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

WRIT PETITION NO.10572 OF 2023

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Sunanda Appasaheb Birajdar

... Petitioner

V/s.

The State of Maharashtra Through
Secretary & Ors.

... Respondents

Mr. Tejpal S. Ingale for the petitioner.

Mr. P. G. Sawant, AGP for respondent/State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 22, 2023

P.C.:

1. The petitioner-original claimant who initiated proceedings under section 28A of the Land Acquisition Act, 1894 is challenging order passed by the reference Court directing payment of deficit court fees on enhanced compensation and the order rejecting review of order of payment of deficit court fees.

2. The petitioner was owner of agricultural land bearing Gat No.82/2 admeasuring 2H 93R situated at Village Ankalagi, Taluka Jath, District Sangli. The respondents acquired the said land by issuing notification under section 44 of the Land Acquisition Act, 1894 for the purpose of Minor Irrigation Storage Tank. Respondent No.2 passed an award under section 11 of the Land Acquisition Act, 1894 granting compensation at the rate of Rs.40,792/- per

hector. The adjacent land owner preferred Land Acquisition Reference No.4 of 2010 under section 18 of the said act for enhancement of compensation. The reference Court by judgment and award dated 2nd May 2015 enhanced the compensation at the rate of Rs.3,06,200/- per hector.

3. Based on judgment and award of reference Court, the petitioner filed an application under section 28A of the Land Acquisition Act, 1894. The Special Land Acquisition Officer rejected the petitioner's application for enhancement of compensation. The petitioner, therefore, filed Land Acquisition Reference No.47 of 2017 for referring the matter to Civil Court for decision under section 28A(3) of the Land Acquisition Act, 1894. The petitioner claimed enhance compensation at the rate of Rs.8,97,166/- in addition to amount paid under the award. Reliance was placed on judgment and award dated 2nd May 2015 passed in respect of adjacent amount by the reference Court.

4. The reference Court by judgment and award dated 13th March 2023 allowed the reference and directed payment of enhanced compensation of Rs.8,97,166/- to the claimant along with other benefits under the act. However, while delivering the said judgment, by operative part No.6, the reference Court directed petitioner to pay deficit court fees as per rules.

5. The petitioner, therefore, filed an application for review of clause No.6 of the judgment. By order dated 11th May 2023, the reference Court rejected the review application. Hence, the petitioner has filed a present writ petition.

6. Learned advocate for the petitioner invited my attention to section 20 of the Maharashtra Court Fees Act, 1959 and submitted that the applications for compensation under any law relating to acquisition of property for public purpose, other than chargeable under Article 15 of Schedule I is exempted. Article 15 is charging provision in relation to reference under section 18 and, therefore, clause 6 of the order directing petitioner to pay deficit court fees stamp is without jurisdiction.

7. Per contra, learned AGP supported the order submitting that the analogy drawn by the District Judge equating reference under section 28A of reference under section 18 is correct and, therefore, the reference Court has rightly directed the petitioner to pay deficit court fees.

8. It is well settled principle of law that liability to pay court fees cannot be inferential, but must be shown to be imposed by some charging provision. Article 15 Schedule I of the Maharashtra Court Fees Act, 1959 expressly provides without application to the Collector for reference to the Court under section 18 of the Land Acquisition Act, 1894 is chargeable by one half of ad valorem on the difference between the amount awarded by the Collector and the amount claimed by the applicant. Except Article 15 Schedule I no other charging provision authorizes payment of court fees on an application under the Land Acquisition Act, 1894. Section 20 of the Maharashtra Court Fees Act, 1959 relevant for adjudication of present writ petition reads as under:

“20. Exemption of certain documents

(1). Nothing contained in this Act shall render the following documents chargeable with any fee :

(i) to (xiv).....

(xv) Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes, other than those chargeable under Article 15 of Schedule I.”

9. On reading of exemption provision of the Maharashtra Court Fees Act, it is clear that the application for compensation under any law for the time being in force relating to the acquisition of property for public purposes, other than chargeable under Article 15 of Schedule I is exempt from payment of court fees. Therefore a liability to pay court fees cannot be extended by analogy. In the absence of charging provision under the Maharashtra Court Fees Act, 1959 requiring payment of court fees to application under section 28A of the Land Acquisition Act, 1894, the liability to pay court fees cannot be imposed on inference.

10. It is well settled that in case of a fiscal statute the provisions must be strictly interpreted giving every benefit of doubt to the subject and lightening as far as possible the burden of court fees on the litigant. Therefore, where an interpretation of fiscal statute of payment of court fees could fall within two views, one of which favours payment of court fees and another exempts from payment of court fees, instead of one which is onerous for litigant, the other beneficial to the litigant needs to be adopted.

11. Therefore, in my opinion, the reference Court could not have issued a direction to recover deficit court fees as per rules from the

petitioner. Hence, following order:

- a) The impugned order dated 13th March 2023 passed by IIIrd Joint Civil Judge Senior Division, Sangli in Land Acquisition Reference No.47 of 2017 is set aside to the extent of clause 6 of the order.
 - b) Rest of the award is maintained.
12. Resultantly, order dated 11th May 2023 refusing to recall order dated 13th March 2023 is also set aside.
13. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)