

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.55 OF 2023**

1. Rajesh Ramkishor Dixit
Age: 58 years, Occ: Business
 2. Yogesh Ramkishor Dixit
Age: 60 years, Occ: Business
 3. Rakesh Ramkishor Dixit
Age: 50 years, Occ; Business
No.1 to 3 residing at Ram Janki
Niwas, Shukla Compound, Palghar,
Power-of-Attorney Holder for
Petitioner Nos. 1,2,4 and 5
 4. Smt.Pratibha Satyendra Shukla
Age: 61 years, Occ:Housewife
Residing at Hindu Friend Society,
Jogeshwari East, Mumbai.
 5. Smt. Uma Sanjay Tiwari
Age 57 years, Occ:Housewife
Residing at Sai Kiran, Bhayander
East, Mumbai.
- ... Appellants

versus

1. State of Maharashtra
2. Land Acquisition Officer (MRVCL)
& Sub Divisional Officer, Palghar
Having office at Collector Officer,
Room No.113, First Floor,
Kolgaon, Boisar Road,
Palghar-401404
3. Deputy Superintendent of Land
Records, Palghar
Having Office at -

Behind Tahsildar Office,
Palghar-401 404.

4. Yogesh Anant Sawant
Age:47 years,
5. Chandrasen Anant Sawant
Age:Adult, Occ.: Not Known
6. Smt.Chhaya Anant Sawant
Age: Adult, Occ.:Not known
Nos. 4 to 6 all residing at 2001,
Odyssey, Raheja Reflection, Raheja
Universal Phase II, Thakur Village
Kandivali East, Mumbai-400101. ... Respondents

Mr. Atul Damle Sr.Advocate a/w. Mr.Abhishek Matkar and Mr.Malhar Bageshwar i/by Mr.S.A.Sawad Advocate for Appellants.

Mr. Girish Godbole Sr.Advocate a/w. Surel Shah a/w. Jagdish G.Aradwad (Reddy) for Respondent Nos.4 to 6.

Mr. A.R.Patil, AGP for State/Respondent Nos. 1 to 3.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 20th APRIL 2023
PRONOUNCED ON : 5th June 2023

JUDGMENT :

1. This appeal is directed against an order dated 02/01/2023 passed by learned Civil Judge Senior Division, Palghar on an application for temporary injunction (Exhibit 5) in Special Civil Suit No.115/2022, whereby the learned Judge was persuaded to reject the application preferred by the Appellants/Plaintiffs to order Defendant Nos. 1 to 3, by way of interim mandatory injunction, to carry out joint measurement of

Survey No.459/1, 459/2, 459/3 and 459/4 of Village Mahim Taluka Palghar and to restrain Respondent/Defendant Nos.4 to 6 from entering into the aforesaid property and causing obstruction to the Plaintiffs possession or from alienating or otherwise causing any injury to the Plaintiffs.

2. For the sake of convenience and clarity the parties are hereinafter referred to in the capacity in which they are arrayed before the trial Court.

3. Background facts leading to this appeal can be stated as under:-

a) Land bearing Survey No.459, Hissa No.1, admeasuring 3.72 Hecter, originally belonged to the father and uncle of the Plaintiffs. Under a registered Partition Deed 7 acres land came to the share of father of the Plaintiffs, whereas 2 acres 12 gunthas land was allotted to the share of the uncle of the Plaintiffs. Out of the said land, under registered Sale Deed dated 05/04/1990, the father of the Plaintiffs sold 3 acres 6 R land to the predecessor in title of Respondent No.4. By another registered Sale Deed dated 20/08/1990 the uncle of the Plaintiffs sold 17 gunthas land to the predecessor in title of Respondent

No.4. It is the claim of the Plaintiffs that the agricultural land admeasuring 1.55.00R out of Survey No.459/1 remained with the Plaintiffs father. It was bounded by Road and Railway line on the Eastern, Survey No.460/1 on the Western, land bearing Survey No.459/2 of Defendant No.4 to 6 on the Southern and land bearing No.447/3 of Mangesh Vartak & Others on the Northern side (The Suit Land).

b) Plaintiffs father passed away on 23/10/2021 and the names of the Plaintiffs came to be mutated to the record of right of the suit land on 16/03/2022 vide mutation Entry No.33168.

c) In the meanwhile, the suit land was acquired for Virar Dahanu Road Railway Project. The final award was passed by Land Acquisition Officer MRVCM/Defendant No.1 on 28/12/2021 and an area admeasuring 0.1766 Hectors Are, was shown to have been acquired out of Survey No.459/1. A Notice was issued calling upon the Plaintiffs father to collect the compensation of Rs.2,40,98,408/-.

d) The Defendant No.4 made an application to Defendant No.2 on 26/8/2020 stating that the land has, in fact, been acquired out of

Survey No.459/2. Deputy Superintendent of land Records Palghar, Defendant No.3. was thereupon directed to conduct a joint measurement of the lands. Plaintiff asserts, measurement was carried out without notice to the Plaintiffs and an incorrect report came to be submitted to the effect that the land was in fact acquired out of the Survey No.459/2, the land belonging to Defendant No.4 to 6.

d) Plaintiffs made an application to the competent authority under Section 20H(3) AND (4) of the Railways Act 1989 (The Railways Act) for reference of the dispute to the decision of the Civil Court. Since no action was taken, the Plaintiffs were constrained to institute Writ Petition No.7821/22 seeking a direction to the defendant No.2 to refer the dispute to the decision of Civil Court. The Plaintiffs also assailed the order dated 27/06/2022 passed by Respondent NO.2.

e) By an order dated 21/11/2022 the Writ Petition came to be disposed with liberty to the Plaintiffs to institute a suit for adjudication of their claim to title to the property and payment of compensation.

f) Availing the said liberty the appellants instituted suit No.115/2022 and prayed for temporary injunction, as noted above.

g) By the impugned order the learned Civil Judge was persuaded to reject the application holding inter alia that the Plaintiffs did not claim the relief of declaration of ownership over the acquired land. In any event, in the view of the trial court the legality and validity of acquisition of the suit land could not have been assailed before a Civil Court. It was further held that the prayer of the Plaintiffs to declare the map as illegal and void was also barred by the provisions contained in Section 11 of the Bombay Revenue Jurisdiction Act, 1876.

4. Being aggrieved, the Plaintiffs are in Appeal.

5. I have heard Mr.Damale learned Senior Advocate for the Appellant and Mr.Godbole learned Senior Advocate for Respondent No.4 to 6. I have also perused the pleadings and material on record.

6. Mr.Damle learned Senior Counsel would urge that once the Award was published on 28/12/2021 and a notice was given to the father of the Plaintiffs declaring him as the person interested to claim the compensation, the authorities could not have passed an order which was at variance with the Award. Communication dated 10/03/2022,

whereby the Deputy Superintendent Land Record opined that the land was in fact acquired from Survey No.459/2 was thus totally infirm.

7. Mr.Damle learned Senior Counsel would further urge that the application preferred by the Plaintiffs seeking reference of the dispute to the Civil Court under Section 20H(4) of the Railways Act, could not have rejected by the Respondent No.2 by an order dated 27/06/2022. The aforesaid orders, in effect, amounted to modification of the Award, which the authorities were not legally competent to order, urged Mr.Damle.

8. Mr.Damle would further urge that the fact that the Appellants had invoked writ jurisdiction of this Court in Writ Petition No.7821/22 would not impinge upon the rights of the Appellants. An endeavour was made to show that in the said Writ Petition also the Appellants were seeking reference of the dispute to the Civil Court under Section 20H(4). Therefore, orders passed in the said Writ Petition on 21/11/2022 and Review Petition St.No. 4387/2023 dated 16/03/2023, according to Mr.Damle, did not preclude the Civil Court from consideration of the Plaintiffs primary case that the land, which vested in Plaintiffs, has been acquired. This character of the Plaintiffs claim

was completely lost sight of by the trial Court, submitted Mr.Damle.

9. As against this, Mr.Godbole learned Senior Advocate for Respondent No.4 to 6 would contend that the Plaintiffs claim is wholly misconceived. Taking the Court through the prayers in the Writ Petition No.7821/2022 which came to be instituted following the liberty granted by this Court, Mr.Godbole strenuously submitted that the Plaintiffs never claimed title over the acquired land for which liberty to institute the suit was sought. In fact, according to Mr.Godbole, the claim of the Plaintiffs that the land on the western side of the Railway track continued to vest in their predecessor in title is belied by the Sale Deeds dated 05/04/1990 and 20/08/1990. A conjoint reading of the aforesaid Sale deeds would indicate that no land on the western side of the Railway track remained with the predecessor in title of the Plaintiffs, which could form subject of acquisition for expansion of the Railways.

10. Since the submissions revolve around the liberty granted by this Court to the Plaintiffs to institute a suit and the import of the observations on the merits of the claim, it may be apposite to first note the prayers in the said petition and the observations of this Court, in the order dated 21/11/2022. In the said petition the Plaintiffs/Petitioners

prayed for quashing and setting aside the order dated 27/06/2022 rejecting the objection of the Plaintiffs and also sought a direction to Respondent No.2 to refer dispute to the Civil Court under the provisions of Section 20H(4) of the Railways Act. The Plaintiffs had also sought a direction to Respondent No.3/Defendant No.3 to carry out joint measurement of the disputed lands including Survey No.459/1, 459/2, 459/3 and 459/4.

11. In the backdrop of the aforesaid prayers a statement was made before the Court that the Plaintiffs would institute a Civil Suit for adjudication of their claim to the title of the property and for payment of compensation deposited by the Respondent No.2 in this Court, within 3 weeks thereof. In the light of the aforesaid submissions, the Writ Petition came to be disposed with liberty to the Petitioners/Plaintiffs to institute a suit. Observations in para No.5 and 7 are material and hence extracted below:

“ 5. We have perused the impugned order passed by the competent authority. The competent authority has rejected the objection raised in the impugned order. Since the petitioners propose to file a civil suit for adjudication of title of the property and for payment of compensation, we make it clear that if any civil suit is filed by the petitioners

within three weeks from today, the Civil Court is to decide the said suit and the interim application, if any, that would be filed on its own merits without being influenced by the observations made and the conclusions drawn by the competent authority in the impugned order.

7. It is made clear that if the petitioners do not obtain any stay against the respondent nos. 4 to 6 herein from the Civil Court in the Civil Suit proposed to be filed for withdrawing the said amount from the Civil Court within six weeks from today, the respondent nos. 4 to 6 would be at liberty to apply for withdrawal of the said amount. If any such application is made by the respondent nos. 4 to 6 for withdrawal of the said amount, the Trial Court to permit the respondent nos. 4 to 6 to withdraw the said amount which shall be subject to the undertaking that would be furnished by the respondent nos. 4 to 6 that if on the conclusion of the Trial Court, the plaintiff succeeds, the said amount shall be refunded on such terms and conditions as the Trial Court may deem fit.”

12. It would be contextually relevant to note the prayers in the suit before the Civil Court. Prayer clause (i) to (v) in para 41 of the plaint read as under:

“i) It be declared that, the acquisition of 0.1766 Hectare Are land has been done out of suit property, for which compensation amount Rs.2,40,98,408/- with interest,

only Plaintiffs are entitled and Defendant No.4 to 6 are not entitled, and the Defendant No.1 and 2 be directed to give said amount to the Plaintiffs.

- ii) It be declared that, map/plan of Pot Hissa Mojni No.12/1999 & 30/2000, dated 23/06/1999 & 25/04/2000, Hadda Kayam Mojani No.4136/2012 dated 11/04/2012 and Bhusampadan Mojani No.305/2008, dated 22/02/2022, alongwith reports and specification sheet, contrary to the situation of suit property as such shown in the boundaries of registered sale deed dated 05/04/1990, are void-ab-initio and not binding upon the Plaintiffs.*
- iii) It be declared that, the map/plan as such shown with the sale deeds dated 05/04/1990 & 20/08/1990, contrary to suit property as such shown in the boundaries of registered sale deed dated 05/04/1990, are void-ab-initio and not binding upon the Plaintiffs.*
- iv) Defendant No.1 to 3 be directed by an order and decree of mandatory injunction to carry out joint measurement of Survey no.459/1, 459/2, 459/3 & 459/4 of village Mahim, Taluka Palghar, on the basis of registered sale deed dated 05/04/1990 and boundaries written in it, and as per vahivat, after giving notices to the said Survey numbers land owners and the adjoining land owners, to fix the identity of the land being acquired from which portion of Survey No.459, for the four laning of Virar-Dahanu Road Railway Line.*

v) *Defendant No.4 to 6, their men, servants, agents, representatives etc be restrained perpetually from entering into the suit property, from claiming and blocking the eastern frontage of the suit property facing towards railway line, from obstructing the Plaintiffs from using the eastern Palghar-Kelwa Road, from wasting, damaging, alienating, dispossessing or otherwise causing any injury to the Plaintiffs, in relation to the suit property.”*

13. A bare perusal of the averments in the plaint and the prayers would indicate that the suit has not been instituted for the stated reason for which liberty was sought and obtained. The Plaintiffs desired to establish title to the acquired land and thereby contest the entitlement of Respondent No.4 to 6 to have the compensation. There is a clear disconnect in the prayers in the suit and the interim injunction sought by the Applicants/Plaintiffs. As noted above, the Plaintiffs sought an interim mandatory injunction to carry out the joint measurement.

14. In the aforesaid view of the matter Mr.Godbole was justified in canvassing a submission that at no point of time the legality and validity of the description of the property sold under the Sale Deeds dated 05/04/1990 and 20/08/1990 was put in contest. Institution of a

suit seeking a declaration about the validity of the Sale Deeds, at this length of time, does not merit countenance.

15. I find substance in the submissions of Mr. Godbole that the unsustainability of the Plaintiff's claim becomes evident from the description of the property which was sold under the Sale deeds dated 05/04/1990 and 20/08/1990. Under the Sale Deed dated 05/04/1990 an area admeasuring 74.9 R out of Survey No. 470 Hissa No. 7 was sought to be conveyed in favour of Harihar Govindrao Vartak and others. The said land was described as bound by Railway Lines on the Eastern side. This implies that the land beyond the Railway lines was sold under the said sale deed and no land on the Western Side of the Railway track continued to vest in the predecessor in title of the Plaintiffs. This inference gets reinforced from the description of the boundaries of the land sold under the Sale Deed dated 20/08/1990. Under the said Sale Deed, 17 Guntha land out of Survey No. 459 was sold to Harihar G. Vartak and others and the vendees of the land sold under the Sale Deed dated 05/04/1990 were shown as the holders of the land on eastern side.

16. The situation which thus obtains is that the registered

instruments prima facie indicate, with an element of certainty, that no part of the land of predecessors in title remained on the Western Side of the Railway track. Title to the said tract of the land passed to the predecessor in title of Respondent No.4 to 6.

17. In the aforesaid view of the matter in the absence of challenge to the Sale deeds for more than 30 years, the Plaintiffs claim that the description of the property and the maps annexed to the Sale deeds are not valid and binding cannot be readily acceded to. The learned Judge, in my view, committed no error in arriving at the finding that the Plaintiffs failed to make out a prima facie case. In any event, the prayers in the temporary injunction application are not such that the Plaintiffs would suffer irreparable loss if those prayers are not granted. Resultantly, I do not find any justifiable reason to interfere with the impugned order. Hence following order:

ORDER

1. The Appeal stands dismissed.
2. In view of the dismissal of the Appeal the Interim Application also stands dismissed.
3. Respondent No.4 to 6 stand relieved of the statement

that they would not withdraw the amount of
compensation deposited in this Court.

4. No costs.

(N.J.JAMADAR, J.)