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

**APPEAL FROM ORDER NO. 424 OF 2018
WITH
CIVIL APPLICATION NO. 560 OF 2018
IN
APPEAL FROM ORDER NO. 424 OF 2018**

Ramanbhai Pranjivanbhai Shah ..Appellant
vs.
Union of India & ors. ..Respondents

....
Mr. P.K. Dhakephalkar, Senior Advocate I/b. Jagdish G.
Aradwad (Reddy) for appellant.
Mr. Shrishailya S. Deshmukh for respondent Nos. 2 to 4.

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CORAM : M.S.KARNIK, J.

DATE : 26th JUNE, 2019

P.C. :

Heard learned Senior Counsel Shri Dhakephalkar for
the appellant and Shri Deshmukh learned Counsel for
respondent Nos. 2 to 4.

2. The order under challenge in this Appeal is passed
below Exhibit 5 by the Civil Judge S.D., Dadra & Nagar Haveli,

Silvassa dated 26/6/2018 rejecting the application (Exhibit 5) filed by the appellant/original plaintiff.

3. It is the contention of learned Senior Counsel that out of land admeasuring 2 H 32 Ares, land to the extent of 31 gunthas was in possession of the appellant. The appellant has constructed a chawl and let out as many as 9 rooms on rent in the chawl. Learned Senior Counsel for the appellant would submit that he is the owner of the chawl. He invited my attention to the letter dated 18th November, 1964 wherein it is mentioned that office of the Administrator, Union Territory, Dadra and Nagar Haveli by a letter to the predecessor of the appellant informed her that the said land has to be expropriated. It is further mentioned that the Administration however will with top most priority provide her land by acquiring some other land as soon as such a land becomes available. Shri Dhakephalkar would submit that therefore the suit was filed for declaration that the plaintiff is entitled for compensation for 2 H 1 Are land. Further declaration is sought that the plaintiff is the

owner and occupant of 31 gunthas of land from Survey No. 285 which is in her possession since prior to 1964. In the said suit the application (Exhibit 5) was filed for injunction restraining the defendants, their agents and servants from entering into 31 Are of land in possession of the plaintiff from Survey No. 285 of Village Amli, Silvassa and from disturbing the peaceful possession and enjoyment of the plaintiff over the suit land till the final disposal of the suit.

4. Learned Senior Counsel would submit that averments made in the plaint as well as in the letter of 1964 would clearly indicate that the plaintiff was the owner of 2H 32 Ares and in possession of the land at least to the extent of 31 gunthas. He would submit that it is the plaintiff who has constructed the chawl and he is collecting the rent from the tenants who are occupying the chawl. He would further submit that in order to prove his possession he has filed an application under Order 41, Rule 27 for bringing the additional evidence on record.

5. Learned Senior Counsel would submit that there is no dispute that the plaintiff is the owner of the suit land and that same has been expropriated. Learned Senior Counsel while relying upon the written statement filed by the respondents would submit that the respondents have taken a stand that they had taken possession of the entire 31 gunthas land. He would further point out that except for this area of 31 gunthas, rest of the land which is in possession of the respondents has been developed by constructing Ashram School. He would therefore submit that the trial Court was not justified in rejecting the application for injunction.

6. Learned Counsel for the respondents on the other hand would invite my attention to the written statement filed on behalf of respondent No.4. He would further submit that for claiming alternate land or compensation, the plaintiff has to resort to appropriate procedure as per the provisions of Regulation 21 of the Dadra & Nagar haveli Land Reforms Regulation, 1971, which procedure has not followed by the

plaintiff. He would further submit that there is no evidence on record to show that the plaintiff is in possession of the land. He would submit that even the plaintiff's case is that plaintiff is not in possession of the chawl but the same is in occupation of persons who the plaintiff claims to be his tenants.

7. Heard learned Senior Counsel for the appellant and learned Counsel for the respondents.

8. No doubt that there is a communication on record that respondent - administration had expropriated the land belong to plaintiff. In the communication it is stated that some other land would make available to the owner. For that purpose, however, in view of the Regulation appropriate procedure has to be followed by the plaintiff. The plaintiff has filed the present suit for compensation and other reliefs which obviously will be decided on its own merits.

9. Presently it has to be seen whether the plaintiff is in possession of the suit land as claimed by him. It is the

contention of the respondents that the entire land to the extent of 2 H and 32 Ares was expropriated. However, an area to the extent of 31 gunthas was encroached upon. It is this 31 gunthas which the plaintiff claims to be in possession of. Once the land on which the plaintiff claims possession has been expropriated, then the only remedy in law for the plaintiff is to claim alternate land or compensation. The plaintiff has instituted suit for these reliefs. Merely because there are some structures standing on the said land, which structures are occupied by occupants whom the plaintiff claim are his tenants, is not sufficient to establish plaintiff's possession in the absence of any other cogent materials on record.

10. It is the case of the plaintiff that the chawl has been constructed by him and the rooms have been let out to the tenants. There is nothing on record to substantiate this plea. As rightly observed by the trial Court, no documents have been placed on record to show that the chawl has been constructed after obtaining necessary permission. It is the contention of

learned Senior Counsel that even if the land is encroached upon, the occupants therein have to be evicted only after following the due process of law.

11. In the present case, however, there is nothing on record to show that the plaintiff is in possession of the suit land and the structures standing thereon. On one hand the plaintiff contends that the suit chawl is constructed by the plaintiff and the premises are let out to the occupants on rent and on the other hand it is the contention of the respondents that the area to the extent of 31 gunthas is encroached upon. There are no materials on record to show that the chawl is constructed by the plaintiff. There is nothing on record that the chawl is authorised and constructed after obtaining necessary permission. The trial Court has observed that even there are no statements of any witnesses to indicate that it is the plaintiff who is in possession of the said land. No documents viz. Electricity bill, house and water bill, tax receipts etc. are filed on record to establish possession.

12. In this view of the matter, I do not see any reason to interfere with the order passed by the trial Court.

13. Learned Senior Counsel would contend that the occupants of the chawl cannot be evicted without following the due process of law. Shri Deshmukh appearing on behalf of the respondents would submit that the respondents are bound to follow the due process of law while evicting the occupants and before taking action against unauthorized structures.

14. With these observations, the Appeal is dismissed.

15. The Civil Application is also disposed of.

(M.S.KARNIK, J.)