



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

Civil Application No. 4582 Of 2025

In

First Appeal No. 351 Of 1993

1. Shri Abhay Sopanrao Waghware
2. Shri Anil Sopanrao Waghware
3. Smt. Alka Suresh Thorat
4. Smt. Anita Shreerang Deshpande
5. Smt. Amisha Amul Waghware
6. Shri Akash Amul Waghware
7. Shri Atish Amul Waghware
8. Shri Atul Sopanrao Waghware .. Applicants

Versus

1. The State of Maharashtra,
Through Special Land Acquisition Officer,
Aurangabad.
2. The Administrator,
City and Industrial Development Corporation,
Aurangabad.
- Shri Magan Babaji Dhavare
Since deceased, through L.Rs.
3. Shri Vasant s/o Magan Dhavare
4. Smt. Nanda Pandharinath Kamble
5. Shri Shrikar s/o Magan Dhavare
6. Smt. Vijaya Prabhakar Shirole
7. Shri Sopan Kondiba Waghware
8. Shri Anantrao Bajirao Dhashrathe .. Respondents

WITH

Civil Application No. 1176 Of 2004

In

First Appeal No. 351 Of 1993

1. The State of Maharashtra,

Through Special Land Acquisition Officer,
Aurangabad.

2. The Administrator,
City and Industrial Development Corporation,
Aurangabad. .. Applicants

Versus

Shri Magan Babaji Dhavare
Since deceased, through L.Rs.

1. Shri Vasant s/o Magan Dhavare
2. Smt. Nanda Pandharinath Kamble
3. Shri Shrikar s/o Magan Dhavare
4. Smt. Vijaya Prabhakar Shirole
5. Shri Sopan Kondiba Waghware
6. Shri Anantrao Bajirao Dhashrathe .. Respondents

WITH

Civil Application No. 12465 Of 2004
In
First Appeal No. 351 Of 1993

1. The State of Maharashtra,
Through Special Land Acquisition Officer,
Aurangabad.
2. The Administrator,
City and Industrial Development Corporation,
Aurangabad. .. Applicants

Versus

Shri Magan Babaji Dhavare
Since deceased, through L.Rs.

1. Shri Vasant s/o Magan Dhavare
2. Smt. Nanda Pandharinath Kamble
3. Shri Shrikar s/o Magan Dhavare
4. Smt. Vijaya Prabhakar Shirole .. Respondents

- * **Senior Counsel Mr. P.R. Katneshwarkar i/by Mr. S.V. Adwant**
Advocate for the Applicants in C.A. No.4582/2025.
- * **Mr. S.M. Ganachari**
AGP for Respondent No. 1 in C.A. No.4582/2025 and for Applicant No.1 in C.A. Nos. 1176/2004 & 12465/2004.
- * **Mr. Shambhuraje V. Deshmukh**
Advocate for Respondent No.2 and for Applicant No.2 in C.A. Nos. 1176/2004 & 12465/2004.
- * **Mr. Avishkar S. Shelke**
Advocate for Respondent Nos. 3 to 6 in C.A. No.4582/2025.

CORAM : SHAILESH P. BRAHME, J.

DATE OF RESERVING THE ORDER : 25th APRIL 2025

DATE OF PRONOUNCING THE ORDER : 29th APRIL 2025

ORDER :

1. Heard Mr. P.R. Katneshwarkar learned Senior Counsel holding for Mr. Shrikant V. Adwant for the Applicants, learned AGP for Respondent No.1, Mr. Shambhuraje Deshmukh Advocate for the Respondent No.2 and Mr. Avishkar Shelke for the Respondent Nos. 3 to 6.

2. The Applicants have filed this Civil Application No.4582/2025 in a disposed of appeal praying for direction to the office to accept an amount of Rs.5,00,000/- and for the annulment of surety bond and solvency furnished to this Court in pursuance of orders dated 03.08.1993 in Civil Application No.2667/1993. The Respondent No.7 is dead, but present Applicants are his legal heirs. Respondent No.8 is not a contesting party.

3. Simultaneously, Civil Application No.1176/2004 filed by the Respondent Nos. 1 and 2 for refund of amount of Rs.6,00,000/- with 15% of interest and in default direction to attach and sale the property and Civil Application No.12465/2004 for direction to serve present Respondent Nos. 3 to 6 through paper publication, are also considered, though they are not circulated. I propose to refer the parties in Civil Application No.4582/2025.

4. The First Appeal Nos.351/1993 and 364/1998 were emanating from the judgment and award passed by the Reference Court for acquisition of the property of Late Shri Magan Babaji Dhavare who is represented by his heirs present Respondent Nos. 3 to 6. By common judgment and order dated 08.08.2003, the appeals preferred by Claimants for enhancement of the compensation and other appeals preferred by the Respondent Nos. 1 and 2 were decided. Appeals preferred by the Respondent Nos. 1 and 2 were allowed, whereas appeals of the Claimants were dismissed. The common judgment and award was confirmed by Apex Court.

5. When the first appeals referred above, were pending, Respondent Nos. 1 and 2 had filed Civil Application No.2667/1993, soliciting stay to operation and execution of award passed by the Reference Court. By conditional order passed on 03.08.1993, interim relief was granted by directing the Respondent Nos. 1 and 2 to deposit amount of Rs.6,00,000/- in High Court on or before 14.09.1993. Simultaneously, the amount was permitted to be withdrawn on furnishing security or

the bank guarantee to the satisfaction of the Additional Registrar. Accordingly, the amount was deposited. The matter was put up before the Registrar and Respondent Nos. 3 to 7 furnished solvent surety in the form of solvency certificate, security bond and the affidavit of the sureties and the amount was disbursed to them.

6. Respondent No.7 - Late Sopan Kondiba Waghware stood surety through the solvency certificate, security bond and affidavit to the tune of Rs.6,00,000/-. The house property bearing CTS No.17561, Devgiri Colony, Aurangabad was offered as a security. Similarly, Mr. Anantrao Bajirao Dashrathe also stood surety vide solvency certificate, security bond and affidavit to the extent of balance Rs.1,00,000/- by offering his house property. After the satisfaction of Registrar, Respondent Nos. 3 to 6 were permitted to receive amount of Rs.6,00,000/-.

7. In Civil Application No.1176/2004, sureties Respondent No.7 - Late Sopan Kondiba Waghware and Respondent No.8 - Mr. Anantrao Bajirao Dashrathe were not impleaded. It was against Respondent Nos. 3 to 6. The sureties were subsequently added. Respondent Nos. 3 to 6 could not be served. Hence Civil Application No.12465/2004 was filed. No orders were passed in the application, granting any permission which was sought for.

8. Respondent Nos. 1 and 2 did not prosecute Civil Application No.1176/2004 diligently. Respondent No.7 - Late Sopan Kondiba Waghware - Predecessor of the Applicants passed away on

16.03.2005. When he was impleaded, he was not alive. It was reported by the process server about death of Respondent No.7. No steps were taken to bring present Applicants as heirs of Respondent No.7 on record. By conditional order dated 20.06.2014, application to the extent of original surety, Respondent No.7 was dismissed.

9. Applicants who are heirs of the original surety to the extent of Rs.5,00,000/- have approached this Court for discharging them from the liability. The house property which was offered as surety needs to be released. It is contended in the application that they are no longer liable for any indemnity. It is stated that no contract exists between them and the Respondent Nos. 1 and 2. The claim of the Respondent Nos. 1 and 2 which is sought to be pressed into service by Civil Application No.1176/2004 is stale one and unexecutable.

10. Learned Senior Counsel Mr. P.R. Katneshwarkar tenders on record a compilation of papers. He would submit that the Applicants have approached this Court for releasing their house property which is in dilapidated condition. They are desirous of removing the encumbrance which was created but which no longer subsists due to passage of the time and supervening events. He would submit that out of abundant precautions and to show respect to the commitment made by their father to this Court, they offered to pay Rs.5,00,000/- to the Respondent Nos. 1 and 2. It is contended that as the Respondent No.2 did not accede the request, they are offering the said amount to be

deposited in this Court. It is submitted that the Respondent Nos. 1 and 2 have no executable claim against them and their house property. It is further submitted that the Respondent Nos. 1 and 2 cannot proceed against the security and therefore the solvency certificate and security bond need to be annulled.

11. Per contra, Mr. Shamburaje Deshmukh appearing for Respondent No.2 has vehemently opposed the submissions of the Applicants. He would rely on the various orders of Civil Application No.1176/2004 to buttress the submission that the Applicants are liable to refund the amount with 15% of interest. He would submit that the Respondent Nos. 1 and 2 were successful before High Court as well as Supreme Court and they are entitled to receive the amount disbursed to the Original Claimants alongwith accrued interest.

12. I have heard the contesting parties for deciding the applications filed in a disposed of First Appeal. Almost all facts narrated above are undisputed. Late Magan Babaji Dhavare – Predecessor of Respondent Nos. 3 to 6 was permitted to receive amount of Rs.6,00,000/- by furnishing solvent surety and indemnity bond. Accordingly, the solvency offered by Respondent No.7 - Late Sopan Kondiba Waghware – Predecessor of the Applicants to the extent of Rs.5,00,000/- and solvency offered by Respondent No.8 – Anantrao Bajirao Dashrathe to the extent of Rs.1,00,000/- were accepted.

13. It reveals from record that neither Respondent No.7 –

Sopan Kondiba Waghware, nor his heirs were party to Civil Application No.1176/2004. The compilation which is placed on record by the Applicants, shows that after disposal of appeals, sureties had requested the Respondent No.2 – CIDCO and showed readiness to refund the principal amount and interest was requested to be waived. Those applications were not considered by Respondent No.2. No material is shown to me as to what steps were taken against sureties of present and other appeals.

14. Respondent Nos. 1 and 2 filed Civil Application No.1176/2004 on 12.02.2003. Late Sopan Kondiba Waghware was impleaded on 25.08.2006, but before that he was passed away on 16.03.2005. The Respondent Nos. 1 and 2 impleaded dead person as a party Respondent in their application. This fact was brought to the notice of this Court by the report of process server, but still no steps were taken by them. Ultimately application against deceased – Sopan Kondiba Waghware was dismissed for default vide order dated 20.06.2014. Record reveals that matter was adjourned on number of times to take steps but no steps were taken. The said application was not diligently prosecuted by the Respondent No.2. It was kept in a dormant position. Under these circumstances, I am of the considered view that there is no actionable claim survives in Civil Application No.1176/2004 against the sureties or the securities. The said application has become infructuous and no relief can be granted as such.

15. Learned Senior Counsel is right in contending that the Respondent No.7 – Sopan Kondiba Waghware died on 16.03.2005, thereafter no steps were taken to bring the Applicants on record. They are not liable because no contract subsists between them and the Respondent Nos. 1 and 2. The Respondent Nos. 1 and 2 are unable to show the steps taken by them against Original Claimant – Magan Babaji Dhavare – Predecessor of Respondent Nos. 3 to 6.

16. The Applicants are facing difficulties in developing their property because of the encumbrance created against it during the pendency of the appeals. The Applicants are ready to pay amount of Rs.5,00,000/- either to the Respondent No. 2 or deposit it in this Court to show their respect to the commitment made by their Predecessor in interest – Late Sopan Kondiba Waghware. I do not see any reason to doubt their conduct. Even Civil Application No.12465/2004 was not prosecuted diligently. Despite the lapses on the part of Respondent Nos. 1 and 2, due to good sense and moral responsibility the Applicants are offering amount of Rs.5,00,000/-. Their bonafides cannot be doubted.

17. I have already recorded that the Applicants are not liable to pay the dues to the Respondent Nos. 1 and 2. No contract subsists between them. Therefore, the submission of learned Counsel Mr. Shamburaje Deshmukh for awarding interest, cannot be accepted. The ends of the justice would be served by directing Respondent No.2 to accept amount of Rs.5,00,000/- or by permitting the Applicants to deposit the said amount in this Court

to release their property from the encumbrance. For the reasons stated above, I pass following order :

ORDER

- (i) The Applicants shall deposit amount of Rs.5,00,000/- directly in the office of Respondent No.2 and submit a receipt thereof, to this Court or shall deposit Rs.5,00,000/- in this Court which shall be disbursed to the Respondent No.2.
- (ii) The Applicants shall deposit the above amount within period of two weeks from today.
- (iii) On depositing the amount, the surety bond and the solvency certificate executed by Respondent No.7- Late Sopan Waghware, shall stand annulled and house property bearing CTS No.17561, Devgiri Colony, Aurangabad shall stand discharged from any encumbrance or charge of the Respondent Nos. 1 and 2.
- (iv) Civil Application No. 4582/2025 is allowed in above terms.
- (v) Civil Application Nos. 1176/2004 and 12465/2004 are rejected.

[SHAILESH P. BRAHME]
JUDGE

Neelam