

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

**Second Appeal No. 182 of 2015
With
Civil Application No.1393 of 2015**

Sarjerao S/o Mahadu Khotkar. .. **Appellant.**

Versus

Airport Controlling Authority
And Another. .. **Respondents.**

Shri. A.D. Maney, Advocate, holding for Shri. Umesh
Bodkhe, Advocate, for appellant.

Shri. Nitin S. Chaudhary, Advocate, for respondent No.1.

Shri. Anil S. Bajaj, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 27 JULY 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.1041/2008 which was pending in the Court of the Civil Judge, Senior Division, Aurangabad and also against the judgment and decree of Regular Civil Appeal No.283/2009 which was pending in

the District Court Aurangabad. The suit filed by the appellant for relief of injunction was dismissed by the trial Court and the decision is confirmed by the first appellate Court. The original plaintiff has filed the present proceeding. Heard both the sides.

2) The suit was filed in respect of land Gat No.30/6 admeasuring 20 gunthas and land Gat No.30/7 admeasuring 5 gunthas situated at Mukundwadi, Aurangabad. It is the case of the plaintiff that his father was owner of the suit property and after death of the father he has become absolute owner of the suit property. It is the case of the plaintiff that he has been in possession of the suit property since long and the defendants, viz. Airport Authority and the CIDCO have no concern with the suit property. The property is admittedly within the area of CIDCO, respondent No.2.

3) It is the case of the plaintiff that on 7-11-2008 and 10-11-2008 employees of the defendant No.1-Airport Authority entered the suit property and they started doing work of excavation. It is contended that when the plaintiff

was obstructed, he requested them not to interfere into his possession over the suit property but they did not pay heed to the request made by the plaintiff and so cause of action took place for filing the suit. He had prayed for relief of perpetual injunction to protect his so called possession over the suit property.

4) Defendant Nos.1 and 2 denied the aforesaid contentions of the plaintiff of both ownership and his possession. They contended that entire Gat No.30 was acquired by CIDCO and the possession of the entire portion was handed over to the defendant No.1 in the year 1993. It is contended that after acquisition, compensation was paid to the plaintiff's father and possession of his share was taken from him during acquisition proceeding.

5) It is the case of the defendants that Regular Civil Suit No.351/1999 was filed by father of the plaintiff and others against the defendants for similar relief but the said suit was dismissed. It is contended that in the said suit, Civil Court has held that after acquisition no land was left with the owners and the entire area of Gat No.30

was acquired for defendant No.1. The defendants contended that in view of this position, present suit is not tenable.

6) Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. On the basis of revenue record, oral evidence and the judgment delivered in the previous suit by Civil Court, the Courts below have held that entire area of Gat No.30 was acquired for defendant No.1. The Courts below have held that there is bar of *res judicata* as in the previous suit same issues were involved and they are decided against the plaintiff (plaintiff's father).

7) Copy of judgment delivered in Regular Civil Suit No.351/1999 was produced before the Courts below. This suit was filed in respect of land Gat Nos.30/6, 30/7 and 30/8. Similar pleading was there in that suit and father of the plaintiff was one of the plaintiffs in the said suit. In the said suit similar defence was taken by the present defendants. After leading evidence by both sides, the Courts held that the entire area of Gat No.30 was

acquired and no land was left with the plaintiffs of that case. It was held that, on record, the total area of land Gat No.30 was 3 hectares 15 R but actually the area was 3 hectares 6 R and during acquisition proceeding it was noticed that more area was shown in the record and the possession of actual area was given to the present defendant No.1 on 29-4-1993. Copy of final award prepared in the acquisition proceeding is produced in the present suit also. Said record shows that compensation was received by the father of the plaintiff in respect of Survey No.30/3 admeasuring 77 R.

8) In view of the record and the aforesaid circumstances it can be said that some revenue record in respect of Survey Nos.30/6 and 30/7 was prepared. The total area of remaining post hissas was 3 hectares 6 R and it was the entire area of the Survey No.30. Thus such post hissas were not in existence therefore no acquisition was possible of such pot hissas. Those are the findings of facts and they are concurrent findings. Further, this issue was already decided in the previous suit and so there is bar of *res judicata* as observed by the Courts below. No

substantial question of law as such is involved. In the result, the appeal stands dismissed. Civil Application stands disposed of .

Sd/-
(T.V. NALAWADE, J.)

rsl