

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

17 CRA NO. 48 OF 2015

**PRABHAKAR YASHWANT MUKUTMAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Shri. Z.M. Pathan, Advocate, for applicant.

Shri. S.P. Sonpawale, Assistant Government Pleader, for
respondent Nos.1 to 4.

Shri. V.B. Jagtap, Advocate, holding for Shri. V.D. Sapkal,
Advocate, for respondent Nos.5 and 7.

CORAM: T.V. NALAWADE, J.

DATE : 27 JUNE 2016

ORDER:

1) The proceeding is filed to challenge the order made by the learned Civil Judge, Senior Division, Newasa in Regular Civil Suit No.20/2010. By making order on Exhibit 1 the trial court has decided the point of jurisdiction of Civil Court against the present petitioners, defendants. Both the sides are heard.

2) There is dispute in respect of agricultural lands. It is the case of the plaintiffs that these lands are

allotted to them in the year 1968 and since then they are in possession and they are cultivating the lands as owner as the lands are allotted to them. It is their case that defendant Nos.4 and 5 are interfering in their possession and they have joined hands with revenue authority. They have contended that for defendant Nos.4 and 5, the revenue authority has issued order against the plaintiffs to hand over possession and so cause of action has taken place. In the suit relief of declaration to set aside the order of the revenue authority and injunction, to protect their possession is claimed.

3) It is the case of the defendants, present petitioners that under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 the suit property is allotted to them. They submit that the Civil Court has no jurisdiction in view of provisions of this special Act. They had approached the Mamlatdar and under the provisions of section 5(2) of the Mamlatdar Courts Act 1906, the Mamlatdar has made order to give possession to the present petitioners and this order is under challenge. It appears that in the trial Court,

Government took stand that the order made by the Mamlatdar under the aforesaid Act cannot be challenged in Civil Court.

4) Learned counsel for the petitioner took this Court through the provisions of the Maharashtra Project Affected Persons Rehabilitation Act and also the provisions of the Mamlatdar Courts Act. He took this court through the provisions of Section 24 of the first Act and section 26 of the second Act.

5) It appears that some land was allotted to the defendants but the record created by the revenue authorities shows that this land is different from the land which was allotted to the plaintiffs in the past. It appears that there is dispute that plaintiffs of the present suit have made encroachment over the portion allotted to the defendant Nos.4 and 5. It appears that defendant Nos.4 and 5 have also filed suit for relief of injunction against the present plaintiffs out of the same dispute.

6) It can be said that the question of title is not in dispute in the suit filed for relief of injunction. Point of bar of provisions of the Maharashtra Project Affected Persons Rehabilitation Act is not involved in the matter. Provision of Section 26 of the Mamlatdar Court Act is also for entire different purpose. Only relief of injunction is claimed though some relief is claimed in respect of the order made by the Mamlatdar. Such order of handing over of possession made by the Mamlatdar is not binding on Civil Court and Civil Court has independent jurisdiction. The plaintiffs are claiming that they are in possession of the land allotted to them in the year 1968 and this point needs be decided by the Civil Court. Learned counsel for the petitioners placed reliance on a case reported as **2014(4) Mh.L.J. 246 (Dadu Rama Patil v. Bapu Krishna Kurane)**. The point involved in the said case was altogether different. In view of these circumstances, it is not possible to interfere in the order made by the learned Civil Judge Senior Division Newasa by which it is held that the Civil Court has jurisdiction to decide the suit.

7) In the result, the revision stands dismissed. The trial Court is to expedite the matter and in any case within 6 months from the date of receipt of the order.

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

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