

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.26369 OF 2016

Gautamsheth Kisan Vadve ... Petitioner
Vs.
Shakruddin Dhondubahi Mulani and others ... Respondents

WITH

WRIT PETITION (ST.) NO.26372 OF 2016

Gautamsheth Kisan Vadve ... Petitioner
Vs.
Jagan Waman Gadkar ... Respondent

WITH

WRIT PETITION (ST.) NO.26374 OF 2016

Gautamsheth Kisan Vadve ... Petitioner
Vs.
Laxmibai Dnyaneshwar Barne (decd) through LRs
Santosh D. Barne and others ... Respondents

WITH

WRIT PETITION (ST.) NO.26375 OF 2016

Gautamsheth Kisan Vadve ... Petitioner
Vs.
Kondiba Papabhai Mulani (decd) through LRs
Shakruddin Dhondubahi Mulani and others ... Respondents

WITH

WRIT PETITION (ST.) NO.26378 OF 2016

Gautamsheth Kisan Vadve ... Petitioner
Vs.
Shevantabai Haribhau Raut and another ... Respondents

Mr. Chaitanya Nikte for Petitioner in all the Petitions.

CORAM : R. G. KETKAR, J.

DATE : MARCH 01, 2017

P.C. :

Heard Mr. Nikte, learned Counsel for petitioner in all the

Petitions at length.

2. By these Petitions under Article 227 of the Constitution of India, petitioner has challenged the orders dated 29.07.2016 passed by the learned 3rd Joint Civil Judge Junior Division, Khed. By these orders, the learned trial Judge rejected the applications made by the plaintiff under Order I, Rule 10 and Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint. Since the common questions of law and facts arise in these Petitions, the same can conveniently be disposed of by the common judgment. For the purpose of appreciating the controversy between the parties, facts from Writ Petition (St.) No.26369 of 2016 are taken into consideration.

3. Plaintiff has instituted Suit against defendants for specific performance of oral agreement dated 12.12.2006 as also registered development agreement dated 23.04.2007. Plaintiff has also in the alternative claimed that in case the land is acquired by Maharashtra Industrial Development Corporation (for short 'MIDC') then in that event, compensation should be paid over to the plaintiff by appointing Court Commissioner. During the pendency of the Suit, plaintiff has also sought injunction restraining the defendants from creating third party interest.

4. It is the case of the plaintiff that during the pendency of the Suit, Deputy Collector (Land Acquisition) No.26, Pune issued notice on 03.11.2015 under Section 32(2) of the Maharashtra Industrial Development Corporation Act, 1961 (for short 'Act'). Plaintiff, therefore, filed application exhibit-10 under Order I, Rule 10 read with Order VI, Rule 17 of C.P.C. for amending the plaint. Plaintiff also filed application exhibit-20 under Order VI, Rule 17 of C.P.C. for impleading

Deputy Collector (Land Acquisition) No.26 and Collector, Pune as party defendants. By common judgment and order dated 29.07.2016, the learned trial Judge partly allowed the application exhibit-10 and permitted correction of typographical error. The learned trial Judge rejected the application exhibit-20 for impleadment of Deputy Collector (Land Acquisition) No.26, Pune and Collector. Aggrieved by these orders, plaintiff has instituted the present Petition.

5. In support of these Petitions, Mr. Nikte strenuously contended that the learned trial Judge has ignored clause 8(C) of the development agreement dated 23.04.2007. Clause 8(C) provides that in the event of the suit property being acquired, the compensation shall be payable to the plaintiff and defendants will not raise any objection or cause obstruction in that regard. He submitted that at the time of filing of the Suit, no notice under the Act was issued. In other words, the intention of MIDC to acquire the suite land was not crystalized, and therefore, plaintiff did not implead Land Acquisition Officer as a defendant in the Suit. He submitted that plaintiff is a dominus litis and the judgment in ***Kasturi Vs. Iyyamperumal, (2005) 6 SCC 733*** is not applicable to the facts of the present case as in the present case plaintiff himself has filed application. In Kasturi's case (supra), application for impleadment was made by respondents No.1 and 4 to 11 and not by the appellant-plaintiff. He submitted that Special Land Acquisition Officer and Collector, Pune both are proper party for adjudication of the controversy raised between the parties. The learned trial Judge was, therefore, not justified in rejecting the applications.

6. I have considered the submissions advanced by Mr. Nikte. I have also perused the material on record. As noted earlier, plaintiff has instituted Suit for specific performance of oral agreement dated 12.12.2006 and registered development agreement dated 23.04.2007. By

prayer clause (b), plaintiff has prayed for payment of compensation in the event of the property being acquired by MIDC. A perusal of the notice dated 03.11.2015 issued by the Deputy Collector (Land Acquisition) No.26, Pune shows that notification dated 20.09.2003 was published in the Maharashtra Government Gazette on 02.10.2003 under Section 31 of the Act and provisions of Chapter VI dealing with acquisition and disposal of land were made applicable in respect of the area including the suit property. A perusal of the development agreement, and in particular clauses 2 and 8(C) shows that parties were aware that the properties are likely to be acquired and in that case, compensation will be payable to the plaintiff. Defendants have consented for adopting such course. Precisely for that reason, by prayer clause (b), plaintiff has sought payment of compensation in the event of suit property being acquired by MIDC. It is, however, material to note that plaintiff neither impleaded Deputy Collector (Land Acquisition) No.26 nor Collector, Pune. Mr. Nikte submitted that they were not impleaded earlier as notice under Section 32 of the Act was not issued. That notice was issued pending the Suit on 03.11.2015.

7. In the case of **Kasturi** (*supra*), Apex Court has observed that in a suit for specific performance of contract for sale the necessary parties are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In the present case, it is material to note that neither Deputy Collector (Land Acquisition) No.26, Pune nor Collector, Pune are party to the Development Agreement dated 23.04.2007. In view thereof, it cannot be said that the Deputy Collector (Land Acquisition) No.26, Pune and the Collector, Pune are either a necessary or a proper party. Even in the absence of these parties, by prayer clause (b), plaintiff has claimed compensation in the event of the property

being acquired. I do not find merit in the submission of Mr. Nikte that in **Kasturi's case** (*supra*), application was not made by the appellant / plaintiff but was made by third party viz. respondents No.1 and 4 to 11. As in the present case, plaintiff, being dominus litis, has made the application, the said decision is not applicable. The submission overlooks the ratio laid down in that decision. Equally, I do not find merit in the submission based on Section 32 and issue of notice pending the Suit on 03.11.2015 as basically plaintiff can get relief in terms of prayer clause (b) only upon acquisition of the suit property.

8. While rejecting the application, the learned trial Judge has observed in paragraph 7 that proposed defendants are not party to the agreement. In paragraph 10, the learned trial Judge further observed that even in the absence of the parties proposed to be impleaded as defendants, Suit can be effectively decided. It was further observed that even if acquisition proceeding is completed then also plaintiff has remedy of compensation as prayed in the Suit. Obviously, the learned trial Judge was referring to prayer clause (b) of the plaint. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed. It will be open to the plaintiff to file appropriate application for injunction restraining the defendants from collecting the amount of compensation so determined. Needless to observe that in the event of plaintiff's Suit decreeing in terms of prayer clause (b), it will be open to him to approach Special Land Acquisition Officer for receiving the compensation. Order accordingly.

(R. G. KETKAR, J.)