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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1133 OF 2015

IN

SUIT NO.599 OF 2015

Mr. Pramila D. Gharat & Ors.

...Applicants

In the matter between

Mr. Pramila D. Gharat & Ors.

...Plaintiffs

V/s.

Airport Authority of India Ltd. & Ors.

...Defendants.

.....

Dr. Milind Sathe, Senior Advocate, a/w Shaun Pinto i/b. Mart D'mello and Shaun Pinto for the Applicants/Plaintiffs.

Dr. Abhinav Chandrachud a/w Ms. Jasmine Upadhyay i/b. M/s. M. V. Kini & Co. for Defendant No.1.

Mr. Mohit Jadhav, AGP, for Defendant Nos.2 to 4.

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CORAM : A. K. MENON, J.

DATE : 1st October, 2015.

ORAL JUDGMENT

This Notice of Motion is taken out by the plaintiffs seeking (i) leave under Section 80(2) of the Code of Civil Procedure, 1908 to file the above suit dispensing the requirement of notice under Section 80(1) and (ii) an injunction restraining the defendants from entering upon the

suit land bearing survey no.325.

2] The suit is filed for a declaration that plaintiff nos.1 to 5 are the owners of the suit land bearing survey no. 325/1 of village Dahisar and that on account of provision of Section 24(2) of the Right of Fair Compensation Act, 2013, the proposed acquisition pursuant to an award dated 28th March, 1974 under Land Acquisition Case no. LAQ.300/2 passed by the Special Land Acquisition Officer has lapsed. The plaintiffs also seek permanent and temporary injunctions restraining the defendants as aforesaid.

3] Dr. Sathe, the learned Senior Counsel appearing for the plaintiffs submitted that the suit land was part of a larger plot bearing survey no.325 Hissa no.1 corresponding to CTS No.1553 admeasuring 4805.9 sq. meters. The subject matter of the present suit is an area of 1 Acre 18 Gunthas and the same is referred to as “the suit land”. The plaintiff nos.1 to 5 claim to be real sisters who have been allotted land in terms of Consent Decree dated 22nd September, 2014 of this Court in Suit No.427 of 2013. Under the Consent Decree, the plaintiff nos.1 to 5 have agreed to sell the suit land to plaintiff no.6 for the consideration agreed therein. The Consent Decree came to be passed pursuant to filing of

consent terms in the said suit and it is the plaintiffs case that the plaintiff no.6 has been in physical possession of the suit land. The defendant no.1 is the Airport Authority of India constituted under Airports Authority of India Act, 1994 and claims to be entitled to the suit land by virtue of the Land Acquisition Act, 1894, for the purposes of setting up its Remote Receiving Station.

4] The facts in brief which lead to the present controversy begins with a notification under Section 6 of the Land Acquisition Act, 1894 which was published in the Bombay Government Gazette Part-I dated 19th February, 1959 under which lands bearing survey nos.325 (admeasuring 7 acres) and survey no.327 (part) were subject matter of acquisition proceedings. The acquisition proceedings led to an award being passed on 28th March, 1974 in LAQ No.300. The land in question was situated at Village Dahisar and the contents of the award reveal that the Execute Engineer, Bombay Aviation division No.1 Central Public Works Department under his letter dated 19th January, 1957 had requested the Collector of Thane for acquisition of lands at village Dahisar for a public purpose namely for setting up a Remote Receiving Station. According to the applicant, the land sought to be acquired was waste land hence, a preliminary enquiry was conducted in respect of lands bearing survey

no.321, 325 and 327 which were then notified under Section 4 of the Land Acquisition Act. Thereafter the acquiring body decided to take possession of the land and it is the case of the defendants that possession had been taken.

5] It is the plaintiffs' case that actual and physical possession has not been taken and that possession has only been recorded on paper. According to the plaintiff there is contemporaneous evidence that possession has not been taken. I will advert to such evidence shortly. As regards the ownership of the land, the award itself reveals that the suit lands initially stood in the name of Shri Haji Ali Mohammed ex-Khot of village Dahisar. After the death of said Shri Haji Ali Mohammed a dispute arose amongst the heirs of the said owners resulting a suit being filed in this Court and the Court Receiver, Bombay High Court, was appointed for the administration and management of the estate. The Court Receiver had, inter alia, filed a Special Suit No.46 of 1953 which came to be transferred to this Court and was re-numbered as 246 of 1957 but this suit came to be dismissed on 30th June, 1961.

6] It is the case of the cultivators that an enquiry under Section 37(2) of the Bombay Land Revenue Code 1879 was undertaken by the

Special Mamlatdar to decide whether the properties have been vested in the State Government or otherwise and thereafter a judgment was passed whereby the lands comprising survey no.89, 323, 324 and 326 of village Dahisar vested in the Court Receiver in suit no.3415 of 1947. So also survey nos.321, 322, 325 and 327 (part) is believed to vest in the Government. No appeal was filed against this order and accordingly it is submitted that the Government records have been corrected and these lands stand in the Records of Rights in the name of said Haji Ali Mohammed.

7] It appears that the Court Receiver had held an auction on 27th March, 1962 whereby some part of the land was auctioned to one Shri K. Lalchand for a sum of Rs.13,50,000/-. The said Lalchand is one of the Director of M/s. Veekaylal Investment Co. Pvt. Ltd. The award proceeds on the basis that the notices under Section 9 and 10 were served upon the cultivators and the tenants of the lands under acquisition. The names of such tenants and details of lands cultivated by them are provided in Appendix 'A' to the award. In view of Appendix 'A' reveals that at item no.7 the name of Shri D.D. Patil appears as one of the 11 persons to whom certain payments are required to be made. Some of these are tenants and cultivators who appeared personally and some of them were

represented by Advocates.

8] It is the case of the deponent that the said Veekaylal Investment Co. Pvt. Ltd. has objected to the interest of cultivators/tenants whose names are mentioned in the Records of Rights. Therefore, it seems that there are disputes between the aforesaid Veekaylal Investment Co. Pvt. Ltd. and the tenants/cultivators. In the present suit we are concerned with an area admeasuring 1 acre and 18 Gunthas forming part of the plot of 7 acres under survey no.325. There is no dispute about this fact.

9] While justifying the proposed acquisition, the Special Land Acquisition Officer intended that the lands under acquisition are in an interior area and that access to the areas being poor, these lands are badly affected by sea water during high tides and in the monsoon the nalas running along the southern and western boundaries overflow into the land under acquisition. According to the Special Land Acquisition Officer(SLAO) there would be few buyers of the property in the market. All protected tenants and cultivators have claimed ownership of these lands. The Court Receiver and M/s. Veekaylal Investment Co. Pvt. Ltd. have not even accepted their tenancy rights. Accordingly, the SLAO proposed to deposit the amount of compensation under Section 30 of the

Land Acquisition. The award records that said M/s. Veekaylal Investment Co.Pvt. Ltd. and the protected tenants have claimed compensation separately for crops, injury affecting their other properties, loss of business etc. and it is on record that M/s. Veekaylal Investment Co.Pvt. Ltd. did not adduce any evidence in support of their claim. All the protected tenants have claimed the ownership of land in their possession and they cannot claim compensation for loss of income etc. In any event, since the protected tenants have claimed their interest in the land as owners of land, the SLAO concluded that the ownership is claimed by the Court Receiver for survey no.321 and 322 and M/s. Veekaylal Investment Co.Pvt. Ltd. claimed ownership for survey no.325 and 327. Accordingly the compensation was to be deposited in Court pursuant to section 30.

10] There is a dispute between the parties and it is not very clear as to whether the amount of compensation was in fact deposited in any Court. There are conflicting references as to the fact of deposit and in some documents the authorities have contended that the amount was infact deposited in a Court. In clause (11) of the award, the area of the land is shown as nine acres and one guntha and the amount of compensation computed at Rs.8,303/- is to be paid to 13 parties. Out of these 13 parties one was Mr. Dharamdas Patil, predecessor of the present

petitioner no.1 M/s. Veekaylal Investment Co. Pvt. Ltd. and party no.11 was Smt. Manibai Narain. Reference to Smt. Manibai Narain will be relevant insofar as suit no.675 of 2015 is concerned wherein a similar claim has been made by the plaintiff. The Award operates in case of the plaintiffs and/or their nominees or assignees in both the suits. In the aforesaid section of the award, the Special Land Acquisition Officer, after computing the amount of compensation, has recorded that the amount is to be deposited in the Court under section 30.

11] The plaintiffs had contended that although the award was passed on 28th March, 1974 actual and physical possession of the lands have not been taken. In this respect, reference is made to a letter dated 12th June, 1974 appearing at Annexure 'C' to the plain wherein the Town Planning and Valuation Department acting through the Special Land Acquisition Officer has informed the Additional Collector that in respect of lands bearing survey no.321 part, 322 part, 325 and 327 part an attempt was made to take possession of these lands for the purpose of setting up the Remote Receiving Station. However, the representative of the acquiring body refused to take possession of the land as there were two structures on one of the plots. This plot is identified as plot no.322 admeasuring about 5 acres and 14 gunthas. The letter further records

that even if the other land excluding land bearing survey no.322 was to be taken possession of, the acquiring body would have received the possession of roughly 14 acres of land. It is therefore clear that possession had not been taken as of that date. The plaintiffs have also relied upon the letter dated 17th July, 1974 once again addressed by the Additional Collector's Office, Bombay Suburban District to the Director of International Airport Authority of India recording that although land bearing nos.321 part, 325 part and 327 part have been acquired for the aviation department and time was fixed for the Special Land Acquisition Officer to hand over possession to the said authority which now is constituted as defendant no.1, the representative who was present at site refused to take possession of the land. The events that took place on 7th June which were recorded in the letter dated 12th June, 1974. Thereafter on 5th December, 1974, the Special Land Acquisition Officer appears to have written a letter to "All interested persons" that in continuation of the notice of acquisition, the addressees are requested to vacate the premises in their occupation before 22nd December, 1974. There is no evidence forthcoming about the persons on whom the letter served or whether in fact the letter was served upon the plaintiffs predecessors in title or for that matter on any of the 13 parties mentioned in the award. The notice of the proposed action of taking possession, however, appears to have

given to the first respondent through the Senior Technical Officer of the first respondent.

12] On 23rd December 1974 a report was seen to be made by the concerned officer who attempted to take possession of the suit land recording that in respect of two structures on survey no.322 part, the occupants had obstructed the attempts to take possession. There was no mention in the said submission as to the fate of the attempts at taking possession of the suit lands bearing survey no.325 part-I or the earlier reference to the deposit of money in the letter dated 21st December, 1976. The Town Planning and Valuation Department has in its letter addressed to the Deputy Collector observed that an area of 14 acres 35 gunthas and 8 annas were subject matter of the acquisition proceedings which included the suit land and the ownership of these lands was found to be disputed and as such the said amount of compensation was said to be “deposited in the District Court under section 30”.

13] The plaintiffs have thereafter and in support of their contention that possession of the land had not been taken, relied upon a copy of communication dated 1st August, 2003 from the first defendant to the Special Land Acquisition Officer demanding possession receipts in

respect of some of the lands which were acquired under the subject award. The contents of the letter are as follows:-

“This is regarding the land of Remote Receiving Station at Dahisar of Airports Authority of India (formerly known as Civil Aviation Department (Central Govt.).

The possession receipts required are mentioned in separate sheet. Some of the possession receipts taken from your office is marked as right on the same sheet (copy enclosed).

Now this office is in need of possession receipt for the remaining S. No. under LAQ cases mentioned in the sheet.

Kindly it is requested to give all the possession receipt and individual awards to us at the earliest to the following address:

*O/o the Regional Executive Director
Airports Authority of India
CSI Airport, Western Region
Mumbai-400 099.”*

Enclosed with the said letter was a handwritten note on two sheets with notings as to the possession receipts if any issued in respect of each of the plots serially listed therein. At the foot of the second page under serial no.5 reference is seen to be made to LAQ 300 and the 4 plots of lands which includes the suit land. The relevant portion of the relevant hand written note is revealing and is reproduced below:

“LAQ 300	321(p)	5-38-8	
	322(p)	6-14-0	possession still to be
	325	7-0-0	taken.
	327(p)	2-1-0	

4 different survey numbers are seen to be mentioned. We are concerned

survey no.325 in the present suit. The area is of the said plot as shown 7 acres and the remark against the same reads that possession was still to be taken. This internal record has been received by the plaintiff no.6 after an application made under the Right to Information Act. It discloses that atleast as on 1st August, 2003, possession of the suit land had not been taken.

14] Dr. Sathe, therefore, submitted that in view of the defendants own records revealing that possession of the suit land had not been taken, by virtue of provisions of section 24(2) the land acquisition and the award had lapsed. Relying upon provisions of section 24(2) Mr. Sathe reiterated that notwithstanding anything contained under sub-section (1), pursuant to land acquisition proceedings if an award had been made at least 5 years prior to the commencement of the Act but physical possession of the land had not been taken OR if the compensation had not been paid, the proceedings would be deemed to have lapsed and acquisition proceedings will have to be commenced afresh. Relying upon this provision Dr. Sathe submitted that the acquisition proceedings forming subject matter of the award had lapsed since the records of the first defendant clearly disclosed that the possession of the suit land had not been taken. Accordingly, he submitted that the plaintiffs were entitled

to reliefs as prayed for in the notice of motion and that the defendants will not be entitled to take any steps in furtherance of the award.

15] The immediate provocation for filing the suit according to Dr. Sathe is that the officers of the defendant no.1 had commenced procedures for inspection and survey of the suit plot for the purpose of demarcation of the plot. He relied upon certain photographs annexed to the plaint forming part of Annexure AG-1 to show that certain efforts were being made by the first defendant to demarcate the plot and take steps in furtherance of the award. He therefore submitted that in the facts of the present case, the plaintiffs are entitled to protection and submitted that the notice of motion was liable to be made absolute as far as prayer clause (b) was concerned.

16] In response to these contentions, on behalf of the first defendant Dr. Chandrachud submitted that firstly there was no question of the award having lapsed inasmuch as per the record the first defendant had taken peaceful possession of the suit land. According to Dr. Chandrachud, the first defendant has filed an affidavit of one Anil Narula on 10th July, 2015 in which it is contended that the first defendant is in actual physical possession of the suit land. It is further contended that the

land was required for setting up a Remote Receiving Station. The same being vested in the Government and had been specifically acquired for this purpose and being in physical possession of the suit land, the defendant no.1 was required to provide air navigation services for efficient, safe and regular aircraft movement over the Indian airspace. For efficient and effective airspace management, the Indian airspace is divided into four Flight Information Regions(FIR). Mumbai (FIR) covers the vast expanse of the Indian Ocean and Arabian sea and is strategically important because it controls several domestic as well as international air routes. According to the first defendant therefore, the land was acquired for a public purpose and they have already set up a Remote Receiving Station and further work needs to be carried out for the said purpose. It is admitted by the defendant no.1 and as confirmed by Dr. Chandrachud on instructions, that no part of the suit land has been utilized yet. Although certain signal towers have been set up on portions of land bearing survey no.325, no structure of any sort has been set up by the first defendant on the suit land of 1 acre and 8 gunthas. The affidavit goes onto state that further installations are proposed to be setup the larger land.

Dr. Chandrachud relied upon paragraph 7 of the affidavit wherein it is contended that in order to secure the installations and for the safety and security of these vital installations a perimeter road is proposed to be built

around the entire larger property forming subject matter of acquisition. The first defendant, according to Dr. Chandrachud, anticipated interference with these installations which may result in the entire communication /navigation system coming to a grinding halt and the aircraft hovering around the Indian Space may be put to serious risk. Accordingly, it was thought fit to construct a perimeter road surrounding an area of about 64 acres which included the suit lands. This according to him, would enable the authorities including defendant no.1 to carry out necessary surveillance of the area at regular intervals. He, therefore, submitted that being in physical possession there was no question of the award having lapsed.

17] Apart from contending that the defendant no.1 was in actual physical possession, the learned counsel also contended that as far as the plaintiff's case is concerned, there is a larger issue of ownership which plaintiffs have failed to establish. According to him, the plaintiffs contentions that they were heirs of the deceased Damodar D Patil also had not established. Apart from relying on the consent decree there was no document to support the contention of the plaintiff nos.1 to 5 that they were heirs of late D. D. Patil who was expired on 1st December, 1989 and that they had succeeded to estate of Late D. D. Patil. Although these are

not issues that has been specifically raised in the affidavit in reply, I have permitted learned counsel to demonstrate how the title of the plaintiffs is questionable in order to obviate any doubt as to the entitlement of the defendant no.1 and so as not to prejudice the larger public interest it espouses. According to the first defendant, it is not a party to the suit in which the consent decree was passed and therefore the consent decree is not binding upon the defendant no.1. Dr. Chandrachud took me through the various documents on record from which he sought to put in doubt the plaintiff title to the suit lands and consequently the plaintiffs' right to file the suit.

18] Be that as it may, the fact remains that the Consent Decree is presently operating and has not been set aside. Dr. Chandrachud submitted that as far as possession is concerned, the acquisition proceedings had been notified in the Bombay Government Gazette dated 17th July, 1958 at Annexure C to the affidavit in reply, a copy of the relevant extract is annexed which discloses that the suit land was forming part of survey no.325 was clearly mentioned in the schedule. As such all persons concerned were put to notice on the fact that the aforesaid lands including the suit lands have been acquired.

19] He relied upon the various references under the said notification to the acquisition of the aforesaid lands and the fact that the process of acquisition had since been completed. Therefore, the learned counsel submitted that it is not now open for the plaintiffs to contend that the possession of the suit lands had not been taken over. He also submitted that the plaintiffs had admittedly contended that the amount of compensation had not been paid. However, according to him reference to payment of compensation were clearly mentioned in the correspondence between SLAO and the Town Planning and Valuation Department. Dr. Chandrachud contended that it is not possible to accept the contention of the plaintiffs that possession of the property had not been taken. He also relied upon the contents of the award and referred to the fact that the possession receipts had been issued in respect of the lands in question. In particular, he referred to the observation in the award which specifically dealt with land bearing survey no.325 and submitted that pursuant to this compensation for the land was deposited in the court under section 30. Therefore, he submitted that the entire basis of the plaintiffs claim that compensation had not been paid is not sustainable.

20] Dr. Sathe submitted that as far as the ownership of the land is concerned, the property was in the possession of the said Damodar D.

Patil as a tenant cultivator and pursuant to an application made under provisions of section 32G of the Bombay Tenancy and Agricultural Lands Act, the said Patil having been found in possession was permitted to acquire the land. In this respect a certificate under section 32M was issued to him and that section 32M certificate conclusively establishes that the land belonged to him. Dr. Sathe submitted that perusal of the certificate which appears at Annexure-Y reveals that Late D. D. Patil was entitled to the lands mentioned in the statements annexed to the said certificate on payment of a sum of Rs.16167/-. Dr. Sahte relied upon the fact that the suit land was specifically mentioned under survey no.325 Hissa no.1 admeasuring 1 acre and 18 gunthas, therefore, it is submitted that there can be no manner of doubt that property in fact vested in D.D. Patil and that the present plaintiff nos.1 to 5 were the heirs of D.D. Patil who were entitled to maintain the suit and especially in view of the consent decree that operates in their favour.

21] Dr. Sathe also referred to a letter dated 27th July, 1973 pursuant to which the certificate of purchase under section 32 M came to be issued. A copy of this certificate appears at Annexure X in the plaint. Perusal of the same reveals that the certificate came to be issued pursuant to order passed by the Court of Tahsildar, Borivali in Tenancy Case

No.22/1971 under section 32G. It mentions the particulars of Survey number, Hissa number, total area and the assessment in relation to each of these plots. As against Survey no.325 Hissa no.1 the total area of the land is shown as 10 gunthas.

22] According to the learned counsel for the first defendant this clearly showed that the challenge to ownership is well founded. Dr. Chandrachud contended that when the order under Tenancy Case No.22/1971 dated 22nd July, 1973 in term specifies the area of survey no.325 Hissa no.1 is admeasuring only 10 gunthas, the Tahsildar was incapable of issuing a certificate of purchase under Section 32 M for which a larger area comprising 1 acre and 18 gunthas.

23] Attractive though this submission may sound, it is difficult to sustain in view of the other documents which relied upon by the plaintiffs inasmuch as the statement annexed to the certificate is specific as to area of each plot is described along with Hissa to area and assessment. Dr. Sathe responded by stating that although in the table in the opening part of the order a reference is made to an area of 10 gunthas, this was obviously an erroneous reference inasmuch as in the final orders the area has been corrected. This new controversy does appear to raise questions

as to the extent of land the said Patil was entitled to. No doubt this can be subjected to hairsplitting but in any event, the issue of ownership need not detain us further since we are presently concerned with whether or not a prima facie case exists in favour of the plaintiffs. Dr. Sathe has produced the relevant mutation entries which prima facie meets the first defendants challenge to ownership and submitted that names of all 5 plaintiffs have been entered in the mutated records because in terms of a Partition Deed dated 30th October, 1996 the property was partitioned amongst the heirs of the late Patil. In the schedule to the said partition deed clear reference is seen to be made to, inter alia, survey nos.325/1 with the area admeasuring 4806.20 sq. meters. Accordingly the various portions which are said to have been demarcated and pursuant to the registration of the said partition deed the relevant mutation entries also appear in the record of rights.

24] These entries which are recorded have all been certified by the Talathi Dahisar Taluka as of 17th February 2007 show the names of all 5 plaintiffs and against their names the survey numbers are also specified. This includes land bearing survey no.325/1. In the extract bearing no.7063 the names of the 5 plaintiffs have been shown and as against their names their entitlement to various lands are also mentioned with

specific reference to the survey numbers and the area. In the column at item no.5 land bearing survey no.325/1 is specifically mentioned and the area is also shown is 1 acre 18 gunthas.

25] These documents being prima facie evidence which I find acceptable, there can be no doubt that the present plaintiff nos.1 to 5 appear to be entitled to the aforesaid suit land by virtue of the partition deed and the consent decree which according to the learned counsel for the plaintiffs are not subject to any challenge.

26] It is also necessary to mention that on behalf of the State two affidavits have been filed one of Yashwant Ramaji Bhalerao. In the first affidavit dated 17th July 2015, in paragraph 5, the deponent has mentioned that in respect of survey no.321 part and 322 part land acquisition reference no.1 of 2008 was made before this Court in the year 2008 and no compensation was paid to any of the parties since there was an ownership dispute and therefore, the apportionment was in dispute. Thus the amount was deposited in this Court. However, as far as survey no.325 and 321 part were concerned, the amount of compensation is kept in a “civil deposit”. In view of the lack of clarity in the aforesaid affidavit as to whether the amount of compensation was actually deposited in

court, a further affidavit dated 10th August, 2015 came to be filed in which the same deponent Yashwant Ramaji Bhalerao clarified that after perusal of the record it was ascertained that the office of Deputy Collector has deposited the amount of compensation of land in respect of survey no.325 in “civil deposit” in the office of the Pay and Accounts on 18th August, 1996. Thus, it is also clarified that the office of the Deputy Collector had not deposited the amount in any land acquisition reference or other proceeding. This is further evidence of the fact that compensation due to the claimants which included late D. D. Patil was not paid over to him nor it was deposited in the Court as contemplated under section 30. Furthermore, the balance of convenience is also clearly in favour of the plaintiffs, having been able to show, firstly that prima facie, the possession of the land had not been taken by the first defendant and secondly the plaintiffs have failed to establish that the compensation payable under the award has been so paid. Thus these vital conditions specified in section 24(2) do not appear to be satisfied.

27] In conclusion the plaintiffs case that the award has lapsed needs to be favourably considered at least at this interim stage. Having observed thus, I come to the conclusion that the plaintiffs have made out a prima facie case and it will be in the interests of justice that the

defendants ought not to be permitted to proceed and/or make any further attempts to demarcate the land. On instructions, the learned counsel for the defendant no.1 has very fairly stated that the perimeter road has not come close to the suit lands inasmuch as the attempt by the defendant no.1 was to demarcate the suit land in anticipation of further construction of the perimeter road. If the plaintiffs are not protected by interim orders, great prejudice and irreparable damage may be caused to them. Accordingly I pass the following order:-

- (i) Notice of motion is made absolute in terms of prayer clause(b).
- (ii) There will be no orders as to costs.

28] At this stage, learned counsel for defendant no.1 seeks stay of operation of this order. In view of the fact that I am satisfied with the plaintiffs case that their rights required to be protected, the request is rejected.

(A. K. MENON, J.)