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

WRIT PETITION NO.5904 OF 2019

Smt. Manjulabai Laxman Patil & Ors. Petitioners

Vs.

Deceased Namdev Milu Patil Respondents
Shri. Santosh Namdev Patil & Ors.

Mr. Sachin Shetye a/w Mr. Vishwanath Kapse for Petitioners.

Mr. Rohit Sakhadeo for Respondent Nos. 10 to 12, 14 and 15.

Mr. Akhilesh Dubey a/w Amit Dubey, Uttam Dubey a/w Siddhesh
Rajput & Varad Dubey i/by Law Counsellor for Respondent No. 16.

Coram : NITIN W. SAMBRE, J.

Date : 2nd FEBRUARY, 2021

P.C.:

1. The present petition questions the order passed in Miscellaneous Civil Appeal No. 232 of 2016 by the learned District Judge, 7, Thane on 21st February, 2018 wherein the order of refusal of grant of injunction passed below Exhibit 5 on 22nd September, 2016 by the Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No. 545 of 2013 came to be confirmed. As such, by this petition, the Petitioner has prayed for an injunction.

2. The facts, which are necessary for deciding the petition are as under :

The Petitioner claims that on 25th September, 1968, Tukaram Kanha Patil was declared as deemed tenant and as such purchased the suit land under Section 32 G of the Bombay Tenancy and Agricultural Land Act.

Notification under Section 4 of the Land Acquisition Act in relation to the property came to be issued on 3rd February 1970, on the very day, the land owner Tukaram Kanha Patil died. The Land Acquisition Officer passed an Award, in which compensation was claimed by one Namdeo Milu Patil and Prabhakar Hiraji Patil, resulting into the Reference being made by the Special Land Acquisition Officer to the District Judge on the issue of apportionment. The said proceedings being L.A.R. No. 108 of 1987 were disposed of by a Consent Decree, to which the Petitioner is not a party. The party to the said Consent Terms namely Namdev Milu Patil was allotted land admeasuring 300 sq. mtr under 12.5% scheme by the Respondent-CIDCO on 26th July, 2012.

3. Being aggrieved by the benefit conferred on Namdev Patil to the extent of developed land of 12.5% of land acquired, the Petitioner initiated suit, being Regular Civil Suit No. 545 of 2013 on 26th June, 2013 claiming relief of injunction.

4. In the said suit, an application, Exhibit 5 came to be moved seeking an injunction against Respondent Nos. 1 to 9 and 16 restraining them from creating third party rights or in developing the suit property either by themselves or through any other developer/ contractor and also an order of restraintment is prayed from selling the developed property. Against Respondent Nos. 10, 11 and 12, an injunction of not to create third party interest was prayed.

5. The said prayer for an injunction was resisted by the Respondent and as such vide impugned order dated 22nd September, 2016, injunction application came to be rejected by the learned Civil Judge, Senior Division, Thane, which order was confirmed on 21st February, 2018 by the District Judge-7, Thane and in Miscellaneous Civil Appeal No. 232 of 2016. Hence, this petition.

6. The submissions of learned counsel for the Petitioner are that the Petitioner is adopted son of deceased Tukaram Kanha Patil and he is the only person, who can succeed to the estate of Late Tukaram Patil, who died on 3rd February 1970. According to him, the third party right created after 3rd February, 1970 i.e. from the date of Notification under Section 4 are required to be declared void in view of provisions of Sections 4,6 and 48 of Land Acquisition Act. The further contention of learned counsel for the Petitioner are, both the Courts below have recorded incorrect findings of fact as regards transfer of property by Laxman Tukaram Patil in favour of Namdev Milu Patil. According to him, even if the parties namely Namdev Milu Patil and Laxman Tukaram Patil had acted on Sale-Deed dated 11th October, 1983, still the effect of provisions of Sections 4 and 6 can declare such transfer void and that being so, only the Petitioners have right to claim the interest in the suit property.

7. The further contention are, unless the rights of the Petitioner are adjudicated qua his entitlement, he succeeded to the property of Tukaram Patil in the capacity of adopted son, an injunction needs to be ordered against the Respondent as prayed.

8. Learned counsel for the Respondent opposed the claim and submits that the Petitioner has not questioned the transfer i.e. Sale-Deed of 13th February 1983. The further contention are, the compensation was received by Namdeo Patil under an Award. Another factual matrix to which the attention of this Court is invited is the Reference under Section 18 of Land Acquisition Act, preferred by Prabhakar, who also claims to be adopted son of deceased Tukaram Patil.

9. In the aforesaid background, the submissions are, the embargo on the right to transfer after issuance of notification under Section 4, will have to be read to the benefit of the acquiring body and not the land owner or the person claiming interest therein.

10. Apart from above, the submissions are that the relief as is claimed by the Petitioner cannot be granted particularly when the possession of the property, was already taken by CIDCO. The Respondent-CIDCO has entered into tripartite agreement with Respondent Nos. 1 to 9 and Respondent No. 16 i.e. developer on 17th

September, 2012. Prior to the above, on 27th April, 2007, Letter of Intent came to be issued by CIDCO, and plot No. 60 is leased out to Respondent Nos. 1 to 9 as an agreement of lease was executed on 26th July, 2007. As such the claim suffers from delay and latches.

11. Considered rival submissions.

12. Both the Courts below in the impugned order have in detail dealt with the contentions on the facts raised by the Petitioner and have concurrently held that the Petitioner is not entitled for an injunction as has been prayed by him.

13. Apart from above, the Petitioner cannot take benefit of provisions of Land Acquisition Act, as embargo created on the transfer by the land owner after issuance of Notification under Section 4 is required to be read to the benefit by the acquiring body and not the owner.

14. Learned counsel for the Respondent has rightly invited attention of this Court to the Judgment of the Apex Court in the matter

of Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Co-operative Housing Society, Jaipur and Others, reported in (2013) 5 Supreme Court Cases, page 427. Paragraph 13 of the said judgment reads thus :

“13. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government (Vide *Gian Chand V. Gopala*, *Yadu Nandan Garg V. State of Rajasthan*, *Jaipur Development Authority V. Mahavir Housing Co-op. Society*, *Jaipur Development Authority Vs. Daulat Mal Jain*, *Meera Sahni V. Lt. Governor of Delhi*, *Har Narain V. Mam Chand* and *V. Chandrasekaran V. Administrative Officer.*)”

15. Perusal of the aforesaid observations, admittedly speaks of the encumbrance created by the owner, or any transfer of land after issuance of Section 4 Notification would be deemed to be void and will not be binding on the Government or the acquiring body. However, what can be noticed is, the Petitioner is trying to take benefit of Section 4 Notification based on the alleged transfer, so as to build his case that he has a right in the land to the extent of 12.5% leased by the CIDCO in favour of Respondent Nos. 1 to 9. The Petitioner at no point of time, has questioned the award or apportionment of compensation. Rather the conduct of the Petitioner from the pleadings in the plaint demonstrate that he is trying to claim restrictive rights to the extent of leased out property in favour of Respondent Nos. 1 to 9 that too by taking benefit of Section 4 of Land Acquisition Act.

16. The Petitioner even if has relied on the provisions of Section 4 of the Land Acquisition Act, is unable to establish his case as to which law or any legal authorities, he has a right to claim 12.5 % of the leased out land of the land acquired.

17. This Court has already observed that the Petitioner cannot take benefit of Section 4 notification as embargo created on the transfer by the land owner after issuance of Notification under Section 4 is required to be read to the benefit of the acquiring body and not the owner.

18. Though the learned counsel for the Petitioner has relied on the following judgments :

- “1. Gian Chand Vs. Gopala and Others, reported in 1995 0 Supreme Court (SC) 109;
2. Hari Chand Vs. State of Haryana, reported in 2008 0 Supreme (P& H) 2170.

so as to canvass his contention on the provisions of Section 4 of Land Acquisition Act, said law cannot be read to the benefit of the Petitioner. I hardly see any supporting observations in the said judgments so as to fortify the contention put-forth by the Petitioner before this Court.

19. As such, from the record it appears that after tripartite agreement was executed on 17th September, 2012, much water has flown qua the third party rights in the property. The Petitioner is

belatedly claiming his right in the suit property at much belated stage though Respondent Nos.1 to 9 and 16 have entered tripartite agreement of development with Respondent-CIDCO.

20. In the aforesaid background and having regard to the concurrent findings recorded by both the Courts below, no error of law or material illegality to be noticed which warrants interference in extra ordinary jurisdiction. The petition as such fails. Dismissed.

(NITIN W. SAMBRE, J.)