



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 APEAL FROM ORDER NO. 20 OF 2020

WITH

CIVIL APPLICATION NO. 134 OF 2020
IN AO/20/2020

YASH AMIT NILAWAR

VERSUS

THE STATE OF MAHARASHTRA THROUGH DISTRICT
COLLECTOR (REVENUE SECTION), JALGAON AND ORS.

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Advocate for Appellant : Mr. Bagul D. S.
A.G.P. for Respondents-State : Mr. Sandesh V. Hange.

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CORAM : S. G. MEHARE, J.

DATE : 18.12.2023

PER COURT :-

1. Heard the learned counsel for the appellant and the learned A.G.P. for respondent Nos.1 and 2-State.
2. The contesting respondent, Nos.4 to 7, were duly served. However, they did not appear. Hence, proceeded *ex-parte*.
3. The appellant was the plaintiff. He had filed a suit for specific performance of the contract against respondents Nos.4 to 7. Out of the agreed land to be sold to the plaintiff, some portion was acquired during the pendency of the suit. The award was passed. The plaintiff had filed an application to

restrain the defendants from creating the third party interest, and the award amount shall not be disbursed.

4. The Learned Court of First Instance held that the appellant had no *prima facie* case. The balance of convenience does not tilt in his favour, and he would suffer no irreparable loss if the injunction as prayed was not granted. The learned Court of first instance has discussed the facts and documents placed on record.

5. Learned counsel for the appellant would submit that there was an oral agreement to sell the suit land. However, the suit land was proposed for acquisition for industrial development. Some part of the suit land has been acquired, and an award was also passed. The acquiring body has deposited the amount of the award with the Land Acquisition Officer. Since there was an agreement to sell the suit land, he is entitled to the benefit, particularly the award amount. He would submit that he would suffer irreparable loss if the award amount was disbursed to the original landlord. He also relied on the order of the office of the District Collector, Jalgaon, dated 09.11.2017, whereby no objection was granted to the registration of the sale deed. In sum and substance, he says that his suit for specific performance of the contract is pending,

and he is entitled to the award money. He also fairly conceded that he had raised the objection before the Land Acquisition Officer, and as per the instructions and information, the award amount has not yet been disbursed to the landlords.

6. Learned A.G.P. would submit that the reasons assigned by the First Appellate Court are correct. No harm or irreparable loss would be caused if the injunction as prayed is refused. It is not a matter of creating third-party interest. The amount of the award is more than the agreed consideration. The suit was based on the oral agreement. An oral agreement is the weakest piece of evidence. The sale document placed on record does not bear the landlord's signature. That would not create any right or interest in favour of the appellant/plaintiff. The landlords did not file the application for leave to register the sale deed to the Collector. So, it raises serious doubt whether such an application is created as evidence to establish the case that there was an agreement to sell. Unless the sale deed is registered, it is an incomplete document that would not help the plaintiff to establish his *prima facie* rights and interests. He would also argue that the award is a money matter; otherwise, the interest of the appellant has been protected.

7. The learned counsel for the appellant would reply that whether there is a dispute about the apportionment of the award money, the acquiring body i.e., the Land Acquisition Officer, has to deposit such amount in the Civil Court and refer the issue to the Court. He relies on Section 35 of the M.I.D.C. Act 1960 to bolster his argument.

8. The learned A.G.P. has raised a serious question about how the Collector has granted leave to register the sale deed on the application of the present appellant, who has a case of oral agreement to sell. Section 54 of the Transfer of Property Act provides that any contract to sell does not create the interest, right, or charge on such property. Otherwise, Section 52 of the Transfer of Property Act also protects the rights of the concerned if the suit property is transferred during the pendency of the suit. In the facts and circumstances, the best remedy for the Land Acquisition Officer was to refer this issue to the Court and deposit the award amount in the Court. But, the amount of the award is kept with him. It is a dispute over the apportionment of the award amount. The parties have to establish their rights. Such an amount should be deposited in a fixed deposit. So, the interests of both parties may be protected.

9. Considering the facts and the nature of the suit, the Court is of the view that the appellant has no *prima facie* case for an injunction restraining the landlord from creating third-party interest; the balance of convenience does not tilt in his favour and would not suffer irreparable injury if the injunction as prayed is refused. He is not entitled to withdraw the amount of award. However, the Land Acquisition Officer was supposed to exercise the powers under Section 36 of the M.I.D.C. Act.

10. In the facts and circumstances of the case, the following order is passed :

ORDER

- (i) The appeal stands dismissed.
- (ii) No order as to costs.
- (iii) The Land Acquisition Officer and Sub Divisional Officer, Jalgaon Area, are directed to deposit the award money in Land Acquisition Case No.NAOA/SDO/SR-161/2016 by transfer and refer the dispute of apportionment to the Civil Court if not disbursed to either of the parties.
- (iv) The parties to the suit shall bring the reference of apportionment to the notice of the Civil Judge Senior Division before whom the Special Civil Suit

No.51 of 2019 is pending. So, both the issues may be decided together.

- (v) The Collector is directed to make an inquiry on how the order dated 09.11.2017 passed in case No. Land/2/26/Kavi/52662/2017 granting permission to the plaintiff without the consent of the landlord and submit the report to the learned Civil Judge Senior Division, Jalgaon, in Special Civil Suit No.51 of 2019 within three (3) months from the receipt of this order.
- (vi) Registrar (Judicial) is directed to supply the copy of this order to the Collector, Jalgaon.
- (vii) Civil Application is disposed of.

(S. G. MEHARE, J.)

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