

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 APPEAL FROM ORDER NO.54 OF 2019
WITH CA/12586/2019 IN AO/54/2019

PANDURANG THAKARAM GAVALI
VERSUS
BACHHU SAMBHAJI GAWALI AND OTHERS

.....
Advocate for Petitioners : Mr. Shaikh Mazhar A. Jahagirdar
Advocate for Respondents 1 and 2: Mr. N. B. Narwade
.....

CORAM : V. K. JADHAV, J.
DATED : 26th NOVEMBER, 2019

PER COURT:-

1. Heard both sides.
2. On going through the order passed below Exh.5 in Regular Civil Appeal No. 272 of 2019 by the learned District Judge-5, Ahmednagar, it appears that the said order is cryptic and not in clear terms. On perusal of interim order dated 3.7.2019, it appears that the learned District Judge-6, Ahmednagar i.e. first appellate court has restrained the respondents/original defendants temporarily from alienating/transferring and disposing of 2 Hectare 3 Are land out of block No. 207 situated at village Apdhup, Tal. Parner, the land of the share of the plaintiffs, until further orders. However, in the final order without referring as to the extent of land acquired by the M.I.D.C. and without any details thereof, simply observed in the following manner:-

“In such circumstances, instead making any interference in the acquisition process, it is proper to ask the concerned acquiring body i.e. M.I.D.C. not to disburse any payment of the suit land acquired by it, until the dispute is resolved in the appeal or until the further directions of this Court.”

3. It is not made clear in para 5 of the impugned order that whether the court has passed the order to the extent of plaintiffs' share, if they succeed. It is pertinent to note that in application Exh.5 there is no specific prayer about disbursement of amount of compensation and it has been simply prayed that till final disposal of the main appeal, respondent No.1 be restrained from transferring or alienating the suit property and to that respect ad-interim injunction be granted against the respondent No.1. It is true that some reference is there in the body of application, however, prayer is restricted to the aforesaid aspect. Apart from this, the impugned order appears to be cryptic. In view of this ambiguous order, this court is left with no other alternate but to remand the matter to the first appellate court with some directions. Hence, the following order:-

O R D E R

- I. The Appeal from order is hereby partly allowed.
- II. The impugned order dated 16.08.2019 passed by learned

District Judge-5, Ahmednagar below Exh.5 in Regular Civil Appeal No. 272 of 2019 is hereby quashed and set aside. The matter is remanded to the learned District Judge-5, Ahmednagar and the learned Judge shall pass order below Exh.5 in Regular Civil Appeal No. 272 of 2019 afresh, after giving opportunity of being heard to both the parties.

- III. The learned Judge of the first appellate court shall expedite the hearing of application Exh.5 and dispose of the same at the earliest.
- IV. The appeal from order is accordingly disposed of.
- V. In view of disposal of appeal from order, nothing survives for consideration in civil application No. 12586 of 2019 and the same is accordingly disposed of.

(V. K. JADHAV, J.)

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