

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Second Appeal No. 303 of 2018

Smt. Shakuntala w/o Gopichand Ikhar,

Versus

State of Maharashtra through the Secretary, Revenue Department
Mantralaya, Mumbai-32 and others.

Office Notes, Office Memoranda of
Order

Court's or Judge's

Coram, appearances, Court's Orders
or directions and Registrar's order

Shri R.N. Deshpande, Advocate for the appellant.

Ms S.Z. Haider, AGP for respondent nos. 1 to 5.

Shri R.D. Dharamadhikari, Advocate for respondent nos.6 to 8

CORAM : ANIL S. KILOR, J.

DATED : 01 DECEMBER 2021

This is an appeal arising out of the judgment and decree dated 22/12/2017 passed by the District Judge – 5, Nagpur in Regular Civil Appeal No.220/2011, dismissing the appeal filed by the plaintiff in a suit for declaration and perpetual injunction.

2. The brief facts of the present case are as follows: (The parties are referred to as per their status before the trial Court.)

3. It is the case of the plaintiff that he has become absolute owner of the suit Survey No.68 admeasuring 1.06 H.R. situated at mouza Singari, Tah. Mouda, District - Nagpur by virtue of sale-deed dated 04/04/2005 executed by defendant Nos. 6 to 8 and she is in actual possession of the suit property. It is further case of the plaintiff that after execution of the sale-deed, she got the knowledge of acquisition of land for the extension of Gaothan and therefore, the suit was filed for declaration, perpetual injunction and declaration to the effect that the plaintiff is the absolute owner of the suit property and the defendant Nos. 1 to 5 i.e. the State of Maharashtra, SDO, collector, Tahsildar, Talathi have no legal right to dispossess the plaintiff. Subsequently the suit was amended and prayer clause (aa) was added seeking declaration that the award dated 13/03/1989 has lapsed by operation of law contained in Section 24 (2) of the Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. After considering the oral as well as documentary evidence the learned trial Court partly allowed the suit and directed the defendant No.6 to 8 to repay/refund sale consideration of Rs. 2,00,000/- to the plaintiffs with interest @ 18% per annum.

5. The plaintiff being aggrieved by the same preferred an appeal bearing RCA No.220/2011 which came to be dismissed vide impugned Judgment and decree dated 22/12/2017. The same is the subject matter of challenge in the present appeal.

6. I have heard the learned Counsel for the respective parties.

7. This Court while issuing notice on 30/08/2019 has framed following substantial question of law

(i) Having permitted the appellant to amend the suit and to add a prayer for declaration that award dated 13/03/1989 in the present case had lapsed by operation of law under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, whether the appellate Court was justified in refusing to consider the said issue on merit by simply holding

that the same could not be considered in view of the fact that the appellant was found to have no locus to file the suit ?

(ii) Whether the Appellate Court was justified in holding that the appellant did not have locus to file the suit ?

8. Shri Deshpande, learned counsel for the appellant submits that there is no finding recorded by both the Courts below declaring sale-deed as void, while holding that the appellant has no locus to file a suit claiming declaration and injunction.

9. He submits that in view of Section 24 of the Act of 2013, the land acquisition process shall be deemed to have lapsed, as the possession was not taken till the time new Act came into force and after new Act came into force, the notices for possession were issued.

10. The learned AGP for the respondent Nos. 1 to 5 points out that in this case the award was passed in the acquisition proceeding of the land in dispute in the year 1989 and admittedly the sale-deed was executed on 04/04/2005 after passing of the award i.e. after vesting of land in the Government. She has submitted that both the Courts below have therefore, in view of the above referred admitted facts, held that the sale-

deed dated 04/04/2005 executed in favour of the plaintiff by the defendant Nos 6 to 8 is null and void.

11. It is submitted that the said finding is sufficient as a declaration by both the Courts below.

12. It is further pointed out that the plaintiff or the defendant Nos. 6 to 8 are not denying that the award was passed in the year 1989 and the suit property was purchased vide sale-deed dated 04/04/2005.

13. To consider the rival contentions of the parties, I have gone through the record and also perused the judgment and decree of both the courts below.

14. In view of the admitted fact that the award in the acquisition proceeding in respect of the suit land, was passed in the year 1989 and sale-deed in respect of the suit property was executed on 04/04/2005 in favour of the plaintiff by original owners i.e. defendant Nos. 6 to 8, the findings recorded by both the Courts below that the sale-deed is null and void, is just and proper and I do not find any perversity in the same.

15. Both the Courts have denied prayer Clause (aa) to the plaintiff in view of the finding recorded by both the Courts below that the sale-deed executed in favour of the plaintiff is null and void and she has no

locus to claim any relief as claimed through prayer Clause (aa).

16. The right of the plaintiffs to claim compensation in the suit land has gone with the declaration that sale deed dated 04/04/2005 is null and void.

17. In that view of the matter, I do not find any perversity in the concurrent finding recorded by both the Courts below. Accordingly I have answered both the substantial questions of law in the above terms.

18. The appeal is dismissed. No order as to costs.

[ANIL S. KILOR, J.]