

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4178/2016

(AMBADEVI ALIAS CHANDRAPRABHU DIGAMBAR JAIN MANDIR, JARUD & OTHERS **VERSUS**
RAMRAO SHIVAJI WADBUDHE (DEAD) BY HIS LR's PARVATIBAI RAMRAO WADBUDHE & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri K.N. Dadhe, counsel for petitioners.
Shri R.S. Charpe, counsel for R-1(ii) & 1(iii).
Shri Shyam Bissa, A.G.P. for R-2 & 3.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 09, 2019.

Heard finally with consent of counsel for the parties.

The petitioner is a public trust duly registered under the provisions of the Maharashtra Public Trusts Act, 1950. It is arrayed as defendant no.1 in the suit that has been filed by the respondent no.1 in which relief of declaration has been sought that the said plaintiff alone is entitled to claim the amount of compensation that has been awarded by the Land Acquisition Officer pursuant to proceedings for acquiring about 12 R land from Field Survey No.472/1. In the plaint, it is the case of the original plaintiff that the suit field was owned by the Trust and the plaintiff was inducted as a tenant therein. In the year 1995-96 the said land came to be acquired for the purposes of construction of a railway line that had gone through the field and hence an award to that effect was passed by the Land Acquisition Officer on 08.07.2002. Since the plaintiff claimed entitlement to the entire amount of compensation and the same was not given to him, he filed the present suit seeking a declaration that he alone was entitled to receive the amount of

compensation and not the Trust. An injunction was sought seeking to restrain the Trust through its trustees from receiving the amount of compensation. The written statement came to be filed by the Trust opposing the claim as made. An objection to the jurisdiction of the Civil Court was also raised. During pendency of the said suit, the Trust filed an application for dismissal of the suit on the ground that the relief as sought could not be claimed before the Civil Court. The trial Court after considering the say as filed by the plaintiff rejected the said application. Being aggrieved the present writ petition has been filed.

Shri K.N. Dadhe, learned counsel for the petitioner-Trust by placing reliance upon the decisions in *S.P. Subramanya Shetty & Others Versus Karnataka State Road Transport Corporation & Others* [AIR 1997 SC 2076] and *State of Maharashtra & Another Versus Haribhau Balbhim Kakade* [2012 (3) Mh.L.J. 767] submitted that suit of the present nature was not maintainable. According to him, the remedy if any was under Section 30 of the Land Acquisition Act, 1894 and the jurisdiction of the Civil Court was barred. He further submitted that such suit against the State Authorities was also not maintainable especially when the reference proceedings were pending in the Civil Court. He therefore submitted that the trial Court committed an error in rejecting the application below Exhibit 60 and urged that the prayer made in that application ought to be granted.

Shri R.S. Charpe, learned counsel for the legal heirs of respondent no.1-plaintiff however submitted that the suit as filed was clearly maintainable in view of the law as laid down in *G.H. Grant Dr Versus State of Bihar* [AIR 1966 SC 237] and *Devalibai Nandalya Gavit (since deceased) through L.Rs. & Another Versus*

Honji Rama Vasawe & Others [2011(6) Mh.L.J. 360]. According to him, the relief as sought in the suit was for a declaration that the plaintiff alone was entitled to receive the entire amount of compensation. There was no question of adjudicating the rights amongst the plaintiff and the defendant no.1-Trust. The plaintiff was claiming sole entitlement to the amount of compensation and therefore in view of the aforesaid decisions, the suit was perfectly tenable. He also submitted that similar applications filed by other defendants came to be rejected earlier.

Heard the learned counsel and perused the documents on record. In the plaint, the relief sought by the plaintiff for a declaration that the entire amount of compensation of Rs.3,47,687/- as awarded by the Land Acquisition Officer be paid to the plaintiff alone. According to the defendant no.1, such relief cannot be claimed before the Civil Court. A somewhat similar controversy was considered in *Devalibai Nandalya Gavit* (supra) and it was observed that under Section 30 of the said Act if there was any dispute between the parties about the apportionment of the compensation amount then the parties have to approach the Collector. However when there is no dispute about apportionment of compensation and when it is the case of the plaintiffs that they alone are entitled for the compensation amount, the option to file a Civil Suit is available. It is found that the ratio of the aforesaid decision applies to the case in hand. As regards the decision in *S.P. Subramanya Shetty & Others* (supra) relied upon by the learned counsel for the petitioner is considered, the plaintiff therein sought the relief of mandatory injunction that the State Government de-notify the acquisition under Section 48 of the said Act. It was held that such suit was not tenable. Similarly, in *Haribhau Balbhim Kakade* (supra), the suit as filed was with regard to claiming

interest on the amount of compensation. Such suit was held to be barred. The ratio of the aforesaid decisions therefore cannot apply to the facts of the present case. The trial Court while passing the impugned order has observed that the suit was not filed against any provisions of the said Act and was seeking disbursement of compensation for the plaintiff himself. The conclusion that the application filed below Exhibit 60 was liable to be rejected is legally correct. There is no jurisdictional error committed by the trial Court.

By directing the trial Court to decide the suit expeditiously on its own merits, the writ petition stands dismissed. No costs.

JUDGE

APTE