

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No. 5804 of 2015
[Somprakash Keshardeo Murarka & three others Vs. State of Mah. & others]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. S. P. Bhandarkar, Adv., for the petitioners.
 Mr. Neeraj Patil, AGP for respondent nos. 1 and 4.
 Mr. D.M. Kale, Adv., for respondent no.3.

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CORAM : P.B. VARALE, J.

DATE : 05th December, 2016

Heard the learned counsel at length. By consent, petition is taken up for final disposal.

The petitioners challenge the order passed by the learned Civil Judge [Senior Division], Khamgaon, on an application filed by the petitioners-plaintiffs under Order-XXXIX, Rules 1 and 2 read with Section 151 of Civil Procedure Code, for grant of temporary injunction in Regular Civil Suit No. 99 of 2015, thereby rejecting the application and the order passed by the learned District Judge-2, Khamgaon, dated 14th September, 2015 in Misc. Civil Appeal No. 19 of 2015 thereby dismissing the appeal.

The facts giving rise to the present petition can

be summarized as follows:-

The petitioners submit that they own and possess land admeasuring 9 hectares 56 R in Survey No. 317, Hissa-1 of Shegaon Part-II, Tq. Shegaon, Distt. Buldana. The State authorities initiated proceedings for acquisition of land to the extent of 9 hectares and 56 R. It was submitted that the land of the petitioners to the extent of 14 R was acquired by the State authorities in the land acquisition proceedings initiated in the year 1971 and the Award was passed in the year 1978. The petitioners received compensation for the said acquisition of land. Subsequently, the State authorities initiated fresh acquisition proceedings for the area of 300 square meters. An Award also came to be passed in the said acquisition proceedings and the compensation was also received by the petitioners. It is submitted that the respondents - authorities on or about 27th May, 2015 started construction activities on a strip of land for widening the road and construction of a drain under the developmental works of Shegaon Vikas Arakhada. It is the allegation of the petitioners-plaintiffs that by the act of the State authorities, damage was caused to the fence raised on the land owned and possessed by the petitioners. Certain structure was also erected on the land area. The structure was also demolished. The petitioners-plaintiffs with the grievance that the respondents-authorities without having any authority in law started the construction activities on the area owned

and possessed by the petitioner, instituted the suit and prayed for a declaration and damages.

The suit is contested by the respondents-authorities. During pendency, an application was filed by the petitioners-plaintiffs for grant of ad interim and temporary injunction. It was submitted that if the interim relief is not granted in favour of petitioners-plaintiffs, the purpose of filing the suit would be frustrated. The petitioners-plaintiffs would suffer irreparable loss and the prima facie case is in favour of the petitioners-plaintiffs to grant the interim relief of temporary injunction.

The application was opposed by filing a Written Statement and Reply by the respondent no.2 [defendant no.2] and the defendant no.4 – Sub Divisional Officer and Land Acquisition Officer, Khamgaon. It was submitted in the Written Statement and reply that the contention of petitioners that they are the owners and possessors of the strip of land, i.e., 7,000 square meters, is not supported by any material and the same is denied. It was submitted that the respondents deny the contention that the petitioners-plaintiffs are the absolute owners and possessors of the area, namely 9 hectares and 56 R of land. It was submitted that the State of Maharashtra had undertaken the developmental activities of Shegaon town under Shegaon Thirth Kshetra Vikas Aarakhada and under the said scheme, the work of

widening of existing road was undertaken. It was also submitted that a Public Notice was issued in the daily, namely a Sanj Dainik - "Prashna Kal" on 11th January, 2012 for initiation of development of State Highway through the Executive Engineer. By way of additional submission, it was submitted that initially, there was a land acquisition proceeding bearing Land Acquisition Case 7/65f/1971-72-Shegaon in which 14 R of land was acquired from the suit field and due compensation was also paid. It was submitted that though the entire 14 R of land was acquired for expansion of road, the same was not used for expansion of road and the petitioners-plaintiffs, by taking advantage of this fact, themselves encroached upon the said land by erecting certain structure. It is further stated that the Division Bench of this Court issued certain directions in Writ Petition No. 5856 of 2007 in respect of the work under Shegaon Thirth Kshetra Vikas Aarakhada and under the directions of the Court, the developmental activities are undertaken. Thus, it was prayed that the application be rejected.

The learned Civil Judge [Senior Division] could not find any favour with the petitioners-plaintiffs and rejected the application.

The learned District Judge also maintained the order of Trial Court by recording his reasons and the appeal was dismissed by the learned District Judge.

Mr. Bhandarkar, the learned counsel for the petitioners, vehemently submitted that the act of the respondents-authorities is an encroachment on the land of the petitioners under the garb of the land acquisition proceedings initiated subsequently. Mr. Bhandarkar submits that the petitioners are the owners and possessors of the said strip of land. He further submitted that the courts below, namely the learned Civil Judge [Senior Division] and the learned District Judge, failed to appreciate the grounds raised by the petitioners for seeking the interim orders in the nature of an injunction. Mr. Bhandarkar further submitted that both the courts below failed to consider the aspect of the ground, namely the so called developmental activities, i.e., widening of the road, being carried out by the respondents-authorities, were on the State Highway and in view of the provisions of the State Highway Act, the acquisition proceeding itself ought not to have been initiated. He further submitted that the courts below on erroneous assumption that the possession of the petitioners is shrouded under cloud of suspicion rejected the application, whereas the petitioners placed material before the courts below in support of their submission that the petitioners are owners and possessors of the land. Mr. Bhandarkar then submitted that the courts below also erred in observing that the balance of convenience lies in favour of the respondents-authorities and no irreparable loss would be caused to the

petitioners-plaintiff.

Learned Asstt. Govt. Pleader appearing for respondent nos. 1,2 and 4, supported the orders impugned in the petition. It is submitted by the learned AGP that initially, the land acquisition proceedings were started for construction of Shegaon-Balapur State Highway Road No. 198 and certain land was acquired. Award was passed on 27th December, 1978. Learned AGP, by inviting my attention to the documents placed on record along with the reply, submitted that the compensation awarded in respect of the acquisition of land was accepted by the family members of the petitioners. Learned AGP further submitted that though the land was acquired for construction of the road, as the complete land was not utilized for the said purpose at the relevant time of acquisition, the petitioners, taking benefit of this fact, erected certain construction on the property and claiming to be owners and possessors of the land, filed a suit as well as application seeking temporary injunction. Learned AGP submitted that the learned Civil Judge [Senior Division] rightly rejected the application on the material placed before it and the order was confirmed by the learned Appellate Court.

The learned counsel Mr. Kale appearing for respondent no.3 largely adopted the submissions of learned AGP and he further submitted that the

petitioners could not place on record any material to show that they are the owners and possessors of the said strip of land where the developmental activities are being carried out by the respondent no.3. He further submitted that the petitioners will have to prove their ownership and their possession over the land by leading cogent evidence before the competent court, i.e., the learned Civil Judge [Senior Division]. The learned counsel further submitted that assuming and not admitting that if the petitioners succeed by leading evidence before the Court, they would be entitled for the compensation in terms of money or the damages that too in monetary terms. At this stage, the developmental activities which are undertaken by the respondent no.3 under the directions of Division Bench of this Court are in full swing and are at the final stage. It was submitted by the learned counsel that any hindrance in the developmental activities would cause serious prejudice to the respondent no.3 and stalling the developmental work or delay in the developmental work would not only result in financial losses, but it would also lead to a great inconvenience to the public at large. It is submitted by the learned AGP as well as learned Adv. Mr. Kale that as a large number of pilgrims regularly visit Shegaon being a holy and religious place, the developmental activities are undertaken and any delay in carrying out those works, would cause hardship and great amount of inconvenience to the pilgrims and the public at large. Thus, the learned AGP and the learned counsel Mr. Kale

for respondent no.3 pray for dismissal of the petition.

Heard the learned counsel appearing for the respective parties at length.

On the backdrop of the submissions of the learned counsel, I have gone through the material placed on record. Perusal of the order passed by the learned Civil Judge [Senior Division] impugned in the present petition shows that on the rival contentions of the parties, the following points were framed and negative findings were recorded against each of them:-

- “1. Do plaintiffs prove prima facie case?
2. Do plaintiffs prove that balance of convenience lies in their favour?
3. Whether plaintiffs will suffer irreparable loss if temporary injunction is refused?”

While recording the findings in negative on these points framed by the learned Trial Court, the learned Civil Judge [Senior Division] referred to the land acquisition proceedings initiated in the year 1971-72. Reference is also made to the notice issued through the Executive Engineer, Public Works Department, Khamgaon, dated 22nd December, 2010, asking the petitioners-plaintiffs to remove the encroachment on the Govt. land. The learned Civil Judge [Senior Division] also dealt with the

submission of the petitioners-plaintiffs in respect of the new Act, i.e., Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013. The learned Civil Judge observed that whether the retrospective effect of the old Act is applicable or the provisions of the new Land Acquisition Act would be relevant in the matter, is the mixed question of law and facts and the same can be very well decided in the suit. Learned Civil Judge [Senior Division] found that the plaintiffs, i.e., petitioners, placed no documents on record to prove their prima facie possession over the strip of land admeasuring more than 7,000 square meters as per the contention of petitioners-plaintiffs. Then the learned Civil Judge [Senior Division] referred to certain judgments relied on by the counsel for the plaintiffs. Then the learned Civil Judge [Senior Division] on perusal of the report of Divisional Commissioner found that the acquisition proceedings of the year 1971-72 were completed and State Govt., proceeded further for the developmental work of Shegaon-Balapur Highway. The Divisional Commissioner directed the Chief Officer of Nagar Parishad to remove the encroachment after fixing the boundaries. Accordingly, steps were taken. The learned Civil Judge [Senior Division], thus, on finding that the plaintiffs-petitioners failed to prove the prima facie possession over the strip of land and on the contrary in view of the Award passed in the Land Acquisition Case No. 7/65/1971-72, the defendants, i.e., respondents-

authorities were carrying out developmental work. The learned Civil Judge also held that granting of relief of temporary injunction would result in inconvenience and sufferance to the public at large. It would also affect the interest of public at large, namely the public utility and transportation. The learned Civil Judge [Senior Division] then observed that in case the plaintiffs-petitioners succeed, they would be entitled for the appropriate damages. Accordingly the application was rejected.

The learned Appellate Court, i.e., the District Judge, on perusal of the material and on the backdrop of submissions made by the learned counsel for the parties, found that no error was committed by the learned Civil Judge [Senior Division]. It was further held by the learned Appellate Court that the Lower Court used the discretion properly and judiciously by considering the record and rightly rejected the application.

In my opinion, no error is committed by the learned Civil Judge [Senior Division], nor by the learned District Judge. Though it was an attempt of Mr. Bhandarkar, learned counsel for the petitioners, to submit that the courts below erred in observing that the ownership and possession over the said strip of land as claimed by the petitioners is shrouded under the cloud of suspicion, the petitioners could not place any material to show that they are the owners and are in possession

of the suit property, i.e., the strip of land. On the contrary, it is submitted by the petitioners that the land acquisition proceedings were initiated for the entire area, i.e., 14 R in the year 1970-71 and the petitioners also received compensation for the said land. Even in the subsequent land acquisition proceedings, the area to the extent of 300 square meters was acquired and for that area also, the compensation was paid and received by the petitioners. The courts below were justified in taking the view that the balance of convenience lies in favour of respondents-authorities and if the injunction is granted, it would result in inconvenience and sufferance to the public at large. Thus, an irreparable loss would be caused to the respondents-authorities if the injunction is granted in favour of the petitioners. Though the learned counsel Mr. Bhandarakar made an attempt to submit before this Court that the learned courts below failed to consider the aspects of the provisions of the Bombay Highways Act, 1955, perusal of the said Act shows that Section 3 thereof says that the State Govt. may, by notification in the Official Gazette, declare any road, way or land to be a highway and classify it as a State highway (Special), a State Highway, a major district road, other district road, or a village road. The said Act provides for issuance of a notification and calling of the objections or suggestions and also hearing before the authority within the prescribed period. Perusal of the material placed on record nowhere reflects that the petitioners had raised any objection or submitted their

suggestion while declaration of the said highway was made in the Official Gazette.

Be that as it may, there is also considerable merit in the submissions of learned Adv. Mr. Kale appearing for respondent no.3 that in case the petitioners succeed in the suit instituted by them, they may be entitled for compensation or damages in terms of money and no loss would be caused to the petitioners. Considering all these aspects, I am of the opinion that the orders impugned in the petition neither suffer from any illegality, nor any error is found therein. Petition, thus, being meritless, deserves to be dismissed. The same is accordingly dismissed.

Judge

[hedau]