

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 161 OF 2006

Raghunath Raghu Kedari (deceased)
through legal heirs
Smt. Bhagirathi Raghunath Kedari & Ors. ...Applicants

Versus

Sou. Vijaya Mahesh Bora & Ors. ...Respondents

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Mr. Ganesh Gole for the Applicants.

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CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 6, 2017

P.C. :

1. In this Civil Revision Application, the applicant has challenged the order dated 25th April 2006 passed by the learned Civil Judge Senior Division, Pune in Regular Civil Suit No. 64 of 2006. The applicants are original defendant nos. 4 to 8.

2. The plaintiffs had filed the Regular Suit No. 64 of 2006 for injunction simplicitor against defendant nos. 1 to 8. Defendant nos. 1 and 2, who are the Special Land Acquisition Officer Pune and the District Collector Pune, respectively, be restrained from giving the compensation of Rs. 20,40,000/- to defendant nos. 4 to 8 i.e. the present

applicants. Admittedly, the land was acquired by the Government from original defendant no. 1 i.e. predecessor of defendant nos. 4 to 8 i.e. the applicants under Land Acquisition Act 1894 read with Maharashtra Industrial Development Corporation Act 1961.

3. As per the case of the plaintiffs i.e. the respondents, the applicants have entered into an agreement of sale on 22nd May 1996 in respect of the said land and also obtained consent letter dated 22nd May 1996 from other defendants. By executing Power of Attorney dated 3rd October 1996, original defendant no.3 and the present applicants have assigned and transferred this land in favour of the plaintiffs' i.e the respondents. Thereafter, the land was acquired by the Government and the amount of compensation is not to be given to the defendants. Therefore, the applicants had filed application under Order VII Rule 11 (d) of the Code of Civil Procedure. The said application was rejected by the learned trial Judge. Hence, this Civil Revision Application.

4. The learned counsel for the applicants submits that in the plaint the plaintiffs have stated that they have made complaint to the Land Acquisition Authority in respect of the payment of compensation. He further submits that by this averment itself the jurisdiction of the Civil Court is to be ousted. He further submits that there is a specific

provision under Land Acquisition Act that if any objection or any dispute arose, it should be taken before the Special Court or before the Acquiring Authority, as the Land Acquisition Act lays down the entire procedure of Land Acquisition. He further submits that admittedly the land was acquired from the applicants and the plaintiffs i.e. respondents have raised dispute in respect of the amount of compensation. Such issue cannot be entertained by the Civil Court and the order dated 25th April 2006 passed in Regular Suit No. 64 of 2006 by the learned Civil Judge Senior Division, Pune is illegal and the same is to be set aside.

5. None present for the respondents, though notice is served.

6. Perused the order dated 25th April 2006 passed by the learned Civil Judge. The observation of the learned Judge that the dispute or objection is not pertaining to the acquisition is correct. The objection can be raised before the Special Court or the Land Acquisition Officer under section 5A of the Land Acquisition Act about insufficiency of award. In the present case, no such objection is raised, but it is a dispute between two parties for to whom money is to be given. In this case, the plaintiffs had raised issue against the defendants that they should not get money of the compensation on the basis of their previous agreement with the original owner i.e. defendants/ applicants. The

rights of the parties, if any, are to be decided by the Civil Court only. On query, the learned counsel for the applicants could not point out any such provision from the Land Acquisition Act where such dispute on the title can be decided by the Collector or any other Court constituted under the Land Acquisition Act. I do not find any illegality in the order dated 25th April 2006 passed by the learned Civil Judge Senior Division Pune. However, I would like to note that the plaintiffs had not asked for the declaration, but asked only for injunction simplicitor. It appears that, earlier, the prayer was made for declaration, but from the record which is placed before this Court, such prayer was scored off. In paragraph 5 of the order of the trial Court, the learned trial Judge has mentioned that the plaintiffs have sought the relief for injunction and not the relief for declaration. There is no delay in filing of the Civil Revision Application. The Civil Revision Application is dismissed on merit.

(MRIDULA BHATKAR, J.)