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

**INTERIM APPLICATION NO. 3696 OF 2025
IN
SECOND APPEAL NO. 563 OF 2022**

Government of India
Ministry of Agriculture and anr

.....Applicants

Vs.

Vijay Laxman Gole
and ors

.....Respondents

Mr. M. S. Topkar a/w Ms. Bhargavi Patil for the applicants/appellants
Mr. S. S. Rajeshirke for the respondents

CORAM : GAURI GODSE, J.

DATE : 25th APRIL 2025

ORDER:

INTERIM APPLICATION NO. 3696 OF 2025:

1. This application is for restoration of the second appeal which was dismissed in default on 1st October 2024. There is delay in filing the application. Learned counsel for the applicants submits that the reasons for the delay are explained in the application. He submits that there is no negligence on the part of the applicants and the reason for non-appearance on 1st October 2024 is unintentional as the panel advocate was changed and thus, the appeal remained unattended.

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2. In the facts and circumstances of the case, the delay is condoned and the application is allowed in terms of prayer clause 16 (i) and (ii).

SECOND APPEAL NO. 563 OF 2022:

3. Heard learned counsels for the parties on the merits of the second appeal. This appeal is preferred by defendant nos. 1 and 2 to challenge the decree for possession passed by the First Appellate Court. The appellants are the acquiring body for whom the plaintiffs' land was acquired under The Land Acquisition Act, 1894 ('the said Act'). The acquisition Award was for an area of 25 Are, however, it is the plaintiffs' contention that the possession of additional area of 8.5 Are was taken by the appellants. Based on the measurement reports on record, the First Appellate Court has passed a decree for possession of 8.5 Are land belonging to the plaintiffs.

4. Learned counsel for the appellants submits that the Award under Section 11 of the said Act is dated 13th December 1971 pursuant to which possession was also taken over. He submits that according to the plaintiffs, when measurement was carried out in 1988, they learnt that an additional area was taken over by the appellants. He submits that the suit is filed on 24th January 2002 with a prayer for declaration

that an additional area was taken over at the time of taking possession of the acquired land. He submits that the prayer for declaration made would be governed by Article 58 of the schedule to the Limitation Act which provides for a limitation period of three years when the right to sue first accrued. He, thus, submits that the suit was barred by limitation. He, therefore, submits that the issue of limitation is ignored by both the Courts.

5. With reference to the prayer for possession, learned counsel for the appellants submits that even if Article 65 of the schedule to the Limitation Act is applied, the possession of the appellants would become adverse in 1988 when the plaintiffs learnt that additional area is taken over by the appellants. He, thus, submits that the suit filed beyond a period of 12 years from 1988, was barred by limitation.

6. Learned counsel for the appellants further submits that the plaintiffs relied upon a measurement plan dated 12th May 1999 at Exhibit 92 prepared by Taluka Inspector of Land Records (TILR), Sonawane. He submits that the Trial Court rightly discarded the oral evidence in support of the map prepared in the year 1999. He further submits that the First Appellate Court misinterpreted the oral evidence of Sonawane and erroneously believed his oral evidence and the map

at Exhibit 92 to hold that additional area was taken over by the appellants. Learned counsel for the appellants, thus submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

7. Learned counsel appearing for the plaintiffs supports the impugned judgment and decree. He submits that the map prepared by Sonawane produced at Exhibit 92 was prepared at the instance of the appellants. He pointed out the relevant averments in the written statement which indicates that the map prepared by Sonawane was at the instance of defendant no. 2 i.e. appellant no. 2. He submits that the map prepared by Sonawane was never challenged by the appellants under the provisions of The Maharashtra Land Revenue Code, 1966. Learned counsel for the plaintiffs further points out that out of the plaintiffs' total area of 95 Are, an area of 25 Are was the subject matter of the acquisition. He submits that in 1988 when the plaintiffs carried out measurement of their land, it revealed that an area of 8.5 Are was by mistake taken over by the acquiring body in addition to the acquired area. He, thus, submits that the plaintiffs approached the concerned authorities and made necessary grievance. Hence, the learned Collector had ordered measurement through the District Inspector of

Land Record and the measurement was carried out on 12th January 1996. He submits that as per the map prepared on the directions of the Collector, an area of 8.5 Guntha was found as wrongly taken over along with the acquired area.

8. Learned counsel for the plaintiffs further points out that even defendant no. 2 i.e. appellant no. 2 had carried out the measurement on 15th September 1988, in which it showed that an additional area of 8.5 Are was taken over. He, thus, submits that accordingly Special Land Acquisition Officer No. 19 had informed defendant no. 2 by letter dated 28th February 2001 that an additional area of 8.5 Are was taken over. Accordingly, the Land Acquisition Officer informed defendant no. 2 to remove the fencing by 15th March 2001 failing which the same would be removed by the office of the Land Acquisition Officer. Learned counsel for the plaintiffs submits that since the possession was not handed over of the additional area, the plaintiffs were constrained to file the suit.

9. Learned counsel for the plaintiffs submits that on 12th May 1999, the map prepared by TILR also revealed that additional area was taken over from the plaintiffs' land. He submits that thereafter on 9th January 2001, office of the Special Land Acquisition Officer intimated

appellant no. 2 about the same and called upon to remove the boundaries and restore the excess area that was taken over from the plaintiffs. He submits that on 28th February 2001, the office of the Land Acquisition Officer made a similar request to the appellants. However, no action was taken over by the appellants to restore the additional area taken from the plaintiffs. Hence, the suit was filed.

10. Learned counsel for the plaintiffs therefore submits that the oral evidence of Sonawane supports the measurement plan dated 12th May 1999 that was prepared at the instance of the appellants. He, thus, submits that the First Appellate Court has rightly relied upon the measurement plan on record supported by the oral evidence of the surveyor. He submits that the measurement plan and the evidence ignored by the Trial Court is rightly considered and interpreted by the First Appellate Court. He, thus, submits that the findings recorded by the First Appellate Court are based on the admitted documents and correct appreciation of the evidence on record.

11. Learned counsel for the appellants submits that the cause of action pleaded in the plaint indicates that the dates and events pleaded by the plaintiffs are not disputed by the defendants. He, thus, submits that the cause of action that first arose in 1988 continued in

view of the letters issued by the Land Acquisition Officer calling upon defendant nos. 1 and 2 to restore the additional area taken over from the plaintiffs. He submits that only when the defendant nos. 1 and 2 refused to act upon measurement plans and the request letters written by the Land Acquisition Officer, the cause of action arose to seek declaration and possession. He, thus, submits that the suit is well within limitation for both the reliefs. He submits that the appellants never raised any objection regarding limitation in the Trial Court or the First Appellate Court. He, thus, submits that the second appeal does not raise any substantial questions of law.

12. I have perused the papers of the second appeal, paper book of the District Court and the compilation of the additional documents submitted on behalf of the plaintiffs. The dates and events pointed out by the learned counsel for the plaintiffs are pleaded in the plaint. The dates and events regarding carrying out the measurements and the map prepared by Sonawane at the instance of the appellants is not disputed in the written statement. Learned counsel for the plaintiffs is right in submitting that all the maps and the correspondence pleaded and supported by the documentary evidence is not disputed by the defendants. There is no dispute that the land acquisition Award was

only for an area of 25 Are. The map relied upon by the First Appellate Court with the supporting evidence of Sonawane is prepared at the instance of defendant nos. 2 i.e. appellant no. 2. Learned counsel for the appellants sought to argue that the report with regard to the measurement plan at Exhibit 92 reveals that the same was prepared without issuing any notice to the appellants. There is no dispute that the map at Exhibit 92 dated 12th May 1999 was prepared at the instance of defendant no. 2. A perusal of the written statement supports the plaintiffs' contention that though the map prepared at the instance of defendant no. 2 revealed that an additional area of 8.5 Are was taken over from the plaintiffs, no dispute was raised on the said map by filing any proceedings as contemplated under the Maharashtra Land Revenue Code. It appears that it was only at the time of trial that an objection was sought to be raised against map at Exhibit 92 which was prepared at the instance of defendant no. 2.

13. The correspondence made by the plaintiffs with the office of the Land Acquisition Officer as pointed out by the learned counsel for the plaintiffs, finds place in the pleadings and supporting evidence. A perusal of the documents with regard to the said correspondence indicates that immediately after the date of knowledge about an

additional area taken over by the appellants, the plaintiffs have taken steps to make a request to the Land Acquisition Officer and the appellants for restoration of his land. The findings recorded by the First Appellate Court based on the measurement plan on record are supported by the documentary evidence on record. Hence, the findings of facts recorded by the First Appellate Court would not require any interference by this Court in the second appeal.

14. With reference to the arguments raised on the point of limitation, the same was never raised in the Trial Court or the First Appellate Court. However, considering that the issue of limitation is a point of law, I have examined the cause of action pleaded by the plaintiffs. The plaintiffs have in detail pleaded the date of knowledge and the measurements carried out at the instance of the plaintiffs as well as defendant nos. 1 and 2. After it was revealed that additional area is taken over, the Land Acquisition Officer has intimated defendant nos. 1 and 2 i.e. acquiring body to restore the additional area of the plaintiffs that was taken over alongwith the acquired area. Thus, considering the cause of action pleaded by the plaintiffs, the possession of defendant nos. 1 and 2 cannot be said to be adverse as on the date of 1988. The cause of action pleaded for seeking declaration and possession is

therefore, correctly pleaded by the plaintiffs in paragraph 5 of the plaint. The contents of paragraph 5 of the plaint are not disputed. The cause of action is proved by the plaintiffs with the supporting documentary evidence and the oral evidence. Hence, I do not see any reason to disbelieve the cause of action pleaded and proved by the plaintiffs. Therefore, the suit is within limitation as per the cause of action pleaded. Hence, both the grounds raised on behalf of the appellants would not require any consideration by this Court.

15. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

16. In view of dismissal of second appeal, pending applications, if any, are disposed of as infructuous.

[GAURI GODSE, J.]