

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

WRIT PETITION NO.2345 OF 2015

Shri. Naresh Ramaniklal Doshi and others .. Petitioners

Versus

Nashik Municipal Corporation and others .. Respondents

Shri. S. K. Shinde i/by Shri. Sham Walve & Mr. Sachin Gorwadkar, for the Petitioners.

Shri. Shekhar Jagtap with ms. Sameera Pawar i/by J. Shekhar & Co., for the Respondent No.1.

Ms. M. S. Bane, AGP for the Respondents No.3 & 4.

CORAM : R.M. SAVANT, J.

DATE : 09th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 13.02.2015 passed by the Adhoc District Judge-1, Nashik, by which order the Civil Misc. Appeal filed by the Respondents No.1 and 2 herein came to be allowed and resultantly, the order dated 19.08.2014 passed by the Trial Court i.e. Learned 5th Joint Civil Judge, Senior Division, Nashik partly allowing the application for temporary injunction came to be set aside and resultantly the application Exh.5 came to be dismissed.

2. The Petitioners herein are the original Plaintiffs and are the owners of land bearing Survey No.346/5 admeasuring 3 Hectors and 6

Ares which they have purchased from one Shivaji Shankar Kothule and the other members of his family. A part of the said land being 24 Ares was the subject matter of acquisition as the same was reserved in the development plan of the Nashik for a road. Along with the said land other lands were also notified for acquisition for the same public purpose. The acquiring body was the Respondent No.1 herein which is the Nashik Municipal Corporation. In respect of the acquisition a Award came to be declared on 12.03.2012. In so far as the Petitioners are concerned, the compensation was paid over to them on 12.03.2012 for the 24 Ares of land and possession was taken on 22.11.2012 by the Respondent No.1. It appears that since the road is required to be completed in view of the ensuing Kumbha Mela in August, 2015, the work relating to the road has to be done with some reasonable despatch. The Petitioners who are the original Plaintiffs have undisputedly accepted the compensation in respect of the said 24 Ares of land. The Petitioners thereafter filed the instant suit being Regular Civil Suit No.316 of 2013. The suit is founded on the fact that the notice in respect of the acquisition has been issued in respect of the 24 Ares of land in Survey No.346/5 and though the notice is in respect of the said area, a larger area is sought to be acquired from the Plaintiffs and put to use for the purposes of the road. It is also alleged that the alignment of the road is sought to be changed so as to benefit certain other land

owners. The Plaintiff in the suit has therefore sought the relief that the Defendants be restrained by an order of injunction from carrying out the work of laying the road without giving notice to the Plaintiff and without compensating the Plaintiff.

3. The Plaintiff has also sought an injunction to restrain the Defendants from interfering with the Plaintiffs possession as according to the Plaintiff though the possession receipt was executed, the Plaintiffs continue to be in possession of the suit property. The Plaintiff has also sought recovery of possession from the Defendants.

4. In the said suit, the Plaintiffs filed an application for temporary injunction invoking Order 39 Rule 1 and 2 of the CPC. The temporary injunction sought was to restrain the Defendants from carrying out the work of laying the road which according to the Plaintiff was illegal and injunction was also sought not to disturb the Plaintiffs possession beyond 24 Ares which was the notified land.

5. The Defendants No.1 and 2 filed their reply to the said application. The Defendants questioned the maintainability of the application for temporary injunction as also the suit. The Defendants have adverted to the Development Plan of the Nashik Municipal Corporation which was sanctioned in the year 1993, wherein the portion of the land which was reserved for the purpose of development plan road having the

width of 30 meters from Aurangabad Road to Godawari Sangam. The Defendants have adverted to the fact that after following the due procedure, the Collector has passed an Award on 12.07.2012. It is upon such grounds that the application for temporary injunction was opposed to on behalf of the Defendants No.1 and 2.

6. The Trial Court considered the said application and on the basis that there is discrepancy in the revenue record and the land record maintained by the office of the DILR with regard to the Survey numbers as also the theory that as per said record one Arjunsing Tarasing Bagga is the owner of Survey No.346/3, whereas the Plaintiffs are owners of Survey No.346/5, but actually Plaintiffs are in possession of Survey No.346/3, while Arjunsing Bagga is in possession of Survey No.346/5. The Trial Court also found that the spot Panchanama and possession receipts dated 22.11.2012 show that they are in respect of Survey No.346/3 whereas as per notification, Defendants have acquired land of the Plaintiffs i.e. suit property out of Survey No.346/5 to the extent of 24 Ares. The SLAO in his Panchanama has recorded that Plaintiffs were found in possession of Survey No.346/3 though its original owner is Arjunsing Tarasing Bagga. The Trial Court did not countenance the submissions raised on behalf of the Defendant Nos.1 and 2 that since the Plaintiffs have accepted the compensation, they are now estopped from questioning the taking over of

possession of the land in question. The Trial Court also recorded a finding that in the light of the discrepancy as regards the actual possession of Plaintiffs and factual position in the revenue record and the record of DILR, it seems that the Defendants are acquiring more land than mentioned in the Award. The Trial Court therefore, held that the Plaintiffs have made out a prima-facie case and has therefore partly allowed the application Exh.5 and restrained the Defendants from carrying out work relating to the road beyond 24 Ares of land by its order dated 19.08.2014.

7. The aggrieved Defendants i.e. Respondents No.1 and 2 carried the matter in Appeal by filing Misc. Appeal No.120 of 2014. The Lower Appellate Court as can be seen from its impugned order has gone threadbare into the material which has come on record at the time of considering the application Exh.5. The Lower Appellate Court held that though the Trial Court has observed that there is a discrepancy in the revenue record and land record maintained by DILR office with regard to the Survey numbers, the Plaintiffs pertinently have withdrawn the compensation amount in respect of field Survey No.346/5 without any objection. The Lower Appellate Court has referred to the application dated 17.10.2008 filed by the Plaintiffs before the Land Acquisition Officer for withdrawal of the compensation. On such consideration, the Lower Appellate Court has held that the Plaintiffs being only concerned with

Survey No.346/5 have nothing to do with Survey No.346/3. The Lower Appellate Court has also adverted to the fact that the two lands i.e. Survey No.346/5 of the Plaintiffs and Survey No.346/3 of the said Arjunsingh Tarasingh Bagga are situated at different locations. Whereas the Plaintiffs land i.e. Survey No.346/5 is abutting Nashik Aurangabad Highway on the South side. In so far as the Survey No.346/3 is concerned, the same does not abut the Nashik Aurangabad Highway on any of the four sides. The Lower Appellate Court therefore observed that the revenue record and Sale Deeds, clearly show that the Plaintiffs are only concerned with Survey No.346/5, whereas the said Arjunsingh Tarasingh Bagga is concerned with Survey No.346/3. The Lower Appellate Court also adverted to the fact that the Plaintiffs have withdrawn the amount of compensation in respect of the Survey No.346/5. In view of the aforesaid facts, the Lower Appellate Court held that the Plaintiffs have not made out any prima-facie case and the Trial Court has merely on the basis of the pleadings has come to an erroneous conclusion that the application for temporary injunction is required to be allowed. The Lower Appellate Court also observed in so far as the aspect of construction of the road is concerned, an element of public interest is also involved as the said road is to be kept ready before the Kumbha Mela which is to take place in August, 2015. The Lower Appellate Court as indicated above has therefore, for cogent reasons set

aside the order passed by the Trial Court granting temporary injunction to the Plaintiffs.

8. In the facts of the present case, the filing of the suit itself seems to be questionable. As though the Plaintiffs are seeking the relief restraining the Defendants from constructing upon the road, the construction of the road is pursuant to the acquisition of the land for the said purpose. The Trial Court as well as the Lower Appellate Court have not dealt with the question of the maintainability of the suit. In my view, since the principal grievance of the Plaintiffs appears to be that more land has been acquired than notified, it would be for the Plaintiffs to prove the said case either in the above suit or any other proceeding that would be required to be adopted by them. Obviously, the Respondents No.1 and 2 cannot acquire land more than what has been notified, in so far as Survey No.346/5 which admittedly belongs to the Plaintiffs is concerned. If more land is acquired from Survey No.346/5, than notified the Plaintiffs obviously would have to be compensated. However, at this stage it cannot be said with any conclusiveness that more land than 24 Ares has been acquired from the Plaintiffs. In my view having regard to the reasons mentioned in the order passed by the Lower Appellate Court for setting aside the injunction granted by the Trial Court, no case for interference in the Writ jurisdiction of this Court is made out. The Writ Petition is

accordingly dismissed. At this stage, the Learned Counsel for the Petitioners Shri. S. K. Shinde seeks continuation of the stay granted by the Lower Appellate Court. In the facts and circumstances of the case, where public interest element is involved in the construction of the road, the said prayer is rejected.

[R.M. SAVANT, J]