

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2542 OF 2020

Sau. Kamalbai Vishwanathrao Bhople
Age- 69 years, Occ- Agriculture & Household,
R/o. Jawahar Colony, Nagar Road,
Beed, Dist. Beed.

PETITIONER
[Original Plaintiff/Respondent]

VERSUS

1. Ulka Digambar Madhekar
Age- 71 years, Occ- Household.

2. Shri. Ankush Vasantrao Kadam
Age- 42 years, Occ- Household.
Both residents of Kabad Galli,
Beed, District- Beed.

3. Shri. Mahadeo Narayan Jadhav
Age- 43 years, Occ- Agriculture & Trade
R/o. At Patoda, Tq. Patoda,
Dist. Beed.

RESPONDENTS
[Original Defendant Nos. 4 to 6/Appellant]

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Mr. Mukul Kulkarni h/f. Mr. Arun Koralkar Advocate for the
petitioner.

Mr. Mayur Subhedar h/f. Mr. C.V. Dharurkar, Advocate for
Respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 30th MARCH 2022.
PRONOUNCED ON: 5th MAY 2022.

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of the parties.

2. This petition filed under article 226 and 227 of Constitution of India, takes exception to the judgment and order passed by the learned District Judge, Beed, in Miscellaneous Civil Appeal No. 85/2018.

3. The petitioner/original plaintiff filed Regular Civil Suit No. 84/2017 seeking declaration of ownership and declaration that gift deed dated 12.08.2016 and sale deed executed by defendant No. 4 in favour of defendant No. 6, dated 12.08.2016, are null and void and not binding on the petitioner/plaintiff and the plaintiff is entitled for compensation amount of the suit land. The petitioner contended in the suit that she has her cattle shed in the suit property, a well, servant quarter and godown and she has electric connection in her name and she is regularly paying the electricity charges. She further contended that she purchased 10 Acres land (which is part of the suit property)

from one Shaikh Gulab Shaikh Rehman by registered sale deed dated 01.07.1977 for consideration of Rs. 30,000/-. There are two wells and 28 mango trees in the said land and the petitioner has right to take water from Bindusara canal. In the year 2012, the Government acquired 10 Acres land for Beed-Ahmednagar-Parali railway. The said land was measured by the petitioner through competent authority in the year 2008. The defendant No. 4- Ulka Madhekar, who happens to be a wife of previous owner Shri. Digambar Madhekar, executed a registered documents of the disputed property in favour of defendants No. 5 and 6, which according to the petitioner is a fraud played on her. On the basis of said documents proceeding of preparing separate award has been initiated by defendants No. 1 to 3 in the name of defendants No. 5 and 6. She claimed that the sale deed executed by defendant No. 4 in favour of defendant No. 6 and the gift deed executed by defendant No. 4 in favour of defendant No. 5 are not genuine documents and the defendant No. 4 in collusion with defendant No. 5 and 6 and some revenue authorities are trying to swallow the suit land which belongs to the plaintiff. She claimed that there is no balance land of Madhekar family to the south side and east side of disputed property and

therefore, Madhekar's successor have no legal right to execute registered documents in favour of defendants No. 5 and 6. It is further claimed that during acquisition proceedings, the plaintiff came to know that 76R land shown as Pot Kharab in the disputed land, which is area of stream has been included in her 10 Acres land, therefore, the suit property shown in para 1 of the plaint was not acquired.

The plaintiff claimed that additional award is likely to be passed in favour of defendants No. 5 and 6 on the basis of said documents and therefore, she filed objection before defendant No. 2, however, no cognizance of the same was taken by defendant No. 2 and therefore, she filed a suit for declaration. In the suit application Exhibit-5 for injunction was filed.

4. The application was resisted by the defendants. They claimed that the suit is not maintainable for want of mandatory notice under Section 80 of the Code of Civil Procedure. They claimed that total land admeasuring 13 acres belonging to the plaintiff and her son is acquired by the defendant No. 2 and compensation is already paid to them. There is no land remaining in the name of plaintiff and her son.

Since 1977 neither the plaintiff nor her husband or her son complained anywhere about the alleged Pot Kharab land. When the plaintiff came to know that the respondents No. 1 to 3 are in need of more land for which heavy compensation is likely to be paid, they have started claiming their ownership of the disputed land. They further submitted that in the joint measurement it is revealed that there is a well, a house and cattle shed owned by defendants No. 4 to 6 in the total land admeasuring 7R which are registered in the Grampanchayat Office of village Wasanwadi for property No. 12248.

5. After hearing the plaintiff and defendants the trial Court allowed the application Exhibit-5 and restrained the defendants No. 4 to 6 from causing obstruction/interference in the peaceful possession of the plaintiff over the suit land till the final adjudication of the suit.

6. Defendants No. 4 to 6 filed Miscellaneous Civil Appeal No. 85/2018, challenging the trial Court's order, which is allowed and the Appellate Court has set aside the order passed below Exhibit-5. The petitioner is aggrieved by this order.

7. Heard the learned advocate for the petitioner and learned advocate for respondents. Perused the documents placed on record.

8. The learned advocate for the petitioner assailed the impugned contending that, the Appellate Court has erred in upsetting the well reasoned order passed by the trial Court. According to him on 18.10.2012, Section 4 notification was published for acquisition of the lands. After issuance of said notification, sale deed and gift deed were executed on 12.08.2016 which could not have been executed. The same are contrary to Section 11(4) of the Right to Fair Compensation Act, 2012. The award is passed on 31.12.2015 and the lands vested in the Government. The entire Survey No. 153 was acquired and therefore nothing remained with the owner. By relying on the observations of the trial Court in order passed below Exhibit-5, he submits that the trial Court has recorded a finding that the petitioner/plaintiff is in actual and settled possession of the suit land and therefore, her possession is required to be protected. The trial Court has also observed that if the application is rejected the defendants would succeed in dispossessing the plaintiff, which will

cause irreparable loss to the plaintiff. In that view of the matter, the trial Court was justified in passing the order, granting injunction in favour of the plaintiff. According to him, the Appellate Court has given erroneous reasoning while upsetting the order of trial Court. The other defendants were not joined by the defendants No. 4 to 6 while challenging the order of trial Court in appeal. Incorrect findings are recorded by the Appellate Court to the effect that *prima facie* plaintiff failed to prove her title and therefore she is not entitled for injunction. He therefore, submits that the impugned order of the Appellate Court is liable to be quashed and set aside and the order passed by the trial Court may be restored.

9. The learned advocate for the respondents on the other hand supported the impugned order and submitted that the petitioner has no locus to challenge the sale deed of respondent. 74R land out of disputed property belongs to the respondents and not to the petitioner. The petitioner has received amount of compensation of her property and entire land of the petitioner has been acquired, therefore, it is not possible to accept her contention that she is in possession of 74R land.

By pointing out the sale deed of the petitioner of the disputed land he submits that in the boundaries of the disputed property, a brook is shown on the western side. The petitioner filed application to the revenue authorities thereby claiming that there are some mistakes in the revenue record in respect of her acquired land. In that no reference of gift deed and sale deed is given by the petitioner. According to him, the petitioner is indirectly challenging the acquisition which is not permissible in law. In support of his argument, he relied on Commissioner, Bangalore Development Authority and another v. Brijesh Reedy and another (2013 AIR SCW 2378). On persuasion of the petitioner the Deputy Superintendent of Land Records conducted panchnama on 24.01.2017, wherein possession of the defendants is recorded. By further relying on the statement of son of the plaintiff recorded on 17.03.2015 at the time of joint measurement, wherein he has categorically stated that the representatives of the acquiring body and the cadestal surveyor came on the spot and as per the objection raised by him inquiry was conducted and the dispute was resolved. He does not have objection on complaint. By further relying on the letter of Deputy Inspector of Land Records, he submits that measurement

map No. 1248/07 was verified and on inspection the said map was found to be incorrect and the same was set aside. The entire land of the petitioner is acquired as per joint measurement No. 527/2012 for Beed-Ahmednagar-Parali railway track. So also, since the names of the petitioner and her son are not found in the 7/12 extract, corrected map cannot be prepared. He therefore, submits that the Appellate Court was justified in passing the impugned order. The Appellate Court has rightly recorded the contention of respective parties and therefore, no case is made out by the petitioner/plaintiff to interfere in the same.

10. In reply, the learned advocate for the petitioner submits that in the sale deed of the petitioner boundary is shown as Odha on eastern side and in acquisition said Odha is shown as Pot Kharab. According to him, when there is dispute about the area and the boundary, the boundary shall prevail. In support of his contention, he relied on State of Maharashtra through the Secretary, Revenue and Forest Department & Ors. v. Nathuji S/o Lotan Dhakate (2003 SCC OnLine Bom 1156).

11. Perusal of record indicates that the entire area owned by the petitioner in Survey No. 153 is acquired for construction of Beed-Ahmednagar-Parali railway track. The petitioner has received compensation of Rs. 17,52,01,650/- towards the same. The petitioner and her son have received total compensation of Rs. 23,83,05600/- towards acquisition of their respective lands in Gut No. 153. In the joint measurement conducted in the year 2012, it is recorded that the entire land owned by the petitioner from survey No. 153 is acquired.

12. It appears from the record that the petitioner has made complaint, after receiving compensation amount making a grievance that 76R Pot Kharab land is wrongly recorded in their name instead of 60R land and the petitioner requested for measurement of her land and to make a detail inquiry. The Collector taking note of the grievance of the petitioner directed inquiry which was conducted by the Deputy Superintendent of Land Records, who submitted his report to the Deputy Collector on 25.01.2017 stating therein that the respondent No. 1 is in possession of the additional land proposed to be acquired and respondent no. 4 is in possession of cattle shed, house etc., and the

petitioner is not in possession of the suit property, hence it is not necessary to conduct joint measurement. The panchnama conducted is produced on record which bears signature of petitioner and her husband. The petitioner has endorsed that in the joint measurement of the additional land claimed by her, her well, cattle shed, house, tick tees, babool trees, Jambhool trees are situated, however, it is also stated in the report that the total area of the petitioner is acquired for Beed-Ahmednagar-Parali railway track, therefore, her and her son's name do not appear in the 7/12 extract.

13. On 17.03.2015 statement of Petitioner's son Rajendra was recorded in presence of Deputy Superintendent of Land Records and the railway department officers. In the said statement Rajendra has categorically stated that during joint measurement for acquisition of land for Beed-Ahmednagar-Parali railway track entire survey No. 153 is acquired. As per the acquisition proposal 10 acres and 3 acres land is shown under acquisition which is correct. Inquiry is conducted in respect of his objection in his presence and his doubts are resolved. Now he has no objection or complaint remaining. In view of this statement also the contentions of the petitioner are unacceptable.

14. So far as contention of the petitioner about electricity connection, house and two wells is concerned it is necessary to mention here that the petitioner is not claiming injunction against respondents/defendants No. 1 to 3 who are the acquiring authorities. Admittedly, entire survey No. 153 is acquired and the petitioner and her son have received compensation for the same. In these facts her claim that she is in possession of 76R land (suit property), is unacceptable. The same is also contrary to the various complaint applications filed by the petitioner to the Deputy Collector. Admittedly, the petitioner has purchased the suit property in the year 1977, no grievance in respect of potkharab land has made by the petitioner till 2013. It is therefore, clear that the petitioner started making grievance about potkharab land only after Respondent No. 2 initiated proceedings for acquisition of additional land of Respondents No. 5 and 6 offering higher rate of compensation.

15. From the pleadings of the petitioner it appears that she is challenging the acquisition proceedings by filing civil dispute, which is not permissible in law. It is settled legal position that once the land is

acquired and possession is taken by the Collector, the land vests in Government. The Land Acquisition Act is a complete Code in itself and jurisdiction of Civil Court to take cognizance stands excluded. In *Commissioner, Bangalore Development Authority and Anr* (supra), it is held thus:-

“13. It is clear that the Land Acquisition Act is a complete Code in itself and is meant to serve public purpose. By necessary implication, the power of civil Court to take cognizance of the case under Section 9 of CPC stands excluded and a Civil Court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil Court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court.”

16. Admittedly, entire land of the petitioner is acquired and the land of the petitioner vests in the Government, the petitioner has received compensation for the same. In these facts, the trial Court has committed an error in granting injunction in favour of the petitioner.

The appellate Court has passed a well reasoned order and has rightly allowed the appeal and set aside the order of trial Court. The order passed by the appellate Court is just, legal and proper. The petitioner has failed to make out a case for interference in the extra ordinary writ jurisdiction. The writ petition being devoid of merits is dismissed.

17. Rule is discharged.

[NITIN B. SURYAWANSHI]
JUDGE