

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.547 OF 2017

JUDGMENT:

The present appeal, under Section 96 of the Code of Civil Procedure, 1908, is directed against the order dated 08.02.2017, in G.R. No.476 dated 25.01.2017, rejecting the plaint at General Register stage, by the learned Principal District Judge, Srikakulam.

2. The plaintiffs claiming to be nominated representatives of the villagers of Duggupuram, Hiramandalam Mandal, Srikakulam District, Andhra Pradesh, filed the plaint on 25.01.2017.

3. The relief sought for was to direct the defendants i.e., the Land Acquisition Officer - Special Deputy Collector, Vamsadhara Project, Phase - II Stage - II, Hiramandalam, Srikakulam District, and the State of Andhra Pradesh, represented by Collector, Srikakulam District, not to proceed with the project work till they were evicted under due process of law and to acquire the plaint schedule village i.e., Duggupuram, by initiating the proceedings under Land Acquisition Act, afresh.

4. The plaint schedule village is described as location of points 'X Y Z' in Vamsadhara Project Bunds of Phase-II and Stage-II, and the outlets opened in the Reservoir Bund at Point 'X' in a length of 750 meters, at Point 'Y', the outlet is in the shape of 'V' with a width of 100 meters at bottom and at the top with 500 meters, and at Point

‘Z’, the outlet is in the shape of ‘V’, the width of bottom being 100 meters and at the top being 500 meters. The plaintiffs termed it as a representative suit, but the provision of law shown in the plaint is under Order - VII Rule - 1 read with Section 26 of the Code of Civil Procedure, 1908 (for short ‘CPC’).

5. The case set out by the plaintiffs is to the effect that the Government of Andhra Pradesh has published a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short ‘Act 1894’) to acquire Duggupuram village as whole, and names of the individual owners of the houses were published in Gazette No.2 dated 05.02.2007. But, consequent upon said publication, the defendants did not take further action as contemplated under the Act, that no such enquiry was conducted and no award was passed even on the date of the present plaint, though, the law prescribes that the Collector, defendant No.2, is entitled to pass an award under Section 11 of the Act 1894. They claimed that none of the villagers did challenge the preliminary notification under Section 4(1) of the Act 1894. They stated that subsequent to the notification, the Government had undertaken works for improvements of roads and school buildings in the village for the benefit of inhabitants of the village and lot of schemes have been floated by the welfare State to improve the living conditions of the villagers and their standard of living.

6. According to the plaintiffs, the defendants had constructed a bund to the East of the village at a distance of 3 to 4 kilometers and

the height of the bund to the river is elevated from 70 feet to 80 feet and if the outlets at Points 'GPS XYZ' are closed, the flow of rainy water from 'Gottipally Gadda' in to Vamsadhara river will be stored in and around the plaint schedule village and the whole village would be submerged in the water inundating it, consequently costing their lives and their livelihood and the fundamental right to property will be jeopardized. They claim that the defendants threatened to take over the agricultural lands, dwelling houses, cattle sheds and vacant sites, and being afraid, they got issued a notice to the defendants under Section 80 of CCP, on 03.02.2016, calling upon them not to interfere and on receipt of the said notice, the defendants stopped from proceeding with the project work, as a result, the villagers felt a temporary relief.

7. They claimed that the Government is hastily trying to close the outlets at 'GPS XYZ' points arbitrarily without resorting to the procedure contemplated under the Land Acquisition Act. They are poor villagers and till date, no compensation or award was passed pursuant to the notification under Section 4(1) of the Act 1894, and, as such, the Government has no right to acquire the residential houses based on the notification under Section 4(1) of the Act 1894, in the year 2007 and, in case, the defendants are intending to acquire the suit schedule properties belonging to the plaintiffs, to publish a notification under Act 30 of 2013, and, therefore, they filed the suit for mandatory injunction seeking the relief not to proceed with the

project work and close the outlets opened in the bund of the reservoir at points 'GPS, XYZ' shown in the plaint schedule property until the suit schedule village is acquired under due process of law.

8. The learned District Judge, Srikakulam, having entertained a doubt as to jurisdiction of the Civil Court to decide a suit of the present nature, directed the office to list the matter on the Bench and that is how, it was heard at the stage of General Register number i.e., even before registering the case, a preliminary examination would be done as to maintainability or otherwise of the suit.

9. An opportunity was afforded to the learned counsel for the plaintiffs and having heard them, opined that the Civil Court has no jurisdiction to entertain the injunction suit filed by the plaintiffs and consequently rejected the leave sought for by the plaintiffs in an application under Order - I Rule - 8 of CPC.

10. Before advertent to the arguments advanced by the learned counsel on either side, the learned counsel for the appellants - plaintiffs and the learned Government Pleader for Appeals for the State, it would be appropriate to advert to the reasoning adopted by the learned District Judge.

11. The learned District Judge refers to the provisions of Section 63 of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short 'Act 2013'), and having extracted the same, referred to the arguments

advanced by the learned counsel. The submissions were to the effect that the land acquisition proceedings were issued in the year 2007, but, no compensation was paid to the villagers of Duggupuram of Hiramandalam Mandal till 2016, that as per Section 11-A, the Collector has to pass award within two years from the date of notification. As per Section 24(2) of the Act 2013, in case, land acquisition proceedings were initiated under the Act 1894, where an award under Section 11 has been made five years or more prior to commencement of Act 2013, but physical possession of the land has not been taken or the compensation was not paid, the said proceedings shall be deemed to have lapsed and appropriate Government, if it so chooses, shall initiate the proceedings under the relevant provisions of the Act 2013 and the learned counsel urged to number the suit. Then the learned District Judge, referring to the fact-situation already narrated in the above, observes that the suit was filed not to close the outlets of bund, but the plaintiffs seeking mandatory injunction to prohibit from closing the outlets of bund at 'GPS, XYZ' points and refers to the main prayer mentioning that the plaintiffs have been seeking mandatory injunction not to proceed with the project work till they are evicted under due process of law.

12. The learned District Judge perceived from the pleadings that the grievance of the plaintiffs was that no compensation was paid by the Government even after publication of notification in 2007 and they were seeking fresh notification in place of the notification under

the Act 1894 and, according to the plaintiff, on account of that reason, the dispute falls under the purview of the Act 2013.

13. The District Judge also refers to the relief as the one sought for mandatory injunction and, of course, extracting the explanation to Section 11-A of the Act 1894, by referring to the proviso thereof and the provisions of Section 63 of the Act, 2013 along with the provisos (1) and (2). Finally, the learned District Judge arrived at the conclusion that jurisdiction of the civil Court is barred under Section 63 of the Act 2013. Thus, holding that the Civil Court has no jurisdiction, rejected the application filed under Order - 1 Rule - 8 of the Code of Civil Procedure, 1908.

14. Heard Sri O. Manohar Reddy, learned counsel for the appellants - plaintiffs, and the learned Government Pleader for Appeals appearing for the State, and perused the material on record.

15. In the grounds of appeal, the appellants would agitate that the Court below ought to have seen that the suit is filed seeking a declaration and for mandatory injunction directing the respondents herein not to proceed with the project work till the appellants are evicted under due process of law and to acquire the plaint schedule village by initiating the proceedings under the relevant Act afresh is maintainable and that the appellants have not challenged any notification issued under the provisions of the Act 2013.

16. The appellants would also urge that the Court below erred in looking at the relief sought for in the proper perspective and thus, erred in making distinction with regard to mandatory injunction and perpetual injunction, lost sight of the fact that mandatory injunction is an injunction, which orders a party or require them to do an affirmative act and the relief claimed by the appellants is legal.

17. They also agitate that the Court below was not right in holding that the suit is not maintainable under Section 63 of the Act 2013 and the question of reference to the authority would arise only after the award is passed and that no award was passed in the present case, and, therefore, the question of reference to the authority does not arise, which the Court below has wrongly interpreted.

18. Yet another main submission has been that the Court below overlooked the fact that the suit filed by the plaintiffs is maintainable as the proceedings under the provisions of the Act 2013 are not impugned and, in fact, no proceedings were issued under the provisions of the Act 2013.

19. The learned Counsel, Sri O. Manohar Reddy, advanced arguments in the light of the grounds agitated, as such, there is no need to once again advert to the submission made by the learned counsel.

20. The learned Government Pleader for Appeals, on the other hand, would submit that the plaint laid was totally misconceived and with an oblique motive, the appellants tried to invoke the jurisdiction of the Civil Court. The learned Government Pleader would submit that in fact, consent awards were passed and the names of the plaintiffs are also occurring in the consent awards. Appendix form of requisition was filed and drawn attention of this Court to the names of the plaintiffs. The relevant details as to the nature of land, survey number, extent, amount computed and the date of award and even the award number with relevant details under the remarks column, wherever it requires. The name of appellant No.1 is occurring at Serial No.1 at page 22 of the material papers filed along with the vacate stay petition have been mentioned. An interim order was granted by this Court on 11.07.2017 in A.S.M.P. No.1337 of 2017. Likewise, the name of appellant No.2 is also occurring in the said annexure. The names of appellant Nos.3 and 4 were also occurring at page No.23 with all relevant details. The said annexures have been filed by the Special Deputy Collector, Land Acquisition, Unit - I, Vamsadhara Project, Srikakulam, Andhra Pradesh. Admittedly, no reply or response was filed refuting the entries and the relevant details projected in the consent awards filed at page Nos.22 and 23.

21. When examined, these entries clearly show the award numbers so far as the appellants are concerned, as such, certainly, it has to be held that they cannot invoke jurisdiction of the Civil Court

and there is bar by necessary implication as can be inferred from the provisions of Section 9 of CCP. The pleas put-forth by the appellants herein, as if, they are espousing the cause of the villagers of Duggupuram village, appears to be unconvincing.

22. The learned Government Pleader for Appeals also places reliance in **Commissioner, Bangalore Development Authority v. Brijesh Reddy**¹ for the proposition that the Land Acquisition Act is a complete Code in itself and is meant to serve public purpose and by necessary implication, power of Civil Court under Section 9 of CPC stands excluded and the Civil Court has no jurisdiction to go into the question of validity or legality of notification under Section 4 and the declaration under Section 6 of the Land Acquisition Act and the subsequent proceedings devoid of jurisdiction to give declaration or even bare injunction on invalidity of procedure contemplated under the Land Acquisition Act and the only right available to the aggrieved person is to approach the High Court under Article 226 of the Constitution of India and the Supreme Court under Article 136 of the Constitution with self-imposed restrictions on their exercise of extraordinary power. The principle laid down is contained in paragraph Nos.18 and 19, thus:

“18) It is clear that the Land Acquisition Act is a complete Code in itself and is meant to serve public purpose. By necessary implication, the power of civil court to take cognizance of the case under Section 9 of CPC stands

¹ (2013) 3 SCC 66

excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the High court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power.

19) No doubt, in the case on hand, the plaintiffs approached the civil court with a prayer only for permanent injunction restraining Defendants 1 and 2 i.e. BDA, their agents, servants and any one claiming through them from interfering with the peaceful possession and enjoyment of the schedule property. It is true that there is no challenge to the acquisition proceedings. However, in view of the assertion of the BDA, in their written statements, about the initiation of acquisition proceedings ending with the passing of award, handing over possession and subsequent action, etc., the said suit is not maintainable. This was rightly concluded by the trial Court. For proper compensation, the aggrieved parties are free to avail the statutory provisions and approach the court concerned. All these aspects have been clearly noted by the trial Court and ultimately it rightly dismissed the suit as not maintainable. On the other hand, the learned Single Judge of the High Court though adverted to the principles laid down by this Court with reference to acquisition of land under the Land Acquisition Act and Section 9 CPC committed an error in remanding the matter to the trial Court on the ground that the plaintiffs were not given opportunity to adduce evidence to show that their vendor was in possession which entitles them for grant of permanent injunction from evicting them from the scheduled property without due process of law by the defendants. In the light of

the specific assertion coupled with materials in the written statement about the acquisition of land long ago and subsequent events, suit of any nature including bare injunction is not maintainable, hence, we are of the view that the High Court is not right in remitting the matter to the trial Court for fresh disposal.”

23. When looked at the fact-situation occurring in the instant case, as already observed in the above, so far as appellant No.1 is concerned, award was passed in 2007. The award numbers were also clearly indicated under the relevant vertical column mentioned therein. In such an event, as regards appellant No.1, a total sum of Rs.2,69,573/-, which is structural value was kept in deposit. So far as other three appellants are concerned, it appears, they have withdrawn the amounts.

24. The question is whether this Court can look into these aspects. Certainly, there cannot be any embargo to look into it for the reason that the very application is unsustainable as the Civil Court lacks jurisdiction to entertain the suit, where pursuant to the notification under Section 4(1) of Act 1894, the declaration under Section 6 of the said Act was already issued and awards were even passed.

25. Thus, the law laid down by the Hon'ble Supreme Court in **Brijesh Reddy**¹ would squarely apply to the fact-situation herein. Hence, there is no need to refer to the relevant provisions of the Act 1894 and the Act 2013.

26. The submission of the learned counsel that the learned District Judge ought to have examined the application filed under Order - I Rule - 8 of CPC, but instead of doing so, the learned District Judge went further and examined the merits touching the civil Court's jurisdiction and passed the order under challenge, is not convincing for the reason that the bar of jurisdiction of a civil Court is to be necessarily examined at the threshold, and, therefore, the learned District Judge has not committed any error in holding that the civil Court has no jurisdiction and consequently rejecting the application filed under Order - I Rule - 8 of CPC.

27. Therefore, the Appeal Suit is dismissed confirming the order under challenge, and vacating the interim injunction granted by this Court by the order dated 26.07.2017 in A.S.M.P. No.1337 of 2017.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand closed.

A. SHANKAR NARAYANA, J

October 11, 2017.

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