'D' of the Petition, dated 1st May, 2015 from the Deputy Superintendent of Land Records, Ajara, District - Kolhapur, filed before the learned Additional Commissioner, Pune Division, Pune, in support of his submission that the Petitioners' lands were wrongly included at the time of taking measurement. Learned Counsel for the Petitioners submitted that the order dated 19th September, 2016, passed by the learned Additional Commissioner, Pune Division, Pune, was passed without assigning any cogent reasons and as such the same is liable to be quashed and set aside

and the matter be remanded back to the learned Additional Commissioner, Pune Division, Pune, for fresh consideration.

5. Learned A.G.P. has tendered an affidavit-in-reply of Mr.Sunil Nagnath Sherkhane, Tahsildar, Resettlement, Collector Office, Kolhapur. The said affidavit has been filed on behalf of the Respondent Nos.1 to 4 and 16. The said Affidavit is taken on record. Learned A.G.P, on instructions, makes a statement that the Deputy Superintendent of Land Records, Ajara, District – Kolhapur, is ready for joint measurement of the Petitioners' lands.

6. In view of the statement made by the learned A.G.P., on instructions, it would be appropriate to quash and set aside the impugned order dated 19th September, 2016, passed by the learned Additional Commissioner, Pune Division, Pune, in Appeal No.48 of 2013. Accordingly, the Appeal is restored back to its original file.

7. The learned Additional Commissioner, Pune Division, Pune, to hear the Appeal being Appeal No.48 of 2013, afresh, after receiving the

Report of the Deputy Superintendent of Land Records, Ajara, District – Kolhapur, with regard to the joint measurement of Gat No.861/1, ad-measuring 9 H. 44.5 Ars, situated at Village Uttur, Ajara, District – Kolhapur.

8. The Petitioners to deposit the necessary charges for the joint measurement with the Office of the Deputy Superintendent of Land Records, Ajara, District – Kolhapur, within three weeks from today. On necessary charges being deposited, the Deputy Superintendent of Land Records, Ajara, District – Kolhapur, shall carry out joint measurement of the Gat No.861/1, and submit a report to the learned Additional Commissioner, Pune Division, Pune, as expeditiously as possible. On receipt of the report, the learned Additional Commissioner, Pune Division, Pune, to hear the Appeal No.48 of 2013, afresh, and pass appropriate orders after giving opportunity to all the parties. All contentions of all the parties, including the issue of maintainability, are kept open,

9. The Petition is allowed in the aforesaid terms and is accordingly disposed of. Rule is made absolute in the aforesaid terms.

10. The parties to maintain status-quo, till the Appeal is finally decided by the learned Additional Commissioner, Pune Division, Pune.
11. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)