

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAS) No.113/2019
IN
Second Appeal No.360/2006

Naresh alias Natthu Karwatkar **Vs.** Nagpur Improvement Trust through Chairman & Anr.

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri Anand Parchure, Advocate & Shri Omkar Deshpande, Advocate for the
 Appellant.
 Shri R. O. Chhabra, Advocate for Respondent No.1.

CORAM : S.M. MODAK, J.
DATE : 25th OCTOBER, 2021.

On the basis of enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and more specifically the provision contained in Section 24 of the said Act, the appellant/original plaintiff wants to add one more substantial question of law. His contention is the acquiring body/respondents have neither taken possession of the suit land nor given compensation as per the award declared as per the old Act. Whereas, by way of reply, the respondents are opposing the application.

02] I have heard learned Advocate Shri Parchure for the appellant and learned Advocate Shri Chhabra for respondent No.1.

03] Apart from the present application, there is a Civil Application No.641/2015 for intervention and Civil Application No.312/2015 for injunction filed by the appellant. My attention is invited to an order passed on 30th July, 2015, thereby observing to hear the matter finally.

04] While deciding the amendment application, this Court is not supposed to decide the merits of the amendment. This Court has only to decide whether new substantial question of law needs to be added or not and for that, only *prima facie* observation is sufficient.

05] As per Section 24(1)(b) of the new Act, the land acquisition process lapses when award has been made. But compensation has not been paid or physical possession has not been handed over within a period of five years.

06] The plaintiff in his suit asked for declaration as to ownership over three plots of land and also asked for the declaration that two notices dated 31st July 1996 and 22nd February, 1996 be declared as illegal. By those notices, the defendants have directed the plaintiff to hand over the possession. It is clarified in paragraph 1 of reply filed to temporary injunction application.

07] So, it is clear that by those notices, the plaintiff was asked to hand over the possession. The question may arise as to whether the defendants have not taken steps in pursuance to those notices due to pendency of the suit. The defendants come with the case that, in fact, possession was taken over as per those notices. This is challenged by the plaintiff by contending that it was only a paper possession.

08] Suffice it to say that, there are two notices asking the plaintiff to hand over the possession. Now, whether the possession was handed over or whether due to pendency of the suit, the defendants have not taken possession, it can be decided later on once the substantial question of law will be framed. Even both the parties are at liberty to argue when the appeal will be taken up for final

hearing. The above discussion is sufficient for this Court to frame one substantial question of law as suggested. Hence, the following order is passed—

ORDER

- i. The application is allowed.
- ii. The amendment suggested in paragraph 4 of the said application be permitted.
- iii. Amendment be carried out in the appeal memo.
- iv. Its copy be supplied on the respondents.
- v. Hence, following substantial question of law is formulated—

Whether the acquisition of suit plots have lapsed for not taking possession of the suit plots and/or not paying the compensation by the respondent to the appellant in view of the provisions of Section 24(1)(b) of 2013 Act?

- vi. The civil application is disposed of.

09] The matter be fixed for final hearing on 7th December, 2021.

JUDGE