

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

WRIT PETITION NO.4671 OF 2019

**SMT. FATIMABI BAKSHU SHAIKH AND ANOTHER
VERSUS
NAGAR PANCHAYAT SHIRDI THROUGH ITS CHIEF OFFICER AND
OTHERS**

...

Mr. L.V. Sangeet, Advocate for Petitioners
Mr. P.G. Borade, AGP for Respondent Nos.3 to 5
Mr. A.V. Hon, Advocate for Respondent No.1
Mr. S.P. Salgar, Advocate h/f Mr. N.V. Gavare, Advocate for
Respondent No.2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th SEPTEMBER, 2023

PER COURT :

1. By this petition filed under Article 226 and 227 of the Constitution of India, petitioners challenge order dated 03/04/2019, passed by learned District Judge-2, Kopargaon, below Exhibit-22 in Regular Civil Appeal No.96/2017.

2. Petitioners filed Regular Civil Suit No.51/2008 for perpetual injunction to restrain respondent Nos.2 to 4 from using suit property for construction of building. It is also prayed that further process of acquisition of petitioners' property be stopped and declaration be given that land owned by petitioners shall not be used for construction of *Prasadalaya*. Petitioners filed application Exhibit-66 in the suit, seeking temporary injunction for restraining respondents/defendants from evicting petitioners from suit

premises, which was allowed by trial Court vide order dated 11/02/2009 and both the parties were directed to maintain *status quo* in respect of suit property.

3. Respondents/defendants appeared in the suit and raised objection of maintainability of suit as petitioners have challenged acquisition proceedings by filing civil suit. Trial Court framed preliminary issue about jurisdiction and by order dated 18/02/2011, decided it against petitioners holding that it has no jurisdiction to entertain and try the suit, and rejected the plaint.

4. Being aggrieved by judgment and order of trial Court, petitioners filed appeal under Section 96 of the Code of Civil Procedure in the District Court, Kopargaon, along with Misc. Application No.12/2011, seeking condonation of 26 days' delay. Petitioners also filed application Exhibit-19 for temporary injunction against respondents. District Court, by order dated 08/07/2011, directed to maintain *status quo* in respect of suit premises, until further orders. Appellate Court dismissed Misc. Application No.12/2011 for want of appearance of both the sides. Applications at Exhibits - 39 and 40 filed by petitioners for setting aside dismissal order dated 24/07/2015 and seeking restoration of Misc. Application No.12/2011, were rejected. Petitioners approached this Court by filing Writ Petition No.8066/2015, which was allowed by this Court by order dated 22/08/2017, thereby directing appellate

Court to consider Misc. Application No.12/2011 on its own merits. Accordingly, R.C.A. No.96/2017 was registered and the same is pending in the District Court at Kopergaon, for hearing.

5. It is contended by petitioners that during pendency of said appeal, 3rd respondent issued notice dated 06/03/2019 to petitioners asking petitioners to vacate suit premises immediately on 15/03/2019. Notice is served on petitioners on 14/03/2019 at 01:00 p.m. Petitioners, therefore, filed application Exhibit-17 on 14/03/2019 in appeal, contending that petitioners are not even given 24 Hours time to evict suit premises. Second respondent, by resolution passed in Board Meeting dated 24/09/2011, resolved that petitioners will be given two shops against land of petitioners which was acquired. The said resolution is still not implemented. In suit property, petitioners have residential premises of 6 to 7 rooms and family of petitioners of near about 24 to 30 members is residing in suit premises. If suit premises is demolished and possession is taken over, petitioners will suffer irreparable loss. Since earlier thrice the *status quo* order was passed, injunction order be passed in favour of petitioners. District Court on the same day, granted stay to execution of notice dated 06/03/2019 till next date, i.e. 03/04/2019. On that date, second respondent appeared and filed their say.

6. Petitioners filed application Exhibit-22 with a request that petitioners are residing in suit premises with their families and since respondent Nos.1, 3 to 5 have not filed their say, interim injunction order dated 14/03/2019 passed below Exhibit-17, be continued till next date. After hearing the parties, appellate Court rejected the application vide order dated 03/04/2019. Petitioners are aggrieved by this order.

7. Heard learned advocate for petitioners, learned advocate for respondent No.1, learned advocate for respondent No.2 and learned Assistant Government Pleader for respondent Nos.3 to 5. Perused writ petition memo, annexures thereto and the impugned order.

8. It is a matter of record that suit property is compulsorily acquired by respondents, invoking provisions of Land Acquisition Act. Award is passed in the year 2009 and compensation in the name of petitioners is also deposited. These aspects were brought to the notice of trial Court by second respondent by filing say and raising preliminary objection as to the maintainability of suit filed by petitioners.

9. Trial Court by recording elaborate reasons, has upheld preliminary objection raised by second respondent and has rejected the plaint holding that it had no jurisdiction to entertain and try the suit, since petitioners have challenged process of land acquisition.

Trial Court by relying on various citations, held that by necessary implication power of Civil Court to take cognizance of case under Section 9 of the C.P.C. stands excluded, and a Civil Court has no jurisdiction to go into question of validity or legality of notification under Section 4 and declaration under Section 6, except by the High Court in proceedings under Article 226 of the Constitution of India. Therefore, civil suit challenging acquisition proceedings is not maintainable.

10. Appellate Court while passing the impugned order, has held that, *"As per impugned order, it has been held that no civil suit can be maintainable against acquisition of land as per the Land Acquisition Act. The advocate for appellants prima facie failed to show how that order is illegal. It is an admitted position that the suit property has been acquired as per the provision of Land Acquisition Act. For taking possession of the suit property the notice dated 6/3/2019 came to be issued by respondent No.3. The same does not appear to be illegal"*. Appellate Court has further taken into consideration submission of learned advocate for respondent Nos.1 and 2 that award was passed in acquisition proceedings and compensation amount has been deposited in the name of petitioners against suit property. Appellate Court has observed that, if compensation is inadequate, it is open for petitioners to file reference as per provisions of Land Acquisition Act. It is held that,

civil suit would not be *prima facie* maintainable to challenge illegality of land acquisition proceeding. If second respondent did not give shops to petitioners as per resolution passed in the year 2011, petitioners can sue second respondent to get shops as per alleged resolution.

11. Order passed by appellate Court is just, legal and proper, and no fault can be found with the same. Appellate Court is right in holding that, *prima facie* suit filed by petitioners is not maintainable considering the fact that award is passed in the year 2009 and compensation amount is deposited in the name of petitioners. Petitioners have failed to make out *prima facie* case and balance of convenience is not in their favour. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merit is dismissed.

12. At this stage, learned advocate for petitioners seeks continuation of interim order passed by this Court dated 12/04/2019, thereby granting stay to notice dated 06/03/2019. Stay granted by the order dated 12/04/2019, shall continue to operate for further period of four weeks from the date of uploading of this order.

(NITIN B. SURYAWANSHI, J.)