



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Second Appeal No. 544 of 2007

ur Improvement Trust, through the Chairman, Nagpur ..vs.. Tulshiram Vithobaji Kshirsagar]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. G. A. Kunte, Advocate for the appellant

CORAM : ANIL L. PANSARE J.

DATED : 25-11-2024

Heard.

2. The appeal has been admitted on following substantial question of law.

“Whether there was improper trial on account of the fact that proper issues were not struck by the Courts below and they failed to take into consideration the effect of the proceedings under the Land Acquisition Act ?”

3. The respondent-plaintiff approached the trial Court seeking declaration that the appellant-defendant had no right or interest to dispossess the respondent and consequently to grant permanent injunction restraining the appellant from dispossessing the respondent from the suit property i.e. Plot No. 2 admeasuring 40 x 40 = 1600 sq. ft. out of Khasara Nos. 53/1 and 63 of Mouza Khamla, Ward No. 74, Nagpur and further from demolishing the structure standing thereon.

4. Learned counsel for the appellant has invited my attention to the pleadings made in the written statement wherein the appellant averred that Khasara

Nos. 53/1 and 63 (in which the suit property is located) along with the other properties situated at Mouza Khamla were under the acquisition of Bhamti Parsodi Street Scheme notified in the year 1965. It was sanctioned by the State Government sometimes in September, 1974. The acquisition proceedings commenced before the Special Land Acquisition Officer, Nagpur Improvement Trust and possession was received on 14-2-1983. Accordingly, a specific plea was raised that appellant is the owner of the said property.

5. Despite such averment, both the Courts below have not framed issue on this point. Learned counsel for the appellant submits that since issues were not framed, the appellant had not placed on record the necessary document and in a way, was deprived to lead evidence in support.

6. To my mind, the appellant ought to have filed documents along with written statement. Nonetheless, there appears no reason why should the trial Court not frame issue on this point which goes to the root of the case. That apart, the appellate Court travelled beyond pleadings and prayers by holding respondent as owner of the suit property. The respondent had not even prayed for or sought such declaration.

7. The Supreme Court in the case of ***Mrs. Akella Lalitha Vs. Shri Konda Hanumantha Rao and anr. [2022 LiveLaw (SC) 638]*** has on this point held that relief which was not sought in the pleadings should be

not granted and if the Court considers or grants relief for which no prayer or pleading was made, depriving the respondent of an opportunity to oppose or resist such relief would lead to miscarriage of justice. In the present case, the first appellate Court, while granting relief of ownership in favour of the respondent, has not afforded opportunity to the appellant to resist such relief and thus, the judgment resulted into miscarriage of justice.

8. None appears for the respondent though served and, therefore, what has been argued and pointed out by the learned counsel for the appellant remained uncontroverted.

9. Thus, it appears that the Courts below have failed to frame proper issues resulting into improper trial and have further failed to take into consideration the effect of proceedings under the Land Acquisition Act. The substantial question of law is answered accordingly.

10. Resultantly, the second appeal is partly allowed. Judgment and decree dated 30-9-1996 passed by 8th Joint Civil Judge Junior Division, Nagpur in Regular Civil Suit No. 1078/1992 and Judgment and order dated 6-4-2005 passed by 16th Adhoc Additional District Judge, Nagpur in Regular Civil Appeal No. 1/1997 are quashed and set aside.

11. Regular Civil Suit No. 1078/1992 is restored on the file of trial Court to consider it afresh in accordance with law and what has been stated in the body of the order. The appellant shall appear before the

trial Court on 10-12-2024. The trial Court shall issue notice to the respondent – plaintiff.

12. Since the suit is of the year 1992, the trial Court shall make every endeavour to decide the same as expeditiously as possible and preferably within nine months from the date of appearance of both the parties.

(Anil L. Pansare, J.)

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