

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

**947 SECOND APPEAL NO.646 OF 2019
WITH CA/14589/2019 IN SA/646/2019**

1. Bansi Tukaram Sahane
Age : 74 years, Occ : Agriculture,
2. Ram Bansi Sahane
Age : 41 years, Occ : Agriculture,
3. Laxman Bansi Sahane
Age : 39 years, Occ : Agriculture,
4. Kusum Bansi Sahane
Age : 68 years, Occ : Agriculture,

All applicants R/o Deothan,
Tq. Akole, Dist. Ahmednagar.

..APPELLANTS

-VERSUS-

1. The Tahasildar, Akole,
Tq. Akole, Dist. Ahmednagar.
2. The Deputy Director Rehabilitation
(Lands), @ Collector, Ahmednagar.
3. The State of maharashtra
Through Collector, Ahmednagar,
Dist. Ahmednagar.

..RESPONDENTS

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Mr.V.Y. Bhide, Advocate for appellants.

Mr.P.M. Kulkarni, A.G.P. for
respondent/State.

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CORAM: V.L. ACHLIYA, J.

DATE : 04.02.2020

ORAL ORDER:

Being aggrieved and dissatisfied with the judgment and decree passed by the learned District Judge-2, Sangamner, Dist. Ahmednagar thereby dismissing the Regular Civil Appeal No.142/2009 and confirming the judgment and decree dated 06.10.2009 passed by the learned Civil Judge, Senior Division, Sangamner, Dist. Ahmednagar dismissing the Regular Civil Suit No.466/2006 filed by the present appellants-plaintiffs, the appellants-plaintiffs have preferred this appeal.

2. Heard learned counsel for the appellants and learned A.G.P. representing the respondents.

3. By referring overall facts of the case, the learned counsel for the appellants submits that due to improper advice, the plaintiffs have claimed declaration that they be declared as owners of the suit property by virtue of adverse possession. It is submitted that in view of the evidence in the nature of 7/12 extract showing the appellants-plaintiffs are in possession of the suit land

from 1975 i.e. even after acquisition of land the plaintiffs deserves to be extended limited protection in nature of prohibitory injunction not to dispossess without following due process of law. It is submitted that the appellants have filed Civil Writ Petition No.2445/2019 claiming declaration under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to declare that acquisition of suit property has lapsed on account of non-payment of compensation of land acquired and said Petition is pending.

4. In brief, it is the contention of learned counsel for the appellants that the Courts below ought to have considered that the plaintiffs being in settled possession of the suit land, their possession ought to have been protected by granting limited relief to the effect that they be not dispossessed without following due procedure of law.

5. On the other hand, learned A.G.P. support the judgments and orders passed by the Courts below. It is submitted that the land in question was acquired for

rehabilitation of project affected persons affected due to construction of Adhala Dam. In terms of award passed, the possession of the land was taken from father of appellants on 08.07.1975. The compensation of land acquired also paid to deceased Tukaram Shahane, the father of the plaintiffs. Since 08.07.1975, the respondents-defendants are in lawful possession of the suit land. The mutation entry in respect of ownership of land also recorded in the name of defendants. As plaintiffs tried to make forceful entry over the land and tried to cultivate acquired land, the Tahsildar issued notice to plaintiffs to remove themselves from the land. Under the guise of suit, the plaintiffs have stalled the distribution of land. The possession of land acquired was taken in the year 1975. During the life time, the owner of suit land i.e. deceased father of plaintiffs made no grievance in respect of possession as well as receipt of compensation. The plaintiffs who are the children of deceased - original owner of the land have raised the grievance after more than 45 years of acquisition of land as to possession as well as payment of compensation in respect of suit land. Both the courts below found no merit in

the case of plaintiffs. There are concurrent findings on facts recorded by Courts below. The appeal raises no substantial question (s) of law and urged to dismiss the appeal.

6. I have carefully considered the submissions advanced in the light of the judgment and order passed by the trial Court and confirmed in appeal. In my view, the appeal raises no substantial question (s) of law. The judgment and order passed by the Trial Court and confirmed in appeal are quite consistent with rival pleadings and the evidence adduced in case. There is absolutely no perversity in any of the reasons and findings recorded by the Courts below.

7. There is no dispute as to the fact that the suit land was acquired for rehabilitation of persons affected due to construction of Adhala Dam. So also there is no dispute that the land in question was acquired way back in the year 1975, after adopting the due process of acquisition of land. The award in respect of the land acquired was passed in the year 1975. The mutation entry in respect of acquisition of land in the name of defendant Government

taken place in the year 1975. The possession of the land also claimed to be taken in the year 1975. Since the year 1975, the deceased father of plaintiffs the owner of suit land, made no grievance in respect of acquisition, possession of suit land as well as payment of compensation. After the period of more than 45 years of acquisition, the appellants-plaintiffs have raised grievance as to payment of compensation of land acquired in the year 1975 and filed Writ Petition seeking declaration under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to the effect that the acquisition of land has lapsed for want of possession and non-payment of compensation.

8. There is no iota of evidence to show that the plaintiffs are in lawful possession of the suit land and deserves to be protected by extending the relief of prohibitory injunction against the respondents – defendants. As per facts apparent from the face of record, the land in question was acquired way back in the year 1975 for rehabilitation of project affected persons. The award was passed in the year 1975. The

mutation entry of acquisition of land and recording the name of respondents-defendants as the owners of suit land taken place in the year 1975. In that view, the plaintiffs are not entitle to enter and cultivate the land which was acquired by following procedure prescribed for acquisition of land. Such act of the plaintiffs to make forceful entry over the land acquired by Government and to cultivate such land, itself amounts to an act of criminal tress-pass. Such act of a person who has taken law in his hand cannot be protected by court of law by way of grant of injunction against tre owners of land. Grant of injunction in such matter would amount to extending the protection of law to those persons who have taken the law in their hand and then approached the Courts for protecting such illegal act.

9. The land in question has been acquired for rehabilitation of project affected persons. The grant of injunction has already affected the persons for whose benefits the land has been acquired. In that view, the Courts below perfectly justified in refusing to grant reliefs in favour of the plaintiffs. Plaintiffs cannot be allowed to

protect and perpetuate their illegal acts under the garb of injunction.

10. The fact that the plaintiffs have claimed the declaration to declare them as owner by way of adverse possession in respect of suit land itself sufficient to show that the the plaintiffs are not the owners of the land and their ownership in respect of suit land has ceased to operate since the year 1975 on account of acquisition of suit land by respondents. In absence of any right, title and interest in the suit property, the plaintiffs are not entitled to seek any relief from Court of law. Thus, the appeal preferred by the appellants is devoid of merits and raises no substantial question (s) of law.

11. In order to entertain the appeal, it is necessary for appellants to satisfy that the appeal raises substantial question (s) of law. In absence of any substantial question (s) of law and perversity in concurrent findings on facts recorded by the Courts below, the appeal deserves no consideration. I am therefore not inclined to entertain the appeal. Accordingly, the appeal is dismissed

with no orders as to costs. In view of dismissal of appeal, the application seeking stay to the execution of judgment and decree stands disposed of in terms of order in appeal.

12. It is expressly made clear that the observations made as to merit of case of appellant are made for the limited purpose of admission of appeal. None of the observations made above shall have bearing upon any other proceedings initiated by the appellants-plaintiffs and pending before any other Courts of law.

[V.L. ACHLIYA]
JUDGE

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