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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST. NO. 16006 OF 2019
WITH
CIVIL APPLICATION ST. NO. 16007 OF 2019
IN
APPEAL FROM ORDER ST. NO. 16006 OF 2019**

Muncherji Nusserwanji Cama ..Appellant

vs.

The State of Maharashtra through
the Ministry of Revenue and Forest,
Mantralaya & ors. ..Respondents

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Mr. Chaitanya a/w. Mr. Pratik Shah a/w. Ankita K. I/b. Vigil
Juris for appellant.

Ms. Tanaya Goswami, AGP for respondent Nos. 1 to 7.

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CORAM : M.S.KARNIK, J.

DATE : 24th JULY, 2019

P.C. :

The order under challenge is dated 8th May, 2019 rejecting the application made for temporary injunction against defendant Nos. 1 to 7. One of the prayer made in the application before the trial Court is that the defendants be restrained from illegally and unauthorisedly entering in and from carrying out any activities of paid parking, digging, excavating or raising construction upon the suit property.

2. There is no dispute that the appellant - original plaintiff was owner of the 3 acres 21 gunthas land. Out of the said land the area of 1 acre 7 gunthas was acquired by the Government in the year 1962.

3. Learned Counsel has disputed about this acquired portion of 1 acre 7 guntas which controversy the trial Court will resolve. His objection however is that all of sudden in the year 2016 the defendants started the activities of parking and digging in the area outside the acquired portion of 1 acre 7 gunthas over which the defendant No.1 has no right. According to learned counsel this area in fact belongs to the plaintiff.

4. He would invite my attention to the pleadings on record and assailed the findings of the trial Court by contending that in paragraph 14 of the impugned order the trial Court has observed that the term “larger property” is nowhere explained in the suit plaint. He would invite my attention to paragraph 2 of the Plaint where the larger property has been described. He

would also invite my attention to paragraph 16 of the trial Court's order which records that the plaintiff admits to the defendants raising construction or carrying out other activities in the acquired area. According to learned counsel no such admission is on record. He points out that the entire Plaint proceeds on the footing that the construction is being carried out on the portion which is not the acquired area.

5. In this view of the matter, learned counsel would submit that the trial Court should have considered the prayer for ad-interim relief and injunction against defendant No.1 in the light of the pleadings.

6. Learned counsel for the respondents on the other hand supported the impugned order. She would submit that the land admeasuring 1 acre 7 gunthas which is acquired is sufficiently identified and all activities are being carried out in this acquired portion. According to her, the plaintiffs have failed to bring any materials on record to show that the construction is being

carried out on the portion of land other than 1 acre and 7 gunthas which is the acquired area.

7. I have gone through the order passed by the trial Court. The observations of the trial Court in paragraph 16 that the plaintiff admits to the defendants raising construction or carrying out other activities in the acquired land, does not appear to be correct in the context of the plea raised in the Pleint. Moreover, even in so far as the observations made in paragraph 14 that the term “larger property” is nowhere explained in the Pleint appears to have been made without considering the avernments made by the plaintiff in paragraph 2 of the Pleint. The plaintiff has described the “larger property” in Schedule 'A'.

8. In this view of the matter, in my opinion, the issue needs to be reconsidered by the trial Court in the context of the avernments made in the Pleint and the materials already on record. The impugned order is therefore set aside.

9. The matter is remanded back to the trial Court for a fresh decision on the application (Exhibit 5). The said application be decided by the trial Court expeditiously on its own merits without being influenced by any of the observations made by me in this order within a period of 6 weeks from today.

10. Learned counsel for the appellant states that the status quo as on today be maintained for a period of 2 weeks. However, as I am remitting the matter back to the trial Court, it would be appropriate if the appellant makes an application for grant of ad-interim reliefs which can be considered by the trial Court expeditiously pending decision on the application (Exhibit 5).

11. The Appeal is partly allowed.

12. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)