

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1519 OF 2017

Haresh Virumal Milani

..Petitioner.

Vs

Union of India, through Defence
Secretary and Ors.

.. Respondents

Mr. Nilesh C. Ojha, Advocate for Petitioner.

Dr.G.R.Sharma i/b Mr. D.P.Singh, Advocate for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 14/02/2017

PC:

1. Not on Board. At the request of Mr. Ojha, taken up for admission. Heard Mr.Nilesh Ojha, learned counsel for the petitioner and Mr.G.R.Sharma, learned counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 21.1.2017 passed by the learned 3rd Jt. Civil Judge, Senior Division, Pune below Exhibit-107 in Regular Civil Suit No. 881 of 2011. By that order, the learned trial Judge rejected the application filed by the petitioner, hereinafter referred to as 'plaintiff', under Order VI, Rule 16 read with Section 151 of C.P.C. for striking out paragraphs 9D and 9E of the written statement.

3. In support of this petition, Mr. Ojha invited my attention to the evidence of Chitnamani Joshi who, at the relevant time, was

working as Deputy Inspector General of Registration and Deputy Control of Stamps, at Pune in the year 2010. In paragraph 5 of the cross examination, he admitted that as per the notification, the Government only decided to acquire the land. As per the said Gazette, the Government had not actually acquired the land. He also could not state as to whether Addl. Collector, Pune, after following due procedure under sections 6,7, 8 and 11 of the Land Acquisition Act, 1894 passed the order relating to mutation entry no.1453.

4. Mr. Ojha invited my attention to paragraph 9D and 9E of the written statement filed by the defendants. In paragraph 9D, the defendants contended that the suit lands were acquired by the then Government pursuant to Section 6 Notification which was published in Bombay Government Gazette dated 15.2.1917. In 7/12 Extract, there is reference to mutation entry no. 1322/1453. If the said mutation entries are produced by the Revenue Authorities, it will prove the fact of acquisition and possession of the suit lands by these entries. In paragraph 9E, it is contended that in view of the acquisition of the suit lands, right, title and interest, if any of the alleged previous owners namely Hari Gangaram Bhat and Dadabhai Padamji, who were alleged to have sold these lands to Acquino Pinto by sale deed dated 4.5.1926 and 16.2. 1926, stood extinguished. These sale deeds do not confer any right, title and interest upon the plaintiff.

5. Mr.Ojha submitted that in view of deposition of Mr. Joshi, in Special (CBI-ACB) Case No.32 of 2011, as the suit lands are not acquired by the defendants, paragraphs 9D and 9E deserve to be struck out.

6. He also invited my attention to paragraph 12 of the impugned order wherein the plaintiff relied upon the decision of Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria, AIR 2012 S.C. 1727 and in particular paragraphs 71 and 76 as also the decision of this Court in Ranjit Satardekar Vs. Joe Mathias, 2006 (6) Bom.C.R. 847. He submitted that the learned trial Judge observed in paragraph 12 that the defendants have given relevant particulars in paragraphs 9D and 9E and is, therefore, in compliance with the requirements laid down by the Apex Court in Maria Margarida Sequeria Fernandes case. As far as ruling of Ranjit Satardekar is concerned, the learned trial Judge observed that the statement made before Police officer during investigation can be produced and used in evidence in a petition under Article 32 provided it is relevant. He is not vested with any constitutional power under Articles 32 or 226 of the Constitution of India and, therefore, contentions of the plaintiff cannot be considered. He relied upon the decision of Sunil Goyal Vs. Addl. District Judge, Jaipur, 2011 (2) ILR (Raj.) 530 and in particular paragraph 12 to contend that the learned trial Judge without considering the ratio laid down by the Apex Court in

Maria Margarida Sequeria Fernandes and of this Court in Ranjit Satardekar made distinction in a casual manner which is not proper for a judicial officer. It also shows that legal knowledge and appreciation of Judgment by the learned trial Judge is very poor. On the other hand, Mr.Sharma supported the impugned order.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiff has filed application under Order VI, Rule 16 read with Section 151 of C.P.C for striking out paragraphs 9D and 9E of the written statement. The learned trial Judge has reproduced paragraphs 9D and 9E in paragraph 9 of the impugned order. In paragraph 13, the learned trial Judge observed that the pleadings in paragraphs 9D and 9E are neither unnecessary, frivolous, vexatious which can cause prejudice, embarrass and delay in fair trial of the suit nor it is otherwise in abuse of process of the court. Perusal of the assertions made in paragraphs 9D and 9E of the written statement shows that the defendants came with the case that the suit lands are already acquired. It is, therefore, for the defendants to establish the said assertions by leading evidence. At the threshold, the defendants cannot be precluded from substantiating the said plea by striking out averments in paragraphs 9D and 9E. In view thereof, I do not find that the

learned trial Judge has committed any error in passing the impugned order. If the defendants are not in a position to substantiate their contentions raised in paragraphs 9D and 9E, undoubtedly, the plaintiff will succeed in the case. The reliance placed by Mr.Ojha on the decisions does not advance the plaintiff's case. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)