

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.533 OF 2017

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| 1. Tukaram Dhondi Sutar (Since Deceased), |] |
| Through Legal Heirs :- |] |
| 1A) Sakharam Tukaram Sutar, |] |
| Age : 50 years, Occ. Agriculturist |] |
| 1B) Shantaram Tukaram Sutar, |] |
| Age : 48 years, Occ. Agriculturist |] |
| Both residents of Vasahat No.9, |] |
| Dhamod, Tal. Radhanagar, Dist. Kolhapur. |] |
| 1C) Shalubai Pandurang Surar, |] |
| Age : 46 years, |] |
| Occ. Agriculturist and Housework, |] |
| R/o. Buranbale Devulwadi, |] |
| Tal. Radhanagar, Dist. Kolhapur. |] |
| 1D) Malubai Aananda Sutar, |] |
| Age : Adult, Occ. Agriculturist, |] |
| R/o. Dhamod Vasahat, |] |
| Tal. Radhanagar, Dist. Kolhapur. |] |
| 1E) Bharati Ashok Sutar, |] |
| Age : Adult, Occ. Agriculturist, |] |
| R/o. Khindivharvade, |] |
| Tal. Radhanagar, Dist. Kolhapur. |] Applicants |

Versus

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|------------------------------------|---|
| 1. Nana Bhau Tibile, |] |
| Age : 70 years, Occ. Agriculturist |] |
| 2. Sanjay Nana Tibile, |] |
| Age : 42 years, Occ. Agriculturist |] |
| 3. Dattatray Nana Tibile, |] |

Age : 34 years, Occ. Agriculturist	]
All residents of Vasahat No.9, Dhamod,	]
Tal. Radhanagar, Dist. Kolhapur.	]
4. State of Maharashtra,	]
Through Collector, Kolhapur.	]
5. Additional Collector, Kolhapur.	]
6. Tahsildar, Radhanagari,	]
Taluka Radhanagari, Dist. Kolhapur.	]
7. Mandal Officer, Rashiwade Budruk,	]
Tal. Radhanagar, Dist. Kolhapur.	] Respondents

Mr. Sandeep S. Koregave for the Applicants.

Mr. Tanaji Mhatugade, a/w. Mr. Ranjit Shinde, for Respondent Nos.1 to 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
RESERVED ON : 24TH JANUARY 2018.
PRONOUNCED ON : 21ST FEBRUARY 2018.

JUDGMENT :

1. By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure, 1908, the Applicants are challenging the legality, validity and propriety of the order dated 17th August 2017 passed by the 6th Joint Civil Judge, Senior Division, Kolhapur, in Regular Civil Suit No.791 of 2016, thereby holding that the Civil Court has jurisdiction to entertain and decide the said Suit.

2. The Applicants herein are the Original Defendants. Respondent

Nos.1 to 3 have filed this Suit before the Trial Court contending, *inter alia*, that their lands were acquired for the purpose of “Tulsi Project” in the year 1975. Therefore, they became the “project affected persons” and hence, as per the order dated 4th November 2011, the Collector has handed over them the possession of the land admeasuring 40 R, out of New Gat No.829, admeasuring 71 R, situate at Village Dhamod, Taluka Radhanagari, District Kolhapur. Accordingly, Respondent No.1 has paid purchase price of the said land by Challan dated 4th November 2011 and has, thus, become the owner of the suit land. His name was also mutated in 'Record of Rights' by Mutation Entry No.2813 dated 3rd March 2011. However, subsequent thereto, the Project Authority, namely, the Collector, Kolhapur, has deleted the name of Respondent No.1 to the extent of the land admeasuring 20 R and allotted the said land to the Applicants. Being aggrieved thereby, Respondent Nos.1 to 3 approached the Trial Court for a declaration that, this order of the Collector dated 14th July 2016 is totally null, *void ab-initio* and without jurisdiction. As a consequential relief, Respondent Nos.1 to 3 have also claimed injunction, restraining the Applicants herein from causing obstruction to their possession in the suit land and also for deleting name of Respondent No.1 from the 'Record of Rights'.

3. The Applicants herein have appeared in the Trial Court and resisted the said Suit by filing written statement at 'Exhibit-48',

contending, *inter alia*, that, the Civil Court has no jurisdiction to decide the Suit, as it is barred in view of Section 24 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, (*for short*, “*Rehabilitation Act*”).

4. Along with the written statement, the Applicants also preferred an application at “Exhibit-35” for framing preliminary issue as to the jurisdiction of the Trial Court, under Section 9A of the CPC.

5. Accordingly, the Trial Court framed such preliminary issue and allowed the parties to lead their evidence on this preliminary issue. The Applicants did not adduce any oral evidence; however, Respondent No.1 examined himself and also led the evidence of one witness by name Shivaji to prove his possession over the suit land.

6. On the basis of this oral and other documentary evidence and in the light of the submissions advanced by learned counsel for both the parties before it, the Trial Court was pleased to hold that, Civil Court has jurisdiction to decide the dispute. Being aggrieved thereby, this Revision Application is preferred.

7. In this Revision Application, I have heard Mr. Koregave, learned counsel for the Applicants, and Mr. Mhatugade, learned counsel for the

Respondents. Both of them have relied upon the landmark decision of the Apex Court in the case of *Dhulabhai Vs. State of Madhya Pradesh, 1968 DGLS (SC) 95*.

8. According to learned counsel for the Applicants, in view of the aforesaid decision of the Apex Court in the case of *Dhulabhai (Supra)* and also the provisions of Section 24 of the *Rehabilitation Act*, the jurisdiction of the Civil Court is expressly barred and hence, the Trial Court has committed an error in holding that, it has jurisdiction. The impugned order, therefore, passed by the Trial Court is required to be quashed and set aside.

9. Per contra, learned counsel for the Respondents, by relying upon the same Judgment, has submitted that, the jurisdiction of the Civil Court cannot be excluded, when the provisions of the particular Act had not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. It is submitted that, the Statutory Authority in this case, viz. the Collector, has no authority to cancel the grant or assignment of the land. In this case, as the Collector has cancelled the grant of land assigned to Respondent Nos.1 to 3, the said order of the Collector being without jurisdiction, the Civil Court has jurisdiction to entertain the present Suit.

10. In the light of the rival submissions advanced by learned counsel for both the parties, it is necessary to revert to the facts of the Suit filed by Respondent Nos.1 to 3 before the Trial Court.

11. According to Respondent Nos.1 to 3, they being the project affected persons, the suit land was granted or assigned to them by the Collector, under the provisions of the *Rehabilitation Act*. Accordingly, Respondent No.1 has also paid the purchase price and was put in possession thereof. Now, out of the said land, the Collector has granted the land admeasuring 20 R to the Applicants, thereby cancelling the allotment of the land to the extent of 20R in the name of Respondent No.1 and thus, Respondent Nos.1 to 3 have claimed that this order passed by the Collector, Kolhapur, on 14th July 2016, assigning the land admeasuring 20 R, out of the suit land, to the Applicants is void *ab-initio*, illegal and without jurisdiction. Respondent Nos.1 to 3 have claimed a declaration to that effect, which is their first prayer in the plaint. The second relief, which they have claimed, is a consequential relief of injunction, restraining the Applicants from causing obstruction to their possession in the suit land and also from deleting name of Respondent No.1 from the 'Record of Rights' of the suit land.

12. Thus, by this Suit, Respondent Nos.1 to 3 are challenging the order dated 14th July 2016 passed by the Collector, Kolhapur, by which the

grant of the land allotted to Respondent No.1 is cancelled by the Collector and which order was passed by the Collector under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999.

13. Section 16 of the *Rehabilitation Act* pertains to '*grant and assignment of the land to the project affected persons*' and it also lays down the procedure to be followed by the Collector for grant and/or assignment of the land.

14. Section 22 of the *Rehabilitation Act* lays down as to the '*officers of Government and Local Authorities, who are to assist the Commissioner or the Collector in discharge of their duties for the purpose of carrying out the provisions of the Act*'.

15. Section 24 of the of the *Rehabilitation Act* lays down the '*express bar to the jurisdiction of the Civil Court*'. It reads as follows :-

"24. Bar of Jurisdiction :-

No Civil Court shall have jurisdiction to settle, decide or deal with any question, which is, by or under this Act, required to be settled, decided or dealt with by the Project Authority, Collector, Commissioner, or, the State Government."

16. Thus, Section 24 of the *Rehabilitation Act* clearly ousts the jurisdiction of the Civil Court to settle the dispute or deal with any question, which is, by or under this Act, required to be settled, decided or dealt with by the Project Authority, Collector, Commissioner, or, the State Government.

17. In this Suit, the Respondents-Plaintiffs are calling upon the Court to decide the question, '*whether the act of the Collector of cancelling the assignment of 20R of the suit land in favour of Respondent Nos.1 to 3 is legal and valid ?*' As this question is to be decided, settled or dealt with by the Project Authority under the *Rehabilitation Act*, Section 24 of this Act acts as an express bar for the Civil Courts to entertain such question.

18. The issue raised for consideration in the present case is, '*whether in view of this express bar, can Civil Court entertain the dispute raised by the Respondents-Plaintiffs?*' According to learned counsel for Respondent Nos.1 to 3, the Civil Court can do so, as the jurisdiction of the Civil Court to determine all disputes of civil nature is very wide and exclusion of the jurisdiction of the Civil Court is not to be readily inferred. It is true that, there cannot be any two opinions about this legal proposition and it is also well settled that, a provision seeking to bar jurisdiction of Civil Court requires strict interpretation. It also needs no

reiteration that, the Court, normally, lean in favour of construction, which would uphold retention of jurisdiction of the Civil Court. The burden of proof in this behalf, therefore, naturally, lies on the party, who asserts that Civil Court's jurisdiction is ousted.

19. The Hon'ble Supreme Court has, in its landmark decision in the case of *Dhulabhai Vs. State of Madhya Pradesh, 1968 DGLS (SC) 95 (Supra)*, laid down certain principles for determining the jurisdiction of the Civil Courts in paragraph No.32 of its Judgment, as follows :-

“32. NEITHER of the two cases of Firm of Illuri Subayya (1) or Kamla Mills(2) can be said to run counter to the series of cases earlier notices. The result of this inquiry into the diverse views expressed in this court may be stated as follows :

(1) Where the statute gives a finality to the orders of the special tribunals, the Civil Courts jurisdiction must be held to be excluded, if there is adequate remedy to do what the Civil Courts would normally do in a Suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the

sufficiency of the remedies provided may be relevant, but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not. [Emphasis Supplied]

- (3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.
- (4) When a provision is already declared unconstitutional, or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund, if the claim is clearly within the time prescribed by the Limitation Act, but it is not a compulsory remedy to replace a suit.
- (5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

- (6) *Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.*
- (7) *An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”*

20. Thus, as per Clause (1) of these observations, where the statute gives a finality to the orders of the Special Tribunals, the Civil Court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the Civil Courts would normally do in a Suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. In this case, the Trial Court has relied upon this particular clause to hold that, under the *Rehabilitation Act*, the Collector is not at all conferred with the power of cancelling the grant or assignment of the land, once it is made, and by the impugned order, Collector has cancelled such assignment of land in favour of Respondent Nos.1 to 3. Moreover, such cancellation was made without issuing notice to Respondent Nos.1 to 3 and, therefore, it was held that, in this narrow compass, as the provisions of the particular Act have not been complied with and the

Collector has not acted in conformity with the fundamental principles of the judicial procedure, the Civil Court has jurisdiction to entertain the Suit.

21. However, in my considered opinion, the Trial Court has committed an error in applying Clause (1) in paragraph No.32 of the above-said Judgment of *Dhulabhai (Supra)*. This clause deals with the statute, which gives finality to the orders of the Special Tribunals, but does not contain a clause expressly excluding the jurisdiction of the Civil Court.

22. As against it, Clause (2) in paragraph No.32 of *Dhulabhai's Judgment* deals with the cases where there is an express bar to the jurisdiction of the Civil Court. As in the present case, the Maharashtra Project Affected Persons Rehabilitation Act, 1999, lays down express bar to the jurisdiction of the Civil Court, the present case falls under Clause (2) in paragraph No.32 of *Dhulabhai's Judgment*. As per this clause, when there is an express bar of the jurisdiction of the Court, then, there is no scope to consider whether the provisions of the particular Act have not been complied with or Statutory Tribunal has not acted in conformity with the fundamental principles of the judicial procedure. As laid down in Clause (2) of paragraph No.32 of *Dhulabhai's Judgment*, when there is an express bar to the jurisdiction of the Civil Court, then, the Court has to, on examination of the scheme of the

particular Act, find out the adequacy or the sufficiency of the remedies provided, which is relevant but is not decisive to sustain the jurisdiction of the Civil Court. As laid down in this Clause (2), in the present case, the Court has to see whether the *Rehabilitation Act* creates a special right or a liability and provides for determination of that right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted and whether the remedies normally associated with actions in Civil Courts are prescribed by the said Act or not. In view thereof, it is necessary to see the scheme of the *Rehabilitation Act* and whether it provides the adequate remedies under the Act to the aggrieved person.

23. The object and reasons of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, makes it clear that, it is a beneficial legislation, enacted to create special rights for project affected persons.

24. Section 2(2)(a) of the *Rehabilitation Act* defines “Project Affected Person”; means, *'an occupant, whose land in the affected zone is acquired under Section 14 of the Act for the purposes of a project'*.

25. Section 1(4) of the Act makes it clear that, *'this Act shall apply to all irrigation projects, of which the area of the affected zone exceeds 50 hectares, or, the areas of the benefited zone exceeds 200 hectares, or, a*

gaothan is affected'. The Act also extends to all projects, other than the irrigation projects mentioned above; such as Industry, including industrial estate, atomic energy, university, oil and natural gas, energy, chemical, roads, national park, sanctuary, mines etc. However, the entire responsibility to execute those projects and rehabilitate the project affected persons shall rest with the concerned Department of the Government of Maharashtra by entering into an Agreement with the concerned Project Authority or Body.'

26. Thus, the object of the Act is to rehabilitate the project affected persons by granting or assigning them the suitable lands. In order to expedite this process of rehabilitation of the project affected persons, the special machinery is created, as laid down in the Act.

27. Chapter II of the Act provides that, *'the Chief Controlling Authority in all matters connected with the rehabilitation of affected persons in a Revenue Division, shall, subject to the superintendence, direction and control of the State Government, vest in the Commissioner appointed under Section 6 of the Code'*.

28. Section 4 of the Act lays down *'the duties and functions of the Chief Controlling Authority'*; whereas, Section 5 of the Act deals with *'the duties and functions of the Collector'*, which lays down as follows :-

“5. Duties and Functions of Collector :-

It shall be the duty of the Collector -

- (a) to co-ordinate and supervise the work of rehabilitation of affected persons in his District;*
- (b) to ensure speedy rehabilitation of affected persons, within the framework of the policy of the State Government relating to the rehabilitation of affected persons by requiring the project authorities and subordinate officers posted to work on the project to attend to the work of rehabilitation, as may be assigned to them, from time to time;*
- (c) to issue a certificate to a person, who is nominated by the project affected person for being employed against the quota reserved for the nominees of the affected persons;*
- (d) to perform such other functions, as the State Government or the Commissioner may, from the time to time, by an order in writing, entrust to him.”*

29. The Act also defines the term “Project Authority” in Section 2(11) of the Act, which means, *'an officer, in whom the overall control and superintendence of the execution of the project vests and includes an officer, whom the State Government may, by general or special order, designate to be a Project Authority'.*

30. Section 6 of the Act deals with the *'duties and functions of the Project Authority'* and a specific duty assigned to the Project Authority

is, *'to take measures for the speedy rehabilitation of the affected persons under the overall supervision and guidance of the Collector'*.

31. Section 7 of the Act deals with *'delegation of powers to subordinate officers'* and it provides that, *'the Commissioner or the Collector may, by order in writing, delegate such of the powers conferred and duties imposed on him by and under this Act to such officer, not below the rank of Tahsildar, or, to such officers of the State Government or the Local Authority as, with the approval of the Commissioner, may be specified in the order'*.

32. Section 8 of the Act provides that, *'for the purpose of this Act, the Collector, the Project Authority and all other Officers and Servants appointed under this Act, shall be subordinate to the Commissioner'*.

33. Chapter III of the Act deals with *'rehabilitation of affected persons'* and Section 16 thereof deals with *'grant and assignment of land to the affected person, after its acquisition by the Collector or the Commissioner under Section 14 of the Act'*.

34. Thus, if the entire scheme of the *Rehabilitation Act* is perused, it is clear that this Act creates special rights for the project affected persons. Adequate and sufficient remedies are provided under the Act itself by

laying down subordination of officers and servants in Section 8 of the Act, which makes it clear that, for the purposes of this Act, the Collector, the Project Authority and all other officers and servants appointed under the Act shall be subordinate to the Commissioner. As per Section 3 of the Act, as stated above, the Chief Controlling Authority in all these matters connected with the rehabilitation of affected persons in a Revenue Division vests in the Commissioner, but it is also subject to the superintendence, direction and control of the State Government. Thus, hierarchy is laid down for the aggrieved person to approach the various authorities. If any person is aggrieved by the order of the Project Authority or the Collector, he is having remedy to approach the higher authority like the Commissioner and thereafter the State Government also. Thus, the remedies provided under the Act are adequate and cannot be called as inadequate or insufficient for the aggrieved party to take recourse to the Civil Court or for the Civil Court to invoke its jurisdiction.

35. Hence, in the present case, if one considers the express bar to the jurisdiction of the Civil Court, as laid down in Section 24 of the Act, and the entire scheme of the Act creating special rights and remedies also for the aggrieved party to redress their grievances, then, the present case squarely falls under Clause (2) in paragraph No.32 of the judgment in the case of *Dhulabhai (Supra)*, making it necessary to exclude the jurisdiction of the Civil Court to entertain such Suit.

36. It is pertinent to note that, in the present case, Respondent Nos.1 to 3 have also invoked the remedy provided under the Act against the order passed by the Collector. Respondent Nos.1 to 3 have already approached the Commissioner (Rehabilitation), Pune Division. The copy of that order dated 16th September 2017 is also produced on record. It shows that the Respondents have preferred this Appeal raising the same grievances, which they have raised in this Suit also, and the said Appeal is dismissed. Therefore, it goes to show that Respondent Nos.1 to 3 have availed the remedy provided under the Act and hence, it cannot be said that they are remedy-less, for the Civil Court to invoke its jurisdiction.

37. Having regard to the express bar created to the jurisdiction of the Civil Court, in my considered opinion, the Trial Court has committed an error in holding that, it has jurisdiction to entertain the Suit. If such Suits are entertained by the Civil Courts, it would frustrate the very object of having such special legislation with special authorities created thereunder to settle the disputes and deal with all the questions related to it in expeditious manner. In my considered opinion, therefore, the impugned order passed by the Trial Court cannot be sustained in law.

38. Hence, the Revision Application is allowed. The impugned order passed by the Trial Court is quashed and set aside.

39. As a result, it is held that, the Civil Court has no jurisdiction to entertain the Suit filed by Respondent Nos.1 to 3. Hence, the Suit, being Regular Civil Suit No.791 of 2016, stands dismissed for want of jurisdiction in the Civil Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.]