

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

38 WRIT PETITION NO.454 OF 2023

**VIJAYKUMAR MAHADEVAPPA MITKARI
VERSUS
THE STATE OF MAHARASHTRA
THROUGH DISTRICT COLLECTOR AND OTHERS**

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Advocate for Petitioner : Mr. Sharad V. Natu
AGP for Respondent – State : Mr. R.B. Bagul
Advocate for Respondent No.2 : Mr. B.M. Dhanure
Advocate for Respondent No.4 : Mr. D.S. Manorkar

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 20-02-2023

PER COURT :

. The challenge in the petition is to the judgment and order dated 17.12.2022 passed by the Appellate Court in Misc. Civil Appeal No. 133 of 2022 whereby the Appellate Court has directed the trial Court to transfer the Regular Civil Suit No.235 of 2021 to the Specially Designated Court under the Specific Relief Act by considering the subject matter to be infrastructure project.

2. The facts of the case are that the petitioner was the owner of the plot forming part of the Survey No.223/B in his individual capacity as well as the owner of another plot forming part of the same Survey number along with the other two owners. As far as these two plots are concerned, there is no dispute that these plots

have been acquired for the purpose of National Highway and the acquisition process is complete. The petitioner claims to have entered into agreements of sale dated 04.03.2021 and 12.03.2021 in respect of two plots known as plot Nos.7 and 8 respectively forming part of the same Survey No.223 from the original vendor Mahananda @ Deepali Madhukarrao Nalge. The position is that the original owner Madhukarrao Nalge had divided the Survey No.223 into 10 plots and sold the same to different parties out of which the petitioner had purchased one plot individually and was the co-owner in respect of the other plot. Regular Civil Suit No.235 of 2021 was instituted by the petitioner alleging that in respect of two plots i.e. plot no.7 and 8, although the plots were not acquired for the purpose of National Highway, on 07.04.2021 statutory authorities had been to the said plots and had asked him to remove his possession from the said plot. In the proceedings instituted being R.C.S. No.235 of 2021 an application came to be filed seeking ad interim temporary injunction restraining defendants from obstructing the possession of the petitioner over the suit plots which came to be allowed by the trial Court. Misc. Civil Appeal No.133 of 2022 was filed by the National Highway Authority - respondent no. 4 herein challenging the order of interim injunction. It was the specific case in the Misc. Civil Appeal that there is a statutory bar on grant of the stay and therefore the

order of injunction could not have been passed. The Appellate Court after considering the submissions have passed the following order.

“ORDER

1. The appeal is partly allowed.
2. The order passed by the learned 5th Joint Civil Judge Senior Division, Latur, in R.C.S. No.235/2021 below Exh.5 on 18.10.2022 is hereby set aside.
3. The matter is remanded to the learned Trial Court for deciding the application (Exh.5) afresh by giving opportunity of hearing to both the parties.
4. The learned trial Court shall make over the suit R.C.C. No.235 of 2021 to the specially designated Court under Specific Relief Act in respect of contract relating to infrastructure projects i.e. to 3rd Jt. Civil Judge, S.D., Latur, by making appropriate correspondence.
5. The learned specially designated Court shall decide the application (Exh.5) afresh by giving opportunity to both the parties on its own merits without getting influenced by any of the observations made in this order.

6. There was ad-interim injunction order below (Exh.5) dated 22.04.2021. The said interim order shall continue till the specially designated Court decides the application (Exh.5) on merits.”

3. Learned counsel appearing for the petitioner submits that plot nos.7 and 8 were not acquired for the purpose of National Highway and as such cannot be construed to be infrastructure project. He further submits that the Specially Designated Court under Specific Relief Act would not have jurisdiction in respect of the dispute as to whether the said plots have been acquired or not. He has invited the attention of this Court to the say which was filed by the respondent no.4 - National Highways Authority in the reply to Exh.5 wherein the National Highway Authority has submitted that the contents regarding the suit property which are stated in the plaint are not within the knowledge of the answering defendant. It was also submitted that it is only competent authority under Land Acquisition Act who is required to act as per the relevant provisions of the Act and the answering defendant i.e. National Highways Authority has no role to play in the rival dispute between individuals regarding the ownership and possession of the properties under acquisition.

4. The learned counsel appearing for the National Highways Authority has tendered his affidavit-in-reply. He further submits that the petitioner has suppressed the fact that notices for removal of unauthorised encroachment have been issued to Hotel Prapti, Padmaja Vej and Yashodeep Trading Company dated 19.03.2022 which have been replied by the present petitioner. Based on the notices for removal of the alleged encroachment he submits that it is clear from the notices that same is by reason of the alleged encroachment over the acquired land. He further submits that as far as the infrastructure project is concerned, since there is an encroachment over the acquired land it is Specially Designated Court which will have the jurisdiction. He further submits that the petitioner cannot claim injunction on the basis of an agreement for sale as admittedly the entire consideration has not been paid and the conveyance deed has not been executed.

5. Considered the rival submissions of the parties.

6. The issue in the present case is the transfer of the Regular Civil Suit No. 235 of 2021 to the Specially Designated Court under the Specific Relief Act. It is not disputed that such a transfer is contemplated only in respect of an infrastructure project and there is

also a bar under the provisions of the Specific Relief Act restraining the Courts from grant of injunction in respect of the infrastructure project. In the present case, the position is that part of Survey No.223 has been acquired and the petitioner does not dispute that his plots have already been acquired. He does not raise any contention in the respect of the plots which have been acquired, but the entire dispute is in respect of the plot nos.7 and 8 which according to him has not been acquired. The learned counsel for the respondent no.4 submits that during the acquisition the measurements have been carried out and the maps have been prepared. However those maps have not been placed on record and that is the observation of the Appellate Court in paragraph-19. The Appellate Court has observed that neither party has produced joint measurement report to show exactly which portion of the land has been acquired for the National Highway. Considering that the position itself is not clear as to whether the plot nos.7 and 8 have been acquired for the National Highway at this stage the transfer to the Specially Designated Court under the Specific Relief Act, in my opinion, is not warranted.

7. As far as the notices which are issued for removal of encroachment is concerned, the National Highway Authority is at liberty to pursue these notices and to take the notices to its logical

end for removal of the encroachment. The said issue is not the issue in the present case as admittedly notices were issued during the pendency of the proceedings and were not subject matter of challenge in the Regular Civil Suit No. 235 of 2021.

8. Considering the aforesaid facts and that the joint measurement map has not been produced on record and as such there is no clarity as regards the portion of land of Survey No. 223 which has been acquired for the purpose of National Highway, in my opinion, it is in the interest of justice that the impugned order dated 17.12.2022 is quashed and set aside and the matter is remanded to the Appellate Court to first ascertain as to whether the subject matter of Regular Civil Suit No.235 of 2021 i.e. the plot no.7 and 8 forming part of Survey No.223 has been acquired for National Highways or not.

9. The learned counsel for the respondent no.4 - National Highways Authority submits that the joint measurement map will be produced on record before the Appellate Court and it will help the Appellate Court to come to a finding as to whether plot nos. 7 and 8 have been acquired.

10. It is only upon ascertaining the said fact, necessary directions will then be issued by the Appellate Court for transfer of R.C.S. No.235 of 2021 to the Specially Designated Court.

11. This exercise to be conducted by the Appellate Court within a period of four weeks from the date of production of the joint measurement map by the National Highway Authority.

12. All rights and contentions of the parties are kept open.

13. Till the decision of the Appellate Court, the order of injunction granted by the trial Court dated 18.10.2022 to remain in force.

14. Writ Petition stands allowed in the aforesaid terms.

15. It is made clear that the National Highway Authority is permitted to take action in accordance with its notices issued for removal of encroachment.

(SHARMILA U. DESHMUKH, J.)