

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 5573 OF 2021

BALASAHEB BHIKA AGHADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. A.B. Kale h/f. Mr. Vaibhav Deshmukh
AGP for the respondent – State : Mr. S.B. Yawalkar
Advocate for the respondent no. 4 : Mr. S.S. Kulnari h/f. Mr. Rajdeep Raut
Respondent no. 3 – served – absent.
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 14 SEPTEMBER 2022

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate for the petitioner and the learned
AGP.

2. The petitioner is claiming following reliefs :-

- “B) To kindly direct the respondents to acquire the land of the petitioner situated in Gat No. 215 of village Ghatshendra Tq. Kannad Dist. Aurangabad which have been taken into possession since 2008 for construction of road by issuing writ of mandamus or any other writ or order in the like nature;
- C) To kindly grant stay to the construction of said road till the final disposal of the present writ petition and for that purpose issue necessary order.
- D) To kindly direct the respondents that during the pendency and final disposal of this Writ Petition, the respondents to deposit 50% amount along with interest in this court within two weeks and for that purpose issue necessary order.”

3. It is quite apparent that the petitioner is asserting that he is the owner in exclusive possession of the land Gat no. 215 and further alleges that his possession was taken by the respondents in the year 2008 for construction of road without undertaking any process of land acquisition.

4. It transpires during the course of arguments that the petitioner had filed Special Civil Suit no. 101 of 2009 with the following prayers :-

- “A) Suit of the plaintiff may kindly be decreed with costs.
- B) It be declared that the plaintiff is entitled to get damages of Rs. 15 lacs as against the defendants jointly and severally towards the encroachment on the land Gat No.215 of plaintiff and also against cutting of standing trees and creation of road through the land of plaintiff, while passing appropriate decree thereof.
- C) The defendant No. 1 to 4 be directed to pay amount of Rs.15 lacs with bank interest till realisation of the said amount while passing appropriate decree thereof.
- D) The defendants be directed to initiate appropriate proceeding before the competent authority for inquiry of acquisition and payment of compensation as contemplated under the provisions of the Land Acquisition Act.
- E) And/or any other suitable or equitable relief to which the present plaintiff is found entitled may kindly be awarded in his favour and oblige.”

5. The suit was dismissed by the judgment and order dated 29-04-2019 and even according to the petitioner, he did not challenge it.

6. Though the only issue regarding the alleged encroachment over the selfsame writ property and regarding cutting down of the trees from it was framed and decided in that suit, going by the reliefs claimed in the suit, the petitioner had called upon the civil court to decide his title and even was seeking mandatory injunction directing the respondents to undertake the process of land acquisition. He tacitly allowed the suit to be decided as it is which has subsequently been dismissed and the decision has now reached finality.

7. In view of such peculiar circumstances, the attempt of the petitioner to once again approach this Court invoking writ jurisdiction and claim the same reliefs which were the subject matter of the suit, is a course which we cannot comprehend. The decision in the suit having reached finality, even the principle of *res judicata* would be applicable.

8. The learned advocate for the petitioner vehemently submits that the civil Court has no jurisdiction to decide the dispute pertaining to the land acquisition and cites the decision of the Supreme Court in the matter of *State of Bihar Vs. Dharendra Kumar & others*; 1995 (2) *Mh.L.J.* 340.

9. We are afraid, the petitioner is not entitled to derive any benefit from this decision. In that matter, after a declaration under section 6 and the notification under section 9 was issued under the Land Acquisition Act, 1894, the suit was filed and injunction was sought obstructing the land acquisition process. In the matter in hand, the suit was filed seeking a mandatory injunction directing the respondents to initiate the land acquisition proceeding.

10. The writ petition is dismissed.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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