

SA Pathan

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

WRIT PETITION NO.12824 OF 2019

Shahurao Deokar (Deceased)

Through his legal heirs

Balasaheb Shahurao Deokar & Anr. ... Petitioners

V/s.

State of Maharashtra

Through Collector, Pune & Ors. ... Respondents

Mr. Dilip Bodake, for the Petitioner.

Mr. A. P. Vanarse, AGP for the State-Respondent.

Mr. Sachin Gite, for Respondent No.4.

Mr. Surel S Shah, for Respondent No.7.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 29, 2023

P.C.:

1. Challenge in this petition is to the orders passed by the Courts below rejecting application for temporary injunction restraining acquiring body and other private respondents from disturbing possession of plaintiff over the suit property.

2. The petitioner filed a suit for injunction which was subsequently amended to include prayer of declaration against the State of Maharashtra and acquiring body alleging that defendant No.8 was the original owner. The petitioner was protected tenant. In the year 1969, the suit property was acquired. Defendant No.8

and plaintiff received compensation. Formal possession was handed over to the acquiring body. However, the actual possession remains with the plaintiff.

3. In the year 2001-2002, the plaintiff was put in possession of the suit property for cultivating the suit land for period from 1 August 2002 to 30 June 2003 after accepting amount of Rs.4,800/-.

4. According to the plaintiff, though in the year 2009, the policy of cultivating the land through person like plaintiff was cancelled, still defendant No.5 accepted amount from plaintiff from the year 2009 to 2015.

5. In a suit filed by the plaintiff bearing RCS No.220 of 2016, the Civil Court protected the plaintiff to the extent of restraining the defendants from disturbing possession of the plaintiff over the suit property except in accordance with due process of law.

6. The notice dated 4 August 2017 calling upon plaintiff to deliver the possession is the subject matter of the suit. The right based on which reliefs are sought; firstly, erstwhile capacity as protected tenant; and secondly limited right of cultivation conferred in the year 2002. Both the Courts below refused to grant injunction as there was no enforceable right in favor of the plaintiff. It needs to be noted that suit property has been acquired in the year 1969. The plaintiff being tenant has accepted compensation of his share with the result his right as protected tenant stood extinguished in the year 1969.

7. The right created in the year 2002-2003 was for limited

period from 1 August 2002 till 30 June 2003.

8. There is no material on record that on the date of filing of the suit, the plaintiff was having enforceable right or lawfully entitled to protect his possession over the suit property. It is well settled that in relation to public property/Government property, mere acceptance of rent or compensation by officials of Government would not amount to renewal of lease. Unless fresh lease is executed in favor of the plaintiff, he cannot claim any right over the suit property.

9. Even otherwise, express statutory provisions such as Maharashtra Land Revenue Code, 1966 deal with properties owned by the Government. Therefore, any executive instructions cannot create any right in favor of Government officials to create third party rights in relation to Government property. Such issuance of executive instructions has been deprecated by the Apex Court in the case of **Akhil Bhartiya Upbhokta Congress vs State of Madhya Pradesh & Ors**, reported in 2011 (5) SCC 29. Therefore, a person claiming right in relation to Government property is not entitled to seek injunction against the Government without any enforceable right.

10. In so far as paragraph 16 of the order passed in Miscellaneous Civil Appeal No.89 of 2016 is concerned, the Civil Court in the said appeal protected the plaintiff restraining the defendants from evicting him without following due process of law. Since, the suit property was undisputedly acquired under the Land Acquisition Act, only manner recognized by law to take

possession is to issue notice to the person in possession. Issuance of show cause notice or giving opportunity of hearing is not contemplated under the provisions Land Acquisition Act. Therefore, notice dated 4 August 2017 appears to be due process of law as contemplated under paragraph 16 of Miscellaneous Civil Appeal No.89 of 2016.

11. It is well settled that a person cannot seek injunction against true owner. Moreover, the person having no lawful right over the suit property is not entitled for injunction. Since the property has been acquired, such suit by a person to remain in possession after acquisition is not entitled to injunction against the acquiring body. Therefore, the Courts below have rightly rejected the application.

12. However, learned senior Advocate appearing for petitioner pointed out that by virtue of interim relief passed in suit and appeal, the plaintiff has cultivated the suit land. It would, therefore, be open for the plaintiff to file appropriate application before the appropriate authority seeking permission to allow him to remove his crop.

13. With the above clarification, the writ petition stands dismissed. No costs.

14. It is made clear that the observations made in the present order are restricted to the decision on the application below Exhibit 5 and the Trial Court shall not be influenced while deciding the suit on merits.

15. At this stage, learned senior Advocate appearing for petitioner seeks continuation of ad-interim relief. Considering the

fact that the plaintiff is seeking injunction against the acquiring body, not to take possession of premises acquired under the provisions of Land Acquisition Act, such ad-interim relief cannot be continued. Hence, the request is rejected.

(AMIT BORKAR, J.)