

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 97 of 2016**

Sonsai S/O Shri Bhikhuram, Aged About 55 Years Caste- Gond, Occupation- Agriculture/ Labour, R/O Village- Kumarata, Police Station- Kapu, Tahsil- Dharamjaigarh, Distt.- Raigarh, Chhattisgarh .....  
(Plaintiff)

**---- Appellant****Versus**

1. Executive Engineer , Bridge Construction Board (Setu Nirman Mandal), Public Work Department, Raigarh, Distt.- Raigarh, Chhattisgarh .....(Respondent No.1/ Defendant No.1)
2. Contractor, Through- M/S Harjas Rai, Variyal Das, A-4 Class Contractor, 14 Panchashil Nagar, Raipur, Distt.- Raipur, Chhattisgarh, Through- Mahraj (Munshi)- Who Is carrying out work of Bridge Construction over the river of Village- Kumarata, Who Will Be Found Carrying Out Work Of Bridge Construction Over The River Of Village- Kumarata And Who resides in Tent Near The River, Police Station- Kapu, Dharamjaigarh, Distt.- Raigarh, Chhattisgarh ..... (Respondent No.2/ Defendant No.2)
3. State Of Chhattisgarh, Through- The Collector, Raigarh, Distt. Raigarh, Chhattisgarh .....(Respondent No.3/ Defendant No.3)
4. State Of Chhattisgarh, Through- The Sub Divisional Officer Cum Land Acquisition Officer, Dharamjaigarh, Distt. Raigarh, Chhattisgarh .....(Respondent No.4/ Defendant No.4)
5. Secretary, Gram Panchayat Kumarata, Post.- Kumarata, Police Station-Kapu, Tahsil- Dharamjaigarh, Distt.- Raigarh, Chhattisgarh .....(Respondent No.5/ Defendant No.5)
6. Sarpanch, Gram Panchayat Kumarata, Post- Kumarata, Police Station- Kapu, Tahsil- Dharamjaigarh, Distt.- Raigarh, Chhattisgarh .....(Respondent No.6/ Defendant No.6)
7. Up-Sarpanch, Gram Panchayat Kumarata, Post.- Kumarata, Police Station- Kapu, Tahsil- Dharamjaigarh, Distt.- Raigarh, Chhattisgarh .....(Respondent No.7/ Defendant No.7)

**---- Respondents**


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| For Appellant       | : | Mr.R.R.Soni and Mr.Ajeet Kumar<br>Yadav, Advocate |
| For Res.No.1, 3 & 4 | : | Mr.Vinod Deshmukh, Dy.G.A.                        |

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**Hon'ble Shri Justice Sanjay K. Agrawal**  
**Order on Board**

**13/07/2016**

1. The appellant/plaintiff instituted a suit on 24.6.2008 for permanent injunction stating inter-alia that he is owner and title holder of the suit land bearing Khasra No.494 area 1.271 hectare situated at village Kumarata, Tahsil Dharamjaigarh, District Raigarh in which the defendants are illegally encroaching to construct the road/bridge and therefore, the defendants be restrained from interfering with his possession.
2. Upon service of summon, the defendants/state authorities appeared before the trial Court and filed an application under Order 7 Rule 11 (d) of the Code of Civil Procedure (henceforth "CPC") stating inter-alia that the suit land is under acquisition in Land Acquisition Case No.6A-82/2007-2008 and notification under Section 4(1) of the Land Acquisition Act, 1894 (henceforth "Act of 1894") has already been published on 1<sup>st</sup> February, 2008 and notification under Section 6 of the Act of 1894 on 4.7.2008 and suit was filed on 24.6.2008 and therefore, the jurisdiction of the Civil Court is barred under Section 9 of the CPC in respect of the land acquisition proceeding and and plaint be rejected as barred under Order 7 Rule 11(d) of the CPC.
3. The appellant/plaintiff filed the reply to the said application

stating inter-alia that such suit is not barred expressly and further stated that the defendants are unauthorizedly encroaching upon his land and he admitted that he has filed an objection under Section 5A of the Land Acquisition Act to the Collector and also pleaded that notification under Section 6 of the Act of 1894 is illegal and therefore, the application be rejected.

4. The trial Court by its impugned order allowed the application holding that the suit as framed and filed essentially challenging the land acquisition proceeding initiated by the State Government with respect to the suit land and jurisdiction of the Civil Court is barred and rejected the plaint.
5. Feeling aggrieved against the order rejecting plaint, the plaintiff preferred the first appeal before the First Appellate Court under Section 96 of the CPC.
6. The First Appellate Court has held that the suit was filed on 24.6.2008 i.e. after initiation of land acquisition proceeding and after issuance of notification under Sections 4 and 6 of the Act of 1894, therefore, jurisdiction of the Civil Court has rightly held to be barred by law and upheld the judgment and decree passed by the trial Court.
7. Questioning the legality, validity and correctness of the impugned judgment and decree, the second appeal under

Section 100 of the CPC has been preferred by the appellant/defendant.

- 8.** Mr.R.R.Soni and Mr.Ajeet Kumar Yadav, learned counsel appearing for the appellant/plaintiff, would submit that both the Courts below have committed grave legal error in rejecting the plaint to be barred under Order 7 Rule 11(d) read with Section 9 of the CPC. They would further submit that the suit as framed and filed is not barred as the defendants have unauthorizedly encroached upon his land and therefore, the finding is perverse and it gave rise to substantial question of law.
- 9.** I have heard learned counsel appearing for the appellant on the question of admission of this second appeal and perused the records of the Courts below with utmost circumspection.
- 10.** It is not in dispute that the suit land was subjected to land acquisition in Land Acquisition Case No.6A-82/2007-2008 and in which notification under Section 4 of the Act of 1894 was published on 1.2.2008, notification under Section 6 was also published and the plaintiff filed the suit on 24.6.2008. It is also not in dispute that the plaintiff himself has made an objection to the said land acquisition proceeding under Section 5A of the Act of 1894 before the Collector on 25.1.2008.
- 11.** The short question for consideration would be whether in respect of the land acquisition proceeding, the suit for

permanent injunction would be maintainable or the jurisdiction of the Civil Court to take cognizance in respect of the land acquisition proceeding is barred under Section 9 of the CPC.

- 12.** Issue involved herein is no longer res-integra and it stands authoritatively decided by Their Lordships of the Supreme Court in umpteen number of judgments. Few of them may be noticed for gainfully and profitable:-

(i) In the matter of **Laxmi Chand and others vs. Gram Panchayat, Kararai and others**<sup>1</sup>, it has been held by Their Lordships of the Supreme Court that the jurisdiction of the Civil Court in cases arising under Land Acquisition Act is barred under Section 9 of the CPC by holding that the Land Acquisition Act is complete in itself and thereby the jurisdiction of the Civil Court is to take cognizance of the cases arising under the Act, by necessary implication is barred. Paragraph 2 and 3 of the report states as under:-

“2.....it is seen that Section 9 of the Civil Procedure code, 1908 gives jurisdiction to the Civil Court to try all civil suits, unless barred. The cognisance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Sec. 4 and declaration under Sec. 6 of the Act are required to be published in the manner contemplated thereunder. The *inference* gives conclusiveness to the public purpose and the extent of the land

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<sup>1</sup> AIR 1996 SC 523

mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognisance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.”

(ii) Similarly, Their Lordships of the Supreme Court in the matter of **State of Bihar vs. Dhirendra Kumar and others**<sup>2</sup> has held as under:-

“3.....We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under section 9 of the Civil Procedure Code stands excluded, and a civil Court has no jurisdiction to go into the question of the validity or legality of the notification under section 4 and declaration under section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable.....”

(iii) In a recently delivered judgment in the matter of Commissioner,  
 2 (1995) 4 SCC 229

Bangalore Development Authority **and Another Vs. Brijesh Reddy and Another**<sup>3</sup>, Their Lordships of the Supreme Court have clearly held that civil court has no jurisdiction to go into legality and validity of notification issued under section 4 & 6 of the Act of 1894, as by necessary implication, power of civil court to take cognizance under Section 9 of the CPC is excluded. It was held as under:-

“18. It is clear that the Land Acquisition Act is a complete code in itself and is meant to serve public purpose. By necessary implication, the power of the civil court to take cognizance of the case under Section 9 CPC stands excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power.”

13. Following the mandate of the Supreme Court in the above-stated cases which clearly held that the jurisdiction of the Civil Court is barred to challenge the notification under Section 4 of the Act of 1894 and no declaration or permanent injunction can be granted and the Civil Court is devoid of jurisdiction and only right available for the person aggrieved is to approach the High Court under Article 226 of the Constitution

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<sup>3</sup> (2013) 3 SCC 66

of India, I have no hesitation to hold that the trial Court as well as the Appellate Court is absolutely justified in holding that the jurisdiction of the Civil Court is barred.

14. I do not find any substantial question of law for admission of this appeal. The appeal deserves to be and is accordingly dismissed without notice to other side.

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-