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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1197 OF 2014

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| 1. Registrar of the Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad | PETITIONERS |
| 2. Deputy Engineer Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad | |
| 3. Director of National Institute of Sports
Marathwada University Campus
Aurangabad | |

VERSUS

- | | |
|---|-------------|
| 1. Jairam Tatyrao Lokhande
Age – 65 years, Occ – Agriculturist
R/o Bhausingpura, Aurangabad | RESPONDENTS |
| 2. Suresh Tatyrao Lokhande
Age – 55 years, Occ – Agriculturist
R/o Bhausingpura, Aurangabad | |

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Mr. Anil S. Bajaj, Advocate for the petitioners
Mr. N. R. Solunke, Advocate for respondents No.1 and 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th DECEMBER, 2021

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. This petition impugns order dated 13th November, 2013 passed by learned Civil Judge, Junior Division, Aurangabad below

Exhibit-88 in Regular Civil Suit No. 682 of 2001, thereby rejecting the application filed by the petitioner for calling original proceedings of Regular Civil Suit No. 283 of 1988 and the original land acquisition proceedings No. LAQ/WS/178/1962 from the office of Assistant Collector, Aurangabad.

3. Regular Civil Suit No. 682 of 2001 is filed by the respondents – original plaintiffs against the petitioners – original defendants for declaration and possession in respect of 4 Acre and 25 Guntha land situated at Bhausingpura, Aurangabad. The petitioners - defendants resisted the suit by filing written statement.

4. Application Exhibit-88 was filed by the petitioners – original defendants contending that they have filed certified copies of plaint, written statement, judgment, depositions of the plaintiffs in Regular Civil Suit No. 283 of 1988 decided by 5th Joint Civil Judge, Junior Division, Aurangabad on 28th December, 1993 and so as to compare and exhibit the documents, file of Regular Civil Suit No. 283 of 1988 be called from the concerned court. It is further contended that property under dispute i.e. Survey No.36/1 and 36/2 was acquired by the Assistant Collector, Aurangabad vide file No. LAQ/WS/178/1962, on 26th September, 1962, the original file of the acquisition may be called from the

concerned office.

5. The said application Exhibit-88 was resisted by the respondents – plaintiffs contending that since certified copies of public documents are easily available, the original documents need not be called for and the said application is filed only to prolong the matter.

6. By the impugned order, the Trial Court rejected the application Exhibit-88 filed by the petitioners holding that certified copies of the relevant documents are already placed on record by the petitioners which are the public documents and are admissible in evidence as per the Indian Evidence Act and if required, necessary witnesses can be called to lead evidence in that behalf. Therefore, the original record is not necessary for that purpose. The Trial Court, therefore, was of the view that calling for original record is not necessary. This order is impugned in the present writ petition.

7. Heard learned advocates for the parties, at length.

8. Learned advocate for the petitioners, by placing reliance in ***"Shamlata Manohar Raut and Others V/s Vishweshwara Tukaram Giripunje and Another"*** AIR 2008 Bombay 155, submitted that though the certified copies are placed on record and though they

are the public documents, however, unless proved, the same cannot be admitted in the evidence. The Trial Court has failed to take into consideration this legal position while rejecting the application Exhibit-88.

9. Learned advocate for the respondents, on the other hand, vehemently opposed the petition contending that since certified copies of public documents are already on record, it is not necessary to call for original record and the Trial Court was justified in rejecting the application Exhibit-88 filed by the petitioners. He, therefore supported the impugned order and submitted that there is no substance in the petition and the petition is liable to be dismissed.

10. In “***Shamlata Manohar Raut***” (*supra*), the Co-ordinate Bench of this court has held thus-

“... Both the Judge have held that the document i.e. plaint can be read as it is a public document. Both seem to be under misconception. The certified copy of the plaint is not a public document. Hence, it requires proof. For proving such document, the original plaint should have been called in the Court. That is not done, hence the certified copy of the plaint could not be said to be proved at all. The Courts below, therefore, were not justified in putting reliance on this copy of the plaint.”

11. Applying the above ratio to the facts of the present case,

though it is a matter of record that certified copies of the public documents are placed on record by the petitioners, still they are required to be proved and for that purpose, calling for the original record is necessary. The Trial Court has failed to take into consideration the legal position as is reflected in the above judgment. The impugned order therefore, cannot sustain and deserves to be quashed and set aside.

12. Hence, the order:

- a. Writ petition is allowed.
- b. The impugned order dated 13th November, 2013 passed by Civil Judge, Junior Division, Aurangabad below Exhibit-88 in Regular Civil Suit No. 682 of 2001 is hereby quashed and set aside.
- c. The application Exhibit-88, filed by the petitioners – defendants in Regular Civil Suit No. 682 of 2001 is hereby allowed.
- d. The Trial Court to call for the original record of the Regular Civil Suit No. 283 of 1988 from the concerned court and the original proceedings of Land Acquisition File No. LAQ/WS/178/1962 from the office of the Assistant Collector, Aurangabad within

stipulated period and thereafter to proceed with the matter.

- e. Rule is made absolute in aforesaid terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

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