

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

44 WRIT PETITION NO.8268 OF 2018

MAROTI LIMBAJI GAIKWAD AND OTHERS
VERSUS
INDRABAI SAHEBRAO BEWLE AND ANOTHER

...
Advocate for Petitioners : Mr. B. R. Kedar
Advocate for Respondents : Mr. M. L. Muthal

CORAM : M. S. Karnik, J.

DATE : 5th August, 2019

PER COURT

Heard learned counsel for the petitioners and the respondents.

2. It is the case of learned counsel for the petitioners/original defendants that the first Trial Court was justified in rejecting application (Exh-5) made by the plaintiffs/respondents for grant of injunction. It is their case that the plaintiffs/respondents had sold the entire land to the petitioners, and that the plaintiffs/respondents are not in possession of any land which was sold by them to the petitioners/ original defendants. Learned counsel for the petitioners submits that the Appellate Court committed an error in discarding the affidavits filed by the adjoining land owners to support the

petitioners /original defendants' case that the petitioners /defendants were in possession of the suit property. Learned counsel for the petitioners/defendants submits that some portion of the plaintiffs' land was acquired by the Government. The plaintiffs/respondents claim that the Government did not take possession of the said portion of land which was acquired. The plaintiffs are contending that they are in possession of lands which the Government sought to acquire but failed to take possession. According to plaintiffs the acquisitions have lapsed. It is the submission of learned counsel for petitioners that taking advantage of this, the plaintiffs are trying to encroach upon the land of the defendants/petitioners, which was already sold by them by registered sale deed and which is in their possession since then. It is clarified that the lands which were subject matter of acquisition are different from the lands covered by the sale deed.

3. Learned counsel for the respondents/original plaintiffs would submit that the plaintiffs are seeking injunction only in

respect of that portion of the land which was sought to be acquired by the Government as according to learned counsel for the respondents, the acquisition proceedings have lapsed. According to learned counsel for the respondents, said land which the Government had sought to acquire was never sold by the plaintiffs to the defendants and as even the defendants accept this position.

4. I have gone through the order passed by the Appellate Court. The Appellate Court after taking into consideration the documentary evidence on record in the form of 7/12 extracts and the sale deeds which the defendants relied upon, came to the conclusion that the plaintiffs/respondents are entitled to injunction in respect of the suit property during pendency of the suit. The Appellate Court did not rely upon the affidavits tendered on behalf of the adjoining land owners supporting the case of the petitioners, as according to the learned Appellate Court, this would be the subject of cross-examination and as even plaintiffs relied on affidavits of adjoining land owners

though at the appellate stage. However, based on the mutation entries and the sale deeds and the fact that the plaintiffs/respondents claim to be in possession of the land, which was sought to be acquired by the Government, the First Appellate Court granted an injunction only in respect of that portion of land which was subject matter of the land acquisition. It is, therefore, obvious that the injunction granted by the Appellate Court is only to the extent of this land which was subject matter of acquisition in respect of which the plaintiffs claim to be in possession. In case the plaintiffs are disturbing the possession of the defendants lands which they have purchased under the sale deed, it would always be open to the defendants to seek appropriate relief by making appropriate application.

5. With these observations, the petition is dismissed.

(M. S. Karnik, J.)

vsm/