

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

APPEAL FROM ORDER NO.520 OF 2021

WITH

INTERIM APPLICATION NO.1278 OF 2021

Machindranath Laxman Mhatre and Ors. ...Appellants

Vs

Jalindernath Laxman Mhatre

THR. POA Holder Atish J. Mhatre

& Ors.

... Respondents

WITH

APPEAL FROM ORDER NO.425 OF 2021

WITH

INTERIM APPLICATION NO.3285 OF 2021

Jalindernath Laxman Mhatre

THR. POA Holder Atish J. Mhatre

& Ors.

...Appellants

Vs

State of Maharashtra

THR. Collector, Thane & Ors.

...Respondents

...

Mr. Y.S.Jahagirdar, Sr. Adv. With Mr. K.P.Anilkumar with Mr. Amit Sable i/by Priyanka Kumar for Appellant in AO/520/21 and for applicant in IA/1278/21 and for Respondent Nos.3 to 7 in AO/425/21.

Dr. Abhinav Chandrachud with Mr. J.G.Aradwad (Reddy) with Ms. Ashwini Jadhav for appellant in AO/425/2021 for Respondent NO.1 in AO/520/21 and for Applicant in IA/3285/21.

Mr. A.R.Patil, AGP for Respondent Nos.2 to 4.

CORAM : SANDEEP K. SHINDE J.

DATE : JANUARY 18, 2022.

P.C. :

Jalindernath Laxman Mhatre instituted Special Civil Suit No.503 of 2002 in the Court of Civil Judge, Senior Division, Thane against the Special Land Acquisition Officer, Metro Centre Thane-II, Machhindranath Laxman Mhatre, (brother of the plaintiff) his three sons and wife and Land Acquisition Officer, CIDCO, Navi Mumbai and sought declaration, that;

(i)(a) he is entitled to receive Rs.8,11,324/- from the defendants with interest @ 15% p.a.

(b) he has 50% share/right in a plot of land allotted to the defendant nos.3 to 7 in lieu of compensation payable for acquiring Gat No.212 admeasuring 8 Acres 5 Gunthas, as per 12.5% scheme;

(c) Pending suit, the Land Acquisition Officer, CIDCO be restrained by order of injunction from allotting Plot No.212 to anyone;

- (ii) On 14th August, 2021, the Civil Judge, Senior Division, Thane dismissed the Special Civil Suit No.503 of 2002;
- (iii) Plaintiff filed Regular Civil Appeal No.334 of 2012 in the District Court, Thane along with the application below Exhibit 5;
- (iv) On 20th July, 2013, the learned appellate Court rejected the Exhibit 5 application;
- (v) Plaintiff/appellant filed Appeal From Order No.796 of 2013 in this Court against the order dated 20th July, 2013;
- (vi) On 14th October, 2013, the Appeal From Order No.796 of 2013 was disposed of in terms of the “Minutes of the Order”. Vide clause (3) of the Minutes, the respondent nos.3 to 7 agreed not to create third party rights in the suit property and shall keep 50% of the plots allotted to them by the CIDCO under 12.5 Scheme encumbered till Regular Civil Appeal No.334 of 2012 is disposed of finally

AND

- (vii) On 18th February, 2014, the Civil Appeal No.334 of 2012 was dismissed by the District Court, Thane;

(viii) Second Appeal No.181 of 2014 was filed by the appellant/plaintiff in this Court, challenging the order dated 18th February, 2014;

(ix) On 7th April, 2015, this Court in Second Appeal set aside the judgment and decree passed in Regular Civil Appeal No.334 of 2012 and remanded the matter back to the trial Court. In the meantime the interim order passed in terms of the ‘Minutes of the Order’ dated 14th October, 2013 in Appeal From Order No.796 of 2013 was continued pending the suit;

(x) On 30th June, 2016 the Civil Judge, Senior Division, Thane dismissed the Special Civil Suit No.503 of 2002;

(xi) Aggrieved by the judgment and decree dated 30th June, 2016, plaintiff preferred Regular Civil Appeal No.235 of 2016 along with application below Exhibit 5;

(xii) On 30th November, 2016, Exhibit 5 application was disposed of in terms of the Undertaking given by the respondent nos.3 to 7 whereby the order dated 7th April, 2015 has been continued;

(xiii) On 26th July, 2019, the District Court at Thane dismissed the Regular Civil Appeal No.235 of 2016. Afterwhere, plaintiff filed Second Appeal (L) No.27970 of 2019 in this Court;

(xiv) That by order dated 11th November, 2019 in the Second Appeal, the judgment and the decree dated 26th July, 2019 in Civil Appeal No.235 of 2016 was set aside and remanded the matter back to the trial Court, Thane and further continued the interim order pending the appeal;

(xv) Paragraph four of the order dated 11th November, 2019 in Second Appeal (L) No.27970 of 2019 reads as under:

“ In the meantime, the order dated 30th November, 2016 in terms of the statement of the respondents shall continue to operate as an interim order pending hearing and final disposal of the appeal. The Second Appeal is disposed of accordingly. District Court at Thane is requested to dispose of this matter as expeditiously as possible and preferably within three months”.

2 That vide judgment and order dated 8th February, 2021, the District Judge, Thane allowed the appeal and remanded the matter to the Trial Court with, directions, “to frame the issues in respect of *res-judicata* and record its findings as per law as early as

possible more particularly within six months from the date of receipt of the record and proceedings.”

3 Feeling aggrieved by the judgment and order in Regular Civil Appeal No.235 of 2016, plaintiff preferred an Appeal From Order under Order 43 Rule 1(u) of the Code of Civil Procedure, 1908. At the time, the defendants, preferred Second Appeal against the judgment and order dated 8th February, 2021 passed in Civil Appeal No.235 of 2016. Later, defendants sought leave to convert the Second Appeal into the Appeal From Order. Leave was granted and Second Appeal stood converted in Appeal From Order No.520 of 2021.

4 Heard Mr. Jahagirdar, the learned Senior Counsel for the appellants in Appeal From Order No.520 of 2021 and Dr. Abhinav Chandrachud, the learned counsel for the appellants in Appeal From Order No.425 of 2021 and Mr. A.R.Patil for respondent/State in both the appeals.

5 Thus, necessarily, all parties to the appeal were aggrieved by the ‘remand’ order passed by the District Court in Regular Civil Appeal No.235 of 2016.

6 Indisputably, this Court in Second Appeal (L) NO.27970 of 2019 vide order dated 11th November, 2019 passed with the consent of the parties to the appeal, set aside the impugned order dated 26th July, 2019 passed in Civil Appeal No.235 of 2016 and remanded the Civil Appeal to the District Court, Thane for fresh hearing in accordance with law. Paragraph 3 of the order dated 11th November, 2016 reads as under;

“ Accordingly, the impugned order dated 26th July, 2019 is set aside and the Civil Appeal is remanded to the District Court at Thane for a fresh hearing in accordance with law. District Court will have to decide, in terms, whether decision on the issue of legality by the trial Court in favour of the respondent/defendant is justified or not and give its own reasons for its conclusion on the same.”

7 The learned Appellate Court, in-stead, of deciding the appeal in accordance with the order passed by this Court on 11th November, 2019, further, remanded the matter to the trial Court by

directing to frame the issues in respect of *res-judicata*. Therefore, impugned remand order was passed, in defiance of the order passed by this Court on 11th November, 2019 in Second Appeal (L) No.27970 of 2019.

8 In view of the facts stated above and for the reason, the impugned order dated 8th February, 2021 in Regular Civil Appeal No.235 of 2016 passed by the Ad-hoc District Judge-II, Thane is quashed and set aside and the Civil Appeal No.235 of 2016 is remanded to the District Court, Thane for fresh hearing in accordance with law and particularly, in terms of clause (3) of the order dated 11th November, 2019 (re-produced herein-above) passed in Second Appeal (L) No.27970 of 2019. Having regard to the facts of the case and particularly that suit was instituted in 2002, the Appellate Court shall make an endeavour to dispose of the Regular Civil Appeal No.235 of 2016 on merits preferably on or before 31st May, 2022.

9 In the meantime, the order dated 30th November, 2016 in terms of statement of the respondents, shall continue to operate as

an interim order pending hearing and final disposal of Civil Appeal No.235 of 2016.

10 That apart, the learned Appellate Court shall also decide applications below Exhibits 58, 59, 61 moved by the appellants in the Appeal No.235 of 2016 in accordance with law.

11 All contentions of the respective parties are kept open.

12 Appellants in Appeal From Order No.520 of 2021 are entitled to refund of Court-fees paid by them in the Second Appeal, inadvertently instituted against the impugned order of remand in accordance with Rules.

13 Both the Appeal From Orders are allowed and disposed of in the aforesaid terms.

14 All applications in the appeals are disposed of.

(SANDEEP K. SHINDE, J.)