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

CIVIL REVISION APPLICATION NO.154 OF 2017

Hari Shiva Patil	]	
age 70 years, Occn. Agriculturist	]	<u>Petitioner</u>
residing at Dharangrasta Vasahat	]	Original
Abdullat Taluka Shirol,	]	Defendant No.7
District: Kolhapur	]	

V/s.

- | | | |
|--|---|--------------------|
| 1. Sadashiv Krishnaji Kulkarni |] | |
| Age 58 years, residing at Takawade |] | <u>Respondents</u> |
| Taluka: Shirol, District: Kolhapur |] | Respondent |
| |] | Nos. 1 & 2 |
| 2. Shri. Rahul Vilas Jankar |] | Original |
| Residing at Laxmi Industrial Estate |] | plaintiffs. |
| Hatkanangale, Tal. Hatkanangale |] | |
| District: Kolhapur |] | |
| |] | |
| 3. The State of Maharashtra |] | |
| Through Collector, Collector Office |] | |
| Kolhapur |] | |
| |] | |
| 4. The Collector and Deputy Collector |] | |
| Rehabilitation, Collector Office, Kolhapur |] | |
| |] | Respondent |
| 5. Special Land Acquisition Officer No.15 |] | Nos. 3 to 9 |
| Kolhapur, Collector Office, Kolhapur |] | Original |
| |] | Defendants. |
| 6. The Tahasildar, Shirol Tahasil Office |] | |
| Shirol, District: Kolhapur |] | |
| |] | |
| 7. Circle Officer, Shirdhon, Tal. Shirol |] | |
| District: Kolhapur |] | |
| |] | |
| 8. Rahul Rajaram Kulkarni |] | |
| residing at Takwade, Tal. Shirol |] | |

District: Kolhapur	]
	]
9. Vinayak Rajaram Kulkarni	]
residing at Takawade, Tal.Shirol	]
District: Kolhapur	]

Mr. Pradeep D. Dalvi, for the Petitioner.
Mr. Shriniwas Sudhir Patwardhan, for the
Respondent Nos. 1 & 2.
Mr. Yogesh Dabake, AGP for respondent
State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

CLOSED FOR ORDER ON 21st FEBRUARY, 2018.

JUDGMENT PRONOUNCED ON : 26th FEBRUARY 2018.

JUDGMENT

1] Heard learned counsel for the petitioner, learned counsel
for respondent Nos. 1 & 2 and learned AGP for the State.

2] Rule.

3] Rule is made returnable forthwith with the consent of
learned counsel for both parties and the petition is taken up for final
hearing.

4] This Revision Application is filed under Section 115 of

Code of Civil Procedure, challenging the legality, validity and propriety of the order dated 14.02.2017, passed by Civil Judge Senior Division, Jaysingpur, District: Kolhapur, in R.C.S.No.242 of 2016 thereby overruling the objection raised by the present petitioner, to the jurisdiction of the Civil Court to entertain the suit.

5] The petitioner in the present petition is original defendant No.7. Respondent Nos. 1 & 2 had filed the present suit before the trial Court, for the relief of declaration that the land acquisition map prepared by defendant No.2 Collector, Kolhapur, is void ab-initio and not binding upon the ownership rights of the plaintiffs over the suit property bearing Gat No.311 admeasuring 49 R, out of total area of 2 Hectors situate at village Takawade, Taluka: Shirol. Alongwith the relief of declaration, plaintiffs had also claimed the relief of injunction restraining the defendants, including the present petitioner, from causing obstruction to their possession in the suit land and further from taking possession on the basis of Land Acquisition map prepared by defendant No.2 Collector.

6] In this suit, on his appearance, present petitioner filed application at Exh.7 contending inter alia that by the present suit, plaintiffs are challenging the land acquisition proceeding which were

initiated for rehabilitation of Project Affected Persons. In view of Section 24 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, the Civil Court has no jurisdiction to try and entertain the suit. It was further submitted that in respect of said land, initial notification regarding acquisition of land was published on 5.8.1982. Thereafter final award was passed on 10.7.1986. Compensation was paid to the land owners. In such situation, plaintiffs cannot challenge, the map prepared in land acquisition proceeding, by way of present suit. The Land Acquisition Act, 1894 being a complete code in itself, the jurisdiction of the Civil Court is expressly barred. Hence, the trial Court should frame preliminary issue under Section 9 of Code of Civil Procedure, as to whether Civil Court has jurisdiction to try and entertain the suit.

7] Accordingly, trial Court vide its order dated 21.12.2016 framed the preliminary issue. On this issue, the petitioner has not led any evidence. However, plaintiff Nos. 1 and 2 have filed their affidavits in evidence

8] After discussing the provisions and the case laws relating to the Land Acquisition Act 1894, the trial Court was pleased to hold that so far as the relief of declaration that the land acquisition map is

void ab-initio, illegal and not binding on the plaintiffs, is concerned, the Civil Court has no jurisdiction to entertain the suit and the plaintiffs will have to approach before concerned authority for redressal of their grievances. However, as regards relief of injunction, it was held by the trial Court that as the dispute raised by the plaintiffs that they are in possession of the suit property since beginning and entitled to protect their possession; however, as on the basis of wrong four boundaries mentioned in the acquisition map, their possession is sought to be disturbed, the Civil Court alone has jurisdiction to determine the issue of possession and therefore, it was held that the jurisdiction of the Civil Court is not excluded.

9] This order of the trial Court is challenged in this Revision Application, by learned counsel for the petitioner by submitting that the relief of injunction is claimed by the plaintiffs is a consequential relief. The main relief claimed by the plaintiffs pertains to the declaration that the map drawn by the Land Acquisition Officer is not correct and therefore, it is not binding on the plaintiffs. It is urged that this dispute cannot be raised before Civil Court nor can the Civil Court entertain such dispute. As the Land Acquisition Act 1894, is a complete Code in itself, jurisdiction of the Civil Court is expressly barred. It is urged that the plaintiffs have made camouflage by

contending that boundaries shown in the acquisition map are not correct and therefore, seeking to protect their possession, but then in order to decide whether the boundaries mentioned in the Land Acquisition Proceeding are correct or not, the Court has to consider the correctness of acquisition proceeding themselves and it cannot be done by the Civil Court, the appropriate remedy, is available under Article 226 of the Constitution of India. Instead of availing that remedy as the plaintiffs are approaching the Civil Court, the trial Court has committed an error in holding that it has jurisdiction to entertain the suit.

10] Per contra, learned counsel for respondent Nos. 1 & 2-plaintiffs have supported the impugned order of the trial Court by submitting that the plaintiffs are not challenging the land acquisition proceeding, but only contending that their possession needs to be protected as there is apprehension of disturbance to their possession on account of wrong boundaries of the land mentioned in the acquisition map. Hence, according to learned counsel for the respondents, the trial Court has rightly made distinction between the two prayers and held that as regards declaration that acquisition map is not legal, valid and proper, it has no jurisdiction. However, as regards relief of injunction and relief of possession, Civil Court alone

has jurisdiction to entertain the suit. According to learned counsel for respondent Nos. 1 & 2, the impugned order passed by the trial Court, therefore, being just, legal and correct, no interference is warranted therein.

11] In my considered opinion, however, even a cursory glance to the prayers made by the respondents in the suit is more than sufficient to show that the jurisdiction of the Civil Court to entertain such suit is apparently and expressly barred. The first prayer made by plaintiffs is that, the land acquisition map drawn by defendant No.2 the Collector, of the suit property is void ab-initio and illegal and it is not binding on them. The second prayer made is that on the basis of such map drawn in the land acquisition proceeding, the possession of the suit property should not be taken and their possession should not be disturbed. Reading of both these prayers makes it very clear that respondent Nos. 1 & 2/plaintiffs are thereby challenging the acquisition proceeding. The very fact that they are challenging the map drawn by defendant No.2 Collector, in the land acquisition proceeding makes it clear that the Civil Court cannot entertain such suit.

12] The legal position in this respect is fairly well settled as

enunciated by the Hon'ble Apex Court, in its various decisions including that of,

- i) State of Bihar -vs- Dhirendra Kumar and others [(1995) 4 SCC 229],
- ii) Laxmi Chand and ors -vs- Gram Panchayat Kararia and others, [AIR 1996 SC 523],
- iii) S. P. Subramanya Shetty and others -vs- Karnataka State Road Transport Corporation and ors, [AIR 1997 SC 2076],
- iv) Commissioner, Bangalore Development Authority -vs- K.S.Narayan [(2006) 8 SCC 336]
- v) Commissioner, Bangalore Development Authority and anr -vs- Brujesh Reddy and anr [(2013) 3 SCC 66]; relied upon by learned counsel for petitioner.

13] In the last decision in case of of Commissioner, Bangalore Development Authority, the question raised by the Apex Court for its consideration was “Whether the Civil Court has jurisdiction to entertain the suit, when schedule land was acquired in the land acquisition proceeding?” While answering this question, after taking review of its earlier decisions referred above, it was categorically held in paragraph No.18 of its judgment as follows :-

“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 the civil court to take cognizance of the case under Section 9 CPC stands 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”.

14] In paragraph No.19 of the judgment, it was further held that :-

“29. 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 anyone 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 BDA, in their written statements, about the initiation of

acquisition proceeding 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 defendant. In the light of the specific assertion coupled with materials in the written statements about the acquisition of land long ago and subsequent events, suit for 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.”

15] Thus, this judgment clearly puts an express bar to the

jurisdiction of the Civil Court to enter into any question of legality or validity of any steps or measures taken under the provisions of the Land Acquisition Act. For that case, even the suit for permanent injunction, claimed on the basis of certain declarations challenging such measures taken under the said Act, was also held to be not maintainable.

16] Here in the case, admittedly the plaintiffs are challenging the map drawn by defendant No.2- the Collector under the land acquisition proceeding, as illegal null and void and further restraining the petitioner and other defendants from taking possession on the basis of the said order. Therefore, apparently the suit being to challenge the measures taken in land acquisition proceedings, under the provisions of Land Acquisition Act, the suit is expressly barred.

17] As a matter of fact, the trial Court has also rightly held that these reliefs, which plaintiffs are claiming about declaration of the map drawn by Land Acquisition Officer as illegal, cannot be granted by the Civil Court. However, the trial Court has held that the Civil Court has jurisdiction to determine the question of possession of the parties. In my considered opinion, having regard to the fact that relief of injunction and relief of possession is claimed on the basis that

map drawn by the Collector in land acquisition proceeding is illegal, null and void, such relief of injunction also cannot be granted. Plaintiffs have tried to camouflage the reliefs which they are claiming in the suit, stating that they are entitled to protect their possession, and on the basis of wrong four boundaries in the acquisition map, their possession is sought to be disturbed at the behest of the defendants. However, the real relief, which is claimed by them is the relief of declaration that the said map itself is illegal, null and void and parties should not act on the basis of the said map. If it is so, then needless to state that the plaintiffs cannot confer the jurisdiction on the Civil Court, by disguising the real relief and challenge the proceeding taken under the other statute, enacted for the special purpose. Particularly in the present case, it must be noted that the plaintiffs or their predecessors had already raised this contention in the acquisition proceeding itself and after taking into consideration their grievances, the award was passed.

18] In such situation, plaintiffs cannot now invoke the jurisdiction of the Civil Court on the pretext that they are only challenging the four boundaries of the land shown in the map and not claiming actual possession. The plaintiffs have clearly succeeded in misleading the trial Court on this aspect. The impugned order,

therefore, passed by the trial Court cannot be sustained in law. Hence this Revision Application is allowed.

19] The impugned order passed by the trial Court is set aside. It is held that the Civil Court has no jurisdiction to entertain the suit and hence suit stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]