

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

FIRST APPEAL NO.318 OF 2003

1. The Principal }
Willingdon College of Deccan }
Education Society, Pune, Sangli }

2. Adv. Neel Girish Helekar }
Age:52 years, Occ- Advocate. }
Address-Flat no.15, 2nd Floor }
Mayur Building, V. P. Road, }
Near Congress House, }
Girgaon, Mumbai.400004. }

3. Dr. Sharad Shrikrushana Kunte }
Age : 65 Years, Occ-Retired }
Address : Chintamani 20 }
Omkareshwar Society }
Sahakarnagar no.1 }
Pune 411009. }

~~4. Dr. Shrikrishna Nilkanth Kanetkar (Deceased) }~~
~~Age : 60 years, Occ- Service }~~
~~Address : Bungalow no.6, }~~
~~Fergusson College Campus, }~~
~~Shivaji Nagar, Pune 411004 }~~

Rider -I

Dhananjay Anant Kulkarni }
Age :54 years, Occ: Service }
Residing at 254/5, Deepanjali }
Apartment Mukund Nagar }
Pune-411 037. }

.. Appellants

Versus

1. The State of Maharashtra Through the }
Collector, Sangli }

2. The Collector, Sangli. }

3. Maharashtra Industrial Development }
 Corporation Through Regional Officer, }
 Vishrambag, Sangli. }

..Respondents-Original defendants)

...

Mr. Rajesh Datar with Ms. Druti Datar, Advocates for Appellants.

Mr. A. R. Patil, Additional Government Pleader for Respondent nos.1 & 2-State.

Ms. Shyamali Gadre with Ms. Harshita Bhanushali instructed by Little & Co. Advocates for respondent no.3-MIDC.

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CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

Date on which the arguments concluded : 18th MARCH 2024.

Date on which the judgment is delivered : 14th JUNE 2024

JUDGMENT : (PER : A. S. CHANDURKAR, J)

1. In this first appeal filed under Section 96 of the Code of Civil Procedure, 1908 (for short, “the Code), the appellants-original plaintiffs seek to challenge the judgment and decree passed by the learned Civil Judge, Senior Division, Sangli in Special Civil Suit No.72 of 2001 dated 30th August 2002 whereby the said suit came to be partly decreed. The original plaintiffs are aggrieved by the non-grant of the relief of possession and monetary compensation. The parties shall be referred to as per their original status before the trial Court.

2. It is the case of the plaintiffs as pleaded in the plaint (Exhibit-1) that the Plaintiff no.1 is the Principal of the college being run by Deccan Education Society, Pune. The Plaintiff nos.2 and 3 are its trustees. The

predecessors in title of the plaintiffs had purchased land admeasuring 17 acres from Survey no.227 of village Kupwad, Taluka Tasgaon then District Satara and presently District Sangli from one Shri Ramchandra Deval vide registered sale deed dated 9th May 1919. The predecessors in title of the plaintiffs sought to establish a college and hence the then Government acquired land admeasuring 108.37 acres from Survey nos.220 to 232 at village Kupwad under provisions of the Land Acquisition Act 1894 (for short, the Act of 1894). Pursuant to an agreement dated 7th June 1921, the aforesaid land was handed over to the predecessors in title of the plaintiffs. Survey no.220 came to be re-numbered as Survey no.179. It was identified as City Survey no.4325 having area of 4,45,444.2 square metres. According to the plaintiffs, the Willingdon College alongwith other institutions were constructed on the said land. An overhead water tank came to be constructed on land admeasuring 24 R on the western side which was part of City Survey no.4325. The said area of 24R was part of the 17 acres land that was purchased by the predecessors of the plaintiffs on 9th May 1919. According to the plaintiffs, the then Collector – defendant no.2 represented to them that the Government of Maharashtra – defendant no.1 was in need of land for constructing an administrative building. Possession of said land was thus sought from the plaintiffs. By letter dated 24th December 1998, the Collector asked the plaintiffs to

handover 2H 45R land from City Survey no.4325. Since the plaintiffs had constructed the overhead water tank and there was an existing well in the said lands, request was made to exclude the said land admeasuring 24R from acquisition. Ultimately on 28th March 2000, the defendants took possession of land admeasuring 2H 45R including the land admeasuring 24R that was reserved for the overhead water tank. Despite aforesaid, the defendants contended that they had received possession of land admeasuring 2H 21R and hence called upon the plaintiffs to deliver 15R of land from City Survey no.4325. It is the case of the plaintiffs that the defendants had taken over possession of about 84R of land illegally and without any authority of law. Despite request being made to return the land, the defendants did not do so. On the aforesaid basis, the plaintiffs on 12th April 2001 filed the suit for declaration that the trustees of the Society were the owners of the land described in Schedule A which was admeasuring 4,45,444.2 square meters in City Survey no.4325. A declaration of ownership was also sought with regard to land admeasuring 2H 45R including 24R land where the overhead water tank was constructed as well as 84R land.

3. It may be stated that during pendency of the suit, the plaintiffs amended the plaint. Since the Maharashtra Industrial Development

Corporation (for short, the MIDC) undertook construction on a portion of the suit land, the relief was amended and compensation was sought from the defendants.

4. The defendant nos.1 and 2 filed their written statement vide Exhibit-54 and denied the case of the plaintiffs. It was stated that the lands in question had been acquired by the Government of Maharashtra and that it was the owner of the same. The rights of the plaintiffs were governed by the agreement of 1921 and that if the said land was required for public purpose, it was liable to be taken back by the Government of Maharashtra. The possession of the lands in question was handed over by the plaintiffs voluntarily after which its possession was given to the MIDC-defendant no.3 for construction of its IT centre.

An additional written statement at Exhibit-193 was filed by the defendant nos.1 and 2 denying the amended pleadings of the plaintiffs.

5. The defendant no.3 filed its written statement at Exhibit-52 and also denied the plaintiffs claim. It was stated that as per notification dated 24th May 2000, the defendant nos.1 and 2 handed over possession of land admeasuring 2H from Survey no.179/2 that was part of City Survey no.4325. After receiving possession on 5th July 2000, a work order was

issued and the construction was undertaken.

After amendment of the pleadings, the defendant no.3 filed its additional written statement at Exhibit-197 and denied the case of the plaintiffs.

6. Before the trial Court, the plaintiffs examined four witnesses namely, Shri Harishchandra Nirmale, the Principal of Willindon College at Exhibit-75, Shri Viraj Kholkumbe, the Director of the Management Institute at Exhibit-208, Shri Yashwant Toro, the Secretary of the Society at Exhibit-220 and Shri Vivek Deshpande, an Architect at Exhibit-233. Various documents were filed on record of which some were exhibited during the deposition of the plaintiffs witnesses.

On behalf of the defendant nos.1 and 2, Shri Sadashiv Yedke, Tehsildar was examined below Exhibit-243. Various documents were exhibited during the course of his deposition.

7. After considering the entire material on record, the learned Judge of the trial Court by the impugned judgment held that by virtue of the sale deed dated 9th May 1919 the predecessors of the plaintiffs had acquired possession of the lands described therein. However, the plaintiffs failed to prove the exact location of Survey no.179 in which Survey no.227 was

merged. It further held that the plaintiffs were not owners of the lands referred to in Schedule A, B and C as referred to in the plaint. Thus while denying the relief of restoration of possession as prayed for, the defendant nos.1 and 2 were restrained from taking possession of the remaining portion of the suit lands from the plaintiffs without following the due process of law. Other ancillary directions were issued and the defendant no.3 was directed to convey one unit admeasuring 250 square feet to the plaintiffs at 50% of the prevailing rates. The defendant nos.1 and 2 were directed to pay an amount of Rs.1,458/- for land admeasuring 3H 5R. The suit was partly decreed to the aforesaid extent. Being aggrieved by the refusal on the part of the trial Court to grant all the reliefs prayed for in the plaint, the plaintiffs have preferred the present appeal seeking that part of the relief that was refused by the trial Court. The defendants have not challenged the partial relief granted by the trial Court.

8. Shri Rajesh Datar, learned counsel appearing for the appellants-plaintiffs submitted that the trial Court erred in not granting all the reliefs that were prayed for by the plaintiffs in the plaint. According to him, the agreement dated 7th June 1921 was not properly interpreted by the trial Court. As per Clause 3 of the said agreement, on the lands mentioned therein being transferred to the plaintiffs, the said lands were to be held as

the plaintiffs' property. The purpose for which the said lands were granted was to be achieved after receiving possession of the said lands. Under Clause 3, the plaintiffs had become owners of the suit property that was described in Schedule A to the plaint. The stand taken by the defendants that under the agreement dated 7th June 1921, the lands were only transferred by way of grant was without considering various other clauses of the agreement. For the same reason, the further stand taken that possession of the land could be taken back as and when required was also misconceived since the plaintiffs were to hold that land as owners. In this regard, the learned counsel place reliance on the decision in *Delhi Dayalbagh Cooperative House Building Society Limited Vs. Registrar, Cooperative Societies and others*, (2019) 3 SCC 745.

It was further submitted that under Clause 4 of the agreement dated 7th June 1921, the defendant no.1 was liable to pay to the plaintiffs a sum equal to the amount of compensation that could be awarded under provisions of the Act of 1894. Clause 4 had not been correctly interpreted by the trial Court. As a result, a direction was issued to the defendants to pay an amount of Rs.1458 only to the plaintiffs. This was the amount paid by the plaintiffs towards cost of acquisition of the said lands and it was not the amount of compensation as claimed by the plaintiffs. Thus according to the learned counsel, on a conjoint reading of Clauses 3 and 4

of the agreement dated 7th June 1921 it was clear that the plaintiffs were entitled to receive compensation as payable under the Act of 1894 including the amount payable under Section 23(2) of the Act of 1894.

9. The learned counsel for the appellants further submitted that before resuming possession of the subject lands, the defendants did not follow the procedure that was agreed. By misinterpreting Clauses 3 and 4 of the agreement dated 7th June 1921, the trial Court proceeded on the premise that the defendants had the right to take back possession of the subject lands as and when deemed fit. Further the trial Court was not justified in proceeding on the basis that the plaintiffs did not use the land for the purpose for which it was assigned especially when Clause 4 of the agreement did not specify any such condition on the basis of which the defendants had a right to take back possession. It was also to be noted that under Clause 4, the demand for the land was to be made in writing. Though the initial demand was made for 2H 45 R and 0.26R, the defendants took possession of land admeasuring 0.34R without any authority and without following the procedure stated in the agreement dated 7th June 1921. Despite the fact that about five maps had been placed on record by the plaintiffs and the concerned witness had been examined, the said maps were not taken into consideration by the trial

Court.

It was thus submitted that on a proper consideration of the entire evidence on record, it was clear that the plaintiffs were entitled for all the reliefs prayed for in the plaint. The trial Court, however, erred in refusing to grant such reliefs other than those granted. It was accordingly prayed that the suit be decreed in its entirety by allowing the first appeal.

10. Shri A. R. Patil, learned Additional Government Pleader for Respondent nos.1 and 2 – defendant nos.1 and 2 opposed aforesaid submissions. According to him, the learned Judge of the trial Court rightly found that the plaintiffs had failed to prove that 0.34R land, possession of which was taken, was forming part of the sale deed dated 9th May 1919. Despite placing on record various maps, the plaintiffs were unable to prove the exact location of the said lands and that they were part of Survey no.227 which was subsequently converted to Survey no.179. This finding of fact was recorded by the trial Court after taking into consideration all the evidence led by the plaintiffs. It was necessary for the plaintiffs to have brought on record relevant material from the office of the District Inspector of Land Records (for short, DILR). Surprisingly, no such evidence was brought on record. The trial Court, therefore, rightly held that the maps at Exhibits 234 to 239 were not at all helpful to the

plaintiffs. The plaintiffs ought to have sought appointment of the DILR for measuring the suit property which would have enabled the trial Court to consider the case sought to be made out by the plaintiffs.

11. It was further submitted that the trial Court rightly considered the various clauses of the agreement dated 7th June 1921 and found that the land was required to be resumed. Referring to Clause 4 of the aforesaid agreement, it was submitted that such compensation under the Act of 1894 was required to be separately claimed. In the present suit, the monetary claim that could be considered was only with regard to damages. Since this claim was not proved by the plaintiffs, the judgment of the trial Court could not be faulted. It was then submitted that the plaintiffs had voluntarily handed over possession of the subject lands by executing two possession receipts dated 28th March 2000 – Exhibit 142 and 25th May 2000 – Exhibit 271. It, therefore, could not be said that the defendants had taken any forcible possession of any piece of land from the plaintiffs to enable them to claim damages. The plaintiffs had failed to point out non-consideration of any relevant evidence by the trial Court. It was, therefore, submitted that since the plaintiffs had failed to prove their entitlement to the reliefs that were denied by the trial Court, no interference with the judgment of the trial Court was called for. The first

appeal was liable to be dismissed.

12. Ms. Shyamali Gadre, the learned counsel appearing for the respondent no.3 – defendant no.3 also opposed the appeal. Relying upon the written statement filed by the defendant no.3 before the trial Court it was submitted that the plaintiffs failed to lead cogent evidence before the trial Court to support the prayers made by them. The trial Court rightly refused to grant the relief of declaration and restoration of possession to the plaintiffs. There was no case made out for this Court to interfere with the decree passed by the trial Court. It was thus submitted that the appeal was liable to be dismissed.

13. On hearing the learned counsel for the parties and after considering their pleadings, the following points arise for determination :

(a) Whether the plaintiffs have proved that they had become owners of the suit lands pursuant to the agreement dated 7th June 1921 – Exhibit 82 ?

(b) Whether the plaintiffs have proved that the defendant nos.1 and 2 have taken possession of lands not governed by the agreement dated 7th June 1921 – Exhibit 82 but lands forming part of the sale deed dated 9th May 1919 – Exhibit

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(c) Whether the plaintiffs have been paid compensation in terms of Clause 4 of the agreement dated 7th June 1921 – Exhibit 82 ?

(d) Whether the plaintiffs are entitled to receive back possession of lands taken from them pursuant to possession receipts dated 25th May 2000 – Exhibit 92 and 5th July 2000 – Exhibit 179 ?

(e) Whether the plaintiffs have proved their claim for damages ?

(f) Whether the judgment of the trial Court deserves to be interfered with ?

14. We have heard the learned counsel for the parties at length and with their assistance, we have also gone through the record and proceeding of the civil suit. The written submissions placed on record have also been perused. As stated above, the suit filed by the plaintiffs came to be partly decreed by the trial Court. The defendants have not challenged that part of the decree that grants partial relief to the plaintiffs. It is only the plaintiffs who are aggrieved by the non-grant of principal relief by the trial Court.

15. As to point (a) - Land admeasuring 17 acres from Survey no.227

Mouje Kupwad came to be purchased by the predecessor of the plaintiffs from one Shri Ramchandra Deval. According to the plaintiffs, the Society moved the Government of Bombay seeking additional land to carry out the objects of the Society in imparting education. The State of Bombay held an enquiry under Section 40 of the Act of 1894 as to whether land could be acquired to enable the Society to meet its objects. On being satisfied that there was in fact such need, an agreement was entered into under Section 41 of the Act of 1894 between the State of Bombay and the representatives of the Plaintiffs no.1. The execution of this agreement is not in dispute.

Since the agreement dated 7th June 1921 entered into between the plaintiffs and the State of Bombay is the basis of the plaintiffs claim, it would be necessary to refer to the terms and conditions stated therein. The said agreement is at Exhibit-82 and conditions 1 to 7 read as under :-

“1. The Society shall and will provide for and reimburse or pay to the said government the entire cost as determined by the said government of the acquisition under the provisions of the said Act of the said land including all compensation damages, interest costs charges and expenses whatsoever which have been or may be paid or incurred in respect of or on account of

such acquisition and all law costs and other expenses which have been or may be incurred by the said government upon or in respect of or incidental to such acquisition or any litigation arising thereout and either in the original or Appellate courts and including the cost of any establishment and the salary or allowance of any officer or officers of government whom the said government may think it necessary to employ or depute on special duty for the purpose of such acquisition. The monies which shall be payable by the Society under this clause shall be paid by it by the initial deposit with the Collector of the sum of Rupees Twenty one Thousand (Rs. 21,000/-) only within 7 days after the publication in the Bombay government gazette of the Notice under section 6 of the said Act with reference to the said land in the pursuance of these presents and by payment to the Collector in writing of such amount as the Collector shall from time to time estimate to be required or provided by the Society for the purpose of meeting or disbursing any of the monies compensation damages interest. Costs charges or expenses herein before referred to. In these

presents the expression "Collector" shall extend to mean and include (as the case may be) the Collector of the district in which the said land is or shall at any time be included and also the persons meant and included in such expression by the said Act.

2. On payment of the entire monies compensation, damages, interest, costs, charges and expenses incidental to the acquisition of the said land the whole of the said land shall as soon as conveniently may be after the award of the Collector is made in respect thereof and possession has been taken by the Collector under the said Act be transferred to the Society at the cost in every respect of the Society so as to vest in the Society subject to the provisions of the Bombay land revenue Code, 1879, and the rules made thereunder, the rights in the said land which have vested in government under section 16 of the said Act.

3. The said land when so transferred to and vested in the Society shall be held by the Society as their property to be used in furtherance of the above said object subject nevertheless to the payment of local fund cess and the

non-agricultural or other assessment as the case may be, if and so far as the land acquired is liable to such assessment or to an assessment revised under the provisions of the Bombay land Revenue Code, 1879, and the rules there under.

4. *(If) at any time or times any part or parts of the said land shall in the opinion of the said government be necessary to be possessed by the said government for purposes of revenue administration or either by the said government or by a local authority for the purpose of making any new public road or for any purpose connected with public health, safety, utility or necessity (as to which matters the Society shall accept the decision of the said government who shall be the sole Judge), the Society on being thereunto required by the said government in writing (which shall be sufficient if signed by the Collector) shall Transfer to the Secretary of State such part or parts of the said land as the said government shall specify to be necessary for any of the purposes aforesaid, and in consideration of such Transfer the Secretary of State shall pay to the Society a sum equal to*

the amount of the compensation awarded under the said Act and paid by the Society in respect of the land the subject of the Transfer upon the acquisition there of for the Society, including the percentage awarded under Section 23(2) of the said Act, and such amount as shall be estimated by the Executive Engineer whose decision in the matter shall be final as the cost of the development of the land the subject of Transfer which shall include the value at the date of Transfer of any structures standing thereon.

5. The Society shall construct the proposed buildings for the Willingdon College within a period of five years in accordance with the plans already approved by the University of Bombay and seen by the director of Public Instruction, Bombay. The Society shall at all times keep and maintain the said land in good order to the satisfaction of the Collector.

6. The Society shall keep the College open to students of all classes, castes, and creeds -

7. All the costs and expenses incidental to the preparation, execution and registration of this agreement

shall be paid by the Society. In witness whereof the said trustees have thereunto set their respective hands and seals and the Collector has for and on behalf of the Secretary of State for India in Council hereto set his hand and seal the day and year above written.”

The Schedule attached to the agreement refers to thirteen lands totally admeasuring 108.37 acres.

16. A perusal of the entire agreement would indicate that the Government of Bombay on being requested by the Plaintiff no.1 to allot it land to carry out the object of the Society conducted an enquiry under Section 40 of the Act of 1894 and after being satisfied that such land was indeed required by the plaintiff no.1 proceeded to enter into an agreement as required by Section 41 of the Act of 1894. In the Schedule to the said agreement, reference was made to about 13 Survey nos. indicating acquisition of various lands and the total area of the lands acquired was 108.37 acres. The cost of acquisition paid by the plaintiffs was Rs.21,000/-. Under Clause 3 of the said agreement, on the said lands being transferred in favour of the Society, the same were to be held by it as its property. This was subject to payment of non-agricultural or other assessment. As per Clause 4 of the said agreement, if in the opinion of the

Government of Bombay any part of the said land was required for making of any public road or for any purpose connected with public health, safety or utility, it was open for the Government of Bombay to require the Society to handover possession of such area of land. The decision of the Government of Bombay in this regard was treated as final. In consideration of such transfer, it was stated that the State would pay to the Society a sum equal to the amount of compensation awarded under the said Act and paid by the Society in respect of that land as well as the percentage awarded under Section 23(2) of the Act of 1894. The amount so determined was treated to be final as regards the cost of development subject to transfer of said lands.

From the aforesaid, it becomes clear that the lands referred to in the Schedule came to be acquired and thereafter handed over to the Society to carry out its objects. Though the Society was to hold the said lands as its property, such holding was subject to any requirement of the State of Bombay of a part of those lands if such lands were required by it. It is on this basis that the rights of the parties would have to be determined.

17. While the plaintiffs claim ownership of the land admeasuring 108.37 acres that forms part of the agreement dated 7th June 1921, the Government of Maharashtra contends that the plaintiffs do not have

absolute right over these lands. According to the Government of Maharashtra in accordance with the said agreement, the plaintiffs are required to return that part of the land that is demanded by it as per Clause 4 thereof. To consider this aspect, the agreement dated 7th June 1921 will have to be read as a whole. On doing so it becomes clear that the said lands were acquired under provisions of the Act of 1894 at the behest of the Society to enable it to achieve its objects. This was subject to the condition that part of the land on being required was to be returned to the Government of Maharashtra subject to the Society being compensated in accordance with Clause 4 of the agreement. It, therefore, cannot be said that the Society became the absolute owner of the lands admeasuring 108.37 acres pursuant to the agreement dated 7th June 1921. Its ownership rights in that regard were subject to what was stated in Clause 4 of the agreement. It had limited ownership as circumscribed by Clause 4 of the agreement dated 7th June 1921. The Society accepted the terms of the agreement and has not challenged the same.

The ratio of the decision in *Delhi Dayalbagh Co-operative House Building Society Ltd (supra)* cannot be made applicable to the present case as the ownership rights of the Society have been found to be subject to Clause 4 of the agreement dated 7th June 1921. Accordingly, the finding recorded by the trial Court that the plaintiffs were not owners of the said

lands is set aside. It is held that the ownership rights of the Society in the lands mentioned in Schedule A of the agreement dated 7th June 1921 were subject to Clause 4 of that agreement. Point (a) as framed is answered accordingly.

18. As to points (b) and (d) - It would be necessary to consider both these points together. In case the plaintiffs prove that the defendant nos.1 and 2 had taken possession of lands that were not part of Schedule A to the agreement dated 7th June 1921 but were part of the lands purchased under the sale deed dated 9th May 1919 then the relief sought for delivering possession of said lands would arise for consideration. In this regard, it would be necessary to consider the communication dated 24th December 1998-Exhibit 83 issued by the office of the Collector to the plaintiffs. By that letter, possession of lands admeasuring 2H 45R and 0.26R from Survey no.4325 was sought from the plaintiffs. There is another communication dated 18th February, 2000-Exhibit 84 to that effect. In response, the plaintiffs on 8th March 2000-Exhibit 85 submitted their reply calling upon the authorities to undertake necessary compliance as sought. The communication 27th April 2000-Exhibit 89 indicates that the Circle Officer on 28th March, 2000 had taken possession of part of the aforesaid lands excluding 0.24R lands where a water tank was being

constructed as well as 0.26R from the lands described. On 17th May 2000-Exhibit 90, another communication was issued demanding possession of the balance land. Thereafter on 23rd May 2000-Exhibit 91 a notice was issued by the Circle Officer to the plaintiffs stating that possession of the requisite land would be taken on 25th May 2000.

19. On 25th May 2000 a possession receipt-Exhibit 92 came to be executed by the Circle Officer stating therein that 0.84R land from Survey no.179/3/1 was taken on behalf of the Government of Maharashtra. It was further stated that land admeasuring 32H 42R from Survey no.179/3/2 was remaining with the plaintiff no.1. The plaintiffs on 28th June 2000-Exhibit 133 A issued a communication stating therein that instead of taking possession of 0.50R land, possession of 0.84R land was taken. Thus, possession of excess land of 0.34R land was taken. Thereafter on 5th July 2000 another possession receipt-Exhibit 179 came to be executed by the Circle Officer indicating that possession of 0.96R land was taken from Survey No.179/3/1. Thus possession of lands admeasuring 0.84R and 0.96R which was total of 1H 80R came to be taken. It may be noted that on 30th May 2000-Exhibit 141, the order dated 7th April 2000 passed by the Collector came to be revised and instead of land admeasuring 5 acres, land admeasuring 1H 80R came to be allotted to MIDC for construction of its Information Technology building.

20. To prove the aforesaid aspect, the plaintiffs examined PW 4-Shri Vivek Deshpande-Exhibit 233 who was an architect. He placed on record the map at Exhibit 234 as well as the legends at Exhibits 235 to 239. In his cross-examination, he admitted that specific markings had not been made while preparing the said maps. On the other hand, the defendant nos.1 and 2 examined Shri Sadashiv Yedke-Exhibit 243 who was the Tehsildar who stated that possession of the lands in question was taken from the lands that were part of the agreement dated 7th June 1921 and not the part of the plaintiffs' sale deed dated 19th May 1919. He denied the maps prepared by the plaintiff-witness and further stated that 0.24R that was given to the MIDC.

21. The trial Court after considering the evidence on record has held that the plaintiffs failed to prove that possession of lands forming part of the plaintiffs' sale deed dated 19th May 1919 had been taken. Though the plaintiffs title to land admeasuring 17 acres on the basis of sale deed dated 9th May 1919 was held to have been proved, it was held that exact location of the lands of which possession was taken was not proved. This was for the reason that no witness from the office of the DILR or the city survey office came to be examined.

We find on consideration of the evidence led by the plaintiffs and

especially the deposition of PW 4-Exhibit 230 that the plaintiffs have failed to prove the exact location of the subject lands. The maps prepared by the plaintiffs' witness who was an Architect did not clearly indicate their location and whether the same were part of Survey no.227. The burden to prove the location of the said lands was on the plaintiffs. However, the evidence led in that regard is not of such nature to hold that the plaintiffs could prove that possession of lands that were part of the plaintiffs sale deed dated 19th May 1919 had been taken. We do not find that the trial Court committed an error while recording such finding. The same has been recorded after considering the evidence led by the plaintiffs as well as the evidence of the Tehsildar examined by defendant nos.1 and 2. It therefore follows that possession of lands that were part of Schedule A of the agreement dated 7th June 1921 had been taken and not the lands purchased by the plaintiffs on 9th May 1919. Point (b) stands answered accordingly.

Since the plaintiffs have failed to prove Point (b) they would not be entitled to receive back possession of the said lands from the defendants. Point (d) is answered accordingly.

22. As to point (c) - Having found that the defendant nos.1 and 2 had taken over possession of land admeasuring 1H 30R from the plaintiffs on the basis of the agreement dated 7th June 1921, the entitlement of the

plaintiffs to receive compensation would be required to be considered. The trial Court while granting relief in this regard has held that for the aforesaid land of which possession was taken, the plaintiffs would be entitled for a sum of Rs.1458/-. This is on the premise that pursuant to the agreement dated 7th June 1921, the plaintiffs had paid an amount of Rs.21,000/- towards cost of acquisition for land admeasuring 108.37 acres. In other words, the amount of Rs.1458/- has been proportionately determined by the trial Court for the portion of the area of the land taken back.

23. In our view, the trial Court while determining the amount of compensation has failed to take into consideration the effect of Clause 4 of the agreement dated 7th June 1921. Under this Clause, the plaintiffs were entitled to receive in consideration of transferring such lands which the Government of Maharashtra was to specify, a sum equal to the amount of compensation awarded under the said Act and paid by the Society in respect of the land that had been transferred. In addition, the percentage awarded under Section 23(2) of the Act of 1894 as estimated by the Executive Engineer was required to be paid. The value of any structure standing on the portion of land transferred was also to be paid. While determining the amount of Rs.1458/- for land admeasuring 3H 5R, the

trial Court failed to take into consideration the provisions of Clause 4 of the said agreement. We find that since the Government of Maharashtra has invoked Clause 4 of the said agreement and has taken back possession of part of the lands that were handed over to the plaintiffs pursuant to the agreement dated 7th June 1921, it would be necessary for the defendant nos.1 and 2 to pay the plaintiffs compensation in the manner provided by Clause 4. To that extent, the plaintiffs would be entitled to further relief in the form of compensation admissible under Clause 4 of the agreement dated 7th June 1921. The finding recorded by the trial Court in that regard would be required to be modified. The amount of Rs.1458/- as determined by the trial Court being the amount of compensation for the lands taken back is not in accordance with Clause 4 of the said agreement. Point (c) is accordingly answered by holding that the plaintiffs are entitled to receive compensation in terms of Clause 4 of the agreement dated 7th June 1921.

24. As to point (e) - The plaintiffs claim damages from the defendants for having taken possession of the subject lands from them. We have, however, found that possession of the said lands was taken after due notice to the plaintiffs and by executing the possession receipts at Exhibit 92 and Exhibit 179 dated 25th May 2000 and 5th July 2000 respectively.

Before the trial Court, the plaintiffs failed to lead any evidence to support the prayer for grant of damages. The trial Court refused to grant such relief in absence of any material evidence in that regard. Having examined the evidence led by the plaintiffs, we do not find any reason whatsoever to take a different view of the matter. There is no evidence brought on record by the plaintiffs to support the prayer for grant of damages. This finding recorded by the trial Court does not call for any interference. Point (e) is answered accordingly.

25. As to point (f) - Thus we find that the plaintiffs have failed to prove that they had become exclusive owners of the suit lands pursuant to the agreement dated 7th June 1921. Possession of the lands referred to in Schedule A of the said agreement was handed over to the plaintiffs subject to the terms and conditions mentioned in the agreement. The Government of Maharashtra was entitled to take back possession of the lands required by it under Clause 4 of the agreement and the plaintiffs were entitled to receive compensation for the same also in accordance with Clause 4. The amount of compensation of Rs.1458/- has not been correctly determined by the trial Court and that finding is liable to be set aside. As a result, though the findings recorded by the trial Court while refusing to grant the relief of declaration of ownership and restoration of

possession are liable to be confirmed, the finding recorded that the plaintiffs are entitled to receive compensation only of an amount of Rs.1458/- is required to be modified by holding that the plaintiffs would be entitled to receive compensation in accordance with Clause 4 of the agreement dated 7th June 1921. Point (f) stands answered accordingly.

Since it has been held that the plaintiffs are entitled to receive compensation in accordance with Clause 4 of the agreement dated 7th June 1921, determination of that amount would be necessary. It is however seen that the present suit was filed in the year 2001 and a period of almost 23 years has since elapsed. Instead of further prolonging the litigation in this regard by remanding entire proceedings to the trial Court or by taking recourse to the provisions of Order XLI Rule 25 of the Code, we are inclined to follow the course as prescribed under provisions of Order XX Rule 12 of the Code in view of the fact that the suit as filed was one for possession.

26. The decree insofar as it refuses the claim for possession but holds the plaintiffs entitled to receive compensation in accordance with Clause 4 of the agreement dated 7th June 1921 could be treated to be a preliminary decree. The exercise of determining the amount of compensation can be undertaken on the lines of the provisions of Order XX Rule 12 (2) of the

Code. In other words, such determination of the amount of compensation in accordance with the agreement dated 7th June 1921 shall be in the nature of final decree to be passed by the trial Court after giving due opportunity to the plaintiffs as well as the defendants in that regard. To undertake this exercise, the parties would be entitled to take appropriate steps in that regard.

27. As a result of the aforesaid discussion, the following order is passed:

(a) The judgment dated 30th August 2002 passed by the learned Civil Judge Senior Division, Sangli in Special Civil Suit No.72 of 2001 is partly modified to the extent indicated in clauses (b) and (c) below.

(b) It is held that the plaintiffs are entitled to receive compensation for the lands, possession of which has been taken in accordance with possession receipts at Exhibits 92 and 179 in the manner provided by Clause 4 of the agreement dated 7th June 1921. This amount would be in addition to the amount of Rs.1458/- as awarded by the trial Court.

(c) The amount of compensation shall be determined in accordance with the agreement dated 7th June 1921 by passing

a final decree.

(d) Clause (2) of the operative order passed by the trial Court shall be modified to the extent stated above with regard to land admeasuring 3 Hectares 5 acres of which possession has been taken. Clauses (3) to (12) thereof stand confirmed.

28. The First Appeal is partly allowed in aforesaid terms leaving the parties to bear their own costs. The decree be drawn accordingly. The record and proceedings be sent to the trial Court forthwith.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]