



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 127 OF 2017

Govind Shankar Patil.

...Appellant.

Versus

Bandu Rama More and Another.

...Respondents.

Mr. S. S. Patwardhan for the appellant.

Mr. Akshay R. Kulkarni i/b Ashutosh M. Kulkarni for respondents.

Coram : Sharmila U. Deshmukh, J.

Date : January 12, 2024.

P. C. :

1. Heard.
2. Being dissatisfied by the judgment dated 5th July 2016 passed by the learned District Judge in Regular Civil Appeal No. 280 of 2011 confirming the judgment and decree dated 2nd September 2011 passed by the Civil Judge, Jr. Division, Malkapur in Regular Civil Suit No. 22 of 2009, the present appeal has been preferred.
3. The undisputed facts of the case are that the appellant was owner of land Gat No.125 admeasuring 2-Hectare 59-Are and 80-gunthas of land which is subject matter of suit. The State

Government proposed the construction of a dam in the nearby river-Kadavi and the land belonging to the defendants came to be acquired for construction of dam and he became entitled for resettlement as a project affected person. Award came to be passed under the provisions of Land Acquisition Act, 1896. The case put up by the plaintiff is that the State Government did not take possession of the suit land from the plaintiff to deliver the same to the defendants however taking advantage of the entries in revenue records, the defendants started obstructing the plaintiff's possession over the suit land.

4. Against the acquisition of land Gat No.125, Writ Petition No. 4719 of 1995 was preferred by the Appellant seeking quashing of the acquisition proceedings in respect of 80-Are land in Gat No.125. In these proceedings, Special Land Acquisition Officer by its communication addressed to the AGP informed the AGP that the proposal for exchange of Gat No.228 in place of Gat No.125 was acceptable. Based on this communication, which was placed before this Court, the writ petition was permitted to be withdrawn. The case of appellant is that he is in possession of land Gat No.125 and he is all along ready and willing to offer the alternate land Gat No.228 which has been accepted by the Special Land Acquisition Officer. It

appears that subsequently, another writ petition, being Writ Petition No. 9553 of 2010 was instituted by the appellant seeking a direction against the State Government to release the land bearing Gat No. 125 from acquisition which is stated to be pending in this Court.

5. The defendants resisted the suit. It was contention of the defendants that they were not made parties to the writ petition and that they are in possession of the suit land since November 1999. It was also contended that the District Collector-cum-Dy. Director, Resettlement is a necessary party to the suit and as such the suit is bad for non joinder of necessary parties.

6. The trial Court by judgment dated 2nd September 2011 framed the following issues :

	Issues.	Findings.
1.	Whether the plaintiff proves exclusive possession over the suit property ?	 No.
2.	Whether the plaintiff proves that the defendants obstructed his possession over the suit property ?	... Does not survive.
3.	Whether the plaintiff is entitled for relief of perpetual injunction, as prayed ?	... No.
4.	What order and decree ?	... the suit is dismissed.

7. The trial Court considered the communication at Exhibit-56 as a

report of the Secretary, Land Acquisition Department that the plaintiff has sold Gat No.228 by registered sale-deeds of 1985 and 1994 which fact has not been stated either in the writ petition or the application by him for withdrawal of acquisition. The trial Court considered that though award is passed, the physical possession of property is not handed over. Upon considering the documentary evidence as regards the notification as well as the award, trial Court held that the acquisition is complete and the land vests in the State Government free from all encumbrances after taking possession. As regards the panchnama which was effected by talathi, the trial Court held that the original panchnama is not on record and that there is ample evidence on record to show that the defendants are put in possession vide possession receipt dated 9th December 1999 in the presence of TILR as well as the panchas by the superior officer of talathi and, as such, held that the possession receipt at Exhibit-35 and 36 would prevail over panchanama at Exhibit 3/2. Based on the evidence, the trial Court held that the plaintiffs were not found in possession and dismissed the suit, as against which the appeal came to be filed. The appellate Court considered that the factum of possession sought to be proved by the appellant based on the enquiry of talathi could not be accepted as the talathi who had drawn

the panchnama was not examined. Further, as regards the statement given by the defendant at Exhibit-34 on which reliance is placed to show that defendant had expressed willingness to accept land Gat No.228, the appellate Court held that the statement bears thumb impression which is not attested nor it is a statement bearing date on which it was recorded and as such declined to consider the said document as proof of possession. The appellate Court held that based on the evidence on record the plaintiff has lost possession of the said land way back in 1999 and dismissed the appeal.

8. Heard Mr. S. S. Patwardhan, learned counsel appearing for the appellant and Mr. Akshay Kulkarni, learned counsel appearing for the respondents.

9. Mr. Patwardhan, learned counsel for the appellant would submit that the question of law is perversity of findings as orders passed by this Court in Writ Petition No. 4179 of 1995 and Writ Petition No.9953 of 2010 were not considered by the trial Court and the appellate Court. He submits that the orders of this Court would indicate that the specific statement was made before this Court in Writ Petition No. 4179 of 1995 that the alternate land, i.e., Gat No. 228 is acceptable in place of Gat No. 125 and that being the position,

the possession of plaintiff in respect of Gat no. 125 could not be doubted. He would further submit that the statement of defendant no.1 expressing his willingness to accept the alternate land was placed for consideration of Courts which evidence has been discarded by the trial Court as well as the appellate Court despite the same having been recorded by the District Resettlement Officer. He submits that by discarding the evidence, the findings are rendered perverse and therefore substantial question of law would arise.

10. *Per contra* Mr. Kulkarni, learned counsel for the respondent points out that the panchanama on which the reliance is placed by the plaintiff to show his possession was drawn by talathi who has not been examined and the statements of defendant no.1 as well as talathi have not been proved and, as such, the courts below have rightly not considered the same in evidence.

11. Considered the submissions and perused the record.

12. The undisputed facts are that pursuant to the land acquisition proceedings, the award came to be passed for acquisition of land Gat No. 125. Once the acquisition proceedings are complete and the award is passed, it is well settled that the property vests in the State Government.

13. The contention raised by the appellant is that despite the property vesting in State Government, the possession was not taken and the same was for the reason that the alternate land, i.e., Gat No. 228 was accepted in exchange for Gat No. 125. For that the appellant seeks to place reliance on the communication dated 30th November 1995. Perusal of the said communication would indicate that the same was a communication by the Special Land Acquisition Officer to the AGP and based on the communication necessary submissions were made before this Court which led to the withdrawal of Writ Petition No. 4719 of 1995. Although the communication is placed on record, there is no further material which has been brought on record by the appellant to show that subsequent thereto, the exchange of land was approved and exchange has taken place and that thereafter the exchanged land, i.e., Gat No. 228 had been allotted to the respondent and as such the possession of appellant over Gat No. 125 continued.

14. During the proceedings before trial Court for the purpose of showing possession, documentary evidence in the form of panchanama which was recorded by Talathi was placed on record. Mr. Patwardhan would co-relate the said panchanama to an inquiry under Rule 31 of the Maharashtra Land Revenue Record of Rights

and Registers (Preparations and Maintenance) Rules, 1971 and would submit that for the purpose of proving the same as an official act, the examination of talathi was not required. Perusal of the order of appellate Court would indicate that during inquiry into the exchange proposal as an objection was raised that the plaintiff had sold his land in Gat No. 228, for ascertaining the said fact talathi had paid visit to the suit land to inquire as to whether the appellant was in possession thereof. The said visit during inquiry cannot be said for the purpose of Rule 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparations and Maintenance) Rules, 1971. As such the trial Court as well as the appellate Court have rightly held that in the absence of examination of talathi, the appellant has failed to prove his possession over the suit property.

15. As regards the statement that defendant no.1 gave before the District Resettlement Officer that he is willing to accept land Gat No. 228 even if the said statement is accepted, the same will come into effect only when it is shown by the appellant that the exchange proposal had gone through and in place of Gat No.125 land Gat No. 228 was accepted by the State Government and it was allotted to the respondent. Having failed to establish and prove the exchange of Gat No.228 with Gat No. 125, the fact that upon acquisition of land,

the land stood vested in the State Government which was thereafter allotted to the respondent in the year November 1999 itself would indicate that the respondent have been in possession of the suit land.

16. Having regard to the discussion above, based on the evidence on record the trial Court and the appellate Court have rightly appreciated the evidence and come to finding that the appellant is not in possession of the suit property. As such no substantial question of law is involved in this appeal. Under section 100 of CPC, this Court cannot re-appreciate the evidence on record. Appeal stands dismissed.

17. In view of the disposal of the second appeal, pending application, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]