

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 145 OF 1995
WITH
CIVIL APPLICATION NO. 67 OF 2007

- 1 The State of Maharashtra.
Through the Collector,
Kolhapur District, Kolhapur.
- 2 Assistant Collector,
Shahuwadi Division,
Juna Rajwada, Kolhapur.
- 3 District Forest Officer,
Kolhapur. ..Appellants.

v/s.

- 1) Suryakant Sakharam Rane(since deceased)
through his following legal heirs:-
 - (a) Smt. Sakhubai S. Rane, widow,
 - (b) Vijay Suryakant Rane, Son,
 - (c) Vanita Suryakant Rane, Daughter,
All Adults residing at residing at Andur,
Taluka Gaganbavada, District Kolhapur.
 - (d) Anandi Vilas Bhosale,
Married daughter,
Adult, residing at Niwade,
Tal. Gaganbawda, Dist. Kolhapur. ..Respondents.

Mr. Y.Y. Dabade, AGP for appellants.

Mr. Kedar Lad i/b. Shri Pradeep D. Dalvi, advocate for
respondent No. 1.

Talwalkar

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 10, 2020.

JUDGMENT :

1 Heard the respective Counsel. Substantive questions of law in the present Second Appeal are as follows :

(1) Whether the acquisition of property under the Land Acquisition Act could be said to be vitiated for failure to give notice to a purchaser, whose name was not reflected in the Revenue records ?

(2) Whether a Civil Suit challenging the award passed under the Land Acquisition Act is maintainable ?

2 The facts of the case are as follows :

On 15th April, 1982 the plaintiff i.e. present respondents had filed a civil suit seeking declaration that the acquisition of the land Gat No. 19 situated at Mouje Shepawadi, Taluka Gaganbawada, District Kolhapur and award passed on 16/11/1978, and acquiring the suit land is illegal on the ground that no notice was served upon the Plaintiff although he is a purchaser of the said property by virtue of registered sale deed

Talwalkar

dated 27/1/1975. It is contended in the plaint that the Plaintiff had received a notice of encroachment sent by the Collector dated 1/7/1981 and therefore, he was constrained to file suit seeking declaration as a owner of the suit property. The plaintiff had also prayed for perpetual injunction.

3 It is admitted that on 27/1/1975 the plaintiff had purchased the suit property from one Mr. Raghunath Baba Bhat Dhavalikar, who happens to be the defendant No. 4 in RCS No. 372 of 1982. That Raghunath Dhavalikar was shown as a *kabjedar* (person residing in or using a property as its owner) and therefore, notice was issued to the defendant No. 4. Defendant No. 4 had not filed any written statement. He had received the compensation by virtue of the award that was passed on 16/11/1978 and the defendant No. 4 had received compensation towards acquisition of the said land. It was a matter of record that defendant No. 4 had earlier purchased the said property by a registered sale deed and had sold the property to the plaintiff.

4 It is pertinent to note, that the name of the plaintiff was not entered into the revenue record till January, 1980. The entry No. 365 in the mutation record was taken on 3/1/1980 i.e. practically after more than one and half year of passing of

Talwalkar

award of acquisition by the State Government.

5 The plaintiff had also contended that the acquisition is illegal on the ground that there is non-compliance of section 22a of the Maharashtra Private Forests (Acquisition) Act, 1975 as there was a specific bar to acquire a land which was less than 12 Hectors. Principally the acquisition was challenged on the ground that no notice was served upon the plaintiff.

6 The plaintiff had not issued any notice to the State Government under section 80 of Code of Civil Procedure, 1908.

7 The first Court had dismissed the suit on the ground that there was no reason for the Government authorities to know that title has devolved upon the plaintiff by virtue of a sale deed dated 27/1/1975 since the Government had perused the revenue record and had issued notice to the person who was in possession of the said land at the time of issuance of notice under section 4 of the Land Acquisition Act. It is neither the case of the plaintiff that upon receiving notice of encroachment, he had approached the authorities and had submitted that the title and the interest in the property had devolved upon him by virtue of the sale deed.

8 Civil Judge, Senior Division, Kolhapur in his Judgment
Talwalkar

dated 2nd March, 1988 had also observed that there is no claim in this suit as against defendant No. 4, who had, in fact, received the compensation from the Government, without bringing it to the notice of the Government, that he had sold the said property to the plaintiff.

9 Being aggrieved by the Judgment and Order dated 2nd March, 1988 the plaintiff had filed Regular Civil Appeal No. 271 of 1988 before the District Judge at Kolhapur. The learned Appellate Court observed that the Judgment of the Civil Judge, Senior Division, Kolhapur deserves to be set aside on the ground that illegal and undue weightage was given to the fact that the name of the appellant was not recorded in the village record at the time of acquisition proceedings.

10 The learned Appellate Court had held that since the plaintiff had become the owner by virtue of sale deed, he did not bother about the revenue record. The appellate Court was also of the opinion that there would be an embargo of Section 22A of the Maharashtra Private Forests (Acquisition) Act, 1975 as the land that was acquired, was less than 12 hectare and therefore, the Government could not have acquired the same. It was also held that although an award was passed on 16/11/1978, no concrete steps were taken for acquiring the said

Talwalkar

land or the possession of the said land was not acquired and instead, notice of encroachment was issued on 1/7/1981. In the above mentioned facts, it has to be observed that in the absence of any entry in the revenue record, there was no source for acquiring authority to have any knowledge about the sale deed dated 27/1/1975, or even the knowledge that the title and interest in the said suit property had devolved upon the complainant.

11 It is not the case of the plaintiff that he had approached either Talathi or any other revenue officer during the period 22/1/1975 to 3/1/1980. There were no proceedings pending. Moreover, the plaintiff had knowledge that the award is passed on 16/1/1978 and the defendant No. 4 had already received the compensation by virtue of the said award. **It is an admitted position that the land acquisition act is a Code in itself.**

12 Learned AGP has placed implicit reliance upon the Judgment of the Apex Court in the case of **Laxmi Chand v/s. Gram Panchayat, Kararia reported in AIR 1996 SC 523.** The Hon'ble Apex Court has held as follows :

“It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognisance of the cases arising

Talwalkar

under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.

13 Learned AGP has also placed reliance upon the Judgment of this Court in the case of **Dadu Rama Patil and ors vs. Bapu Krishna Kurane (since deceased) through legal heirs Sugana Bapu Kurane & ors.** reported in 2014(4) Mh. L.J. 246, wherein in similar circumstances, this Court had considered the provisions of Section 29 and 22 of the Maharashtra Project Affected Persons Rehabilitation Act, 1976 and 1986, which reads as follows :

“29 Bar of Jurisdiction -No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Director, Commissioner, Deputy Director, Resettlement Officer or the State Government.”

“22 Bar of Jurisdiction-No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the project Authority,

Talwalkar

Collector, Commission, or the State Government.”

14 It is more than clear that the trial Court has therefore, assumed jurisdiction not vested in it. In view of the above observations, it can be said that the acquisition proceedings cannot be held to be null and void only because notice was not issued to the plaintiff. It was incumbent upon the defendant No. 4 to bring it to the notice of the authorities that land has been sold in favour of the plaintiff in 1975.

15 It is further pertinent to note that the plaintiff had not sought any claim against the defendant No. 4, although he was fully aware that the defendant No. 4 had received the compensation. Accordingly, it has to be held that the acquisition proceedings were in accordance with law and therefore, cannot be held to be null and void.

16 As far as second substantial question of law is concerned, it would have to be held that the suit itself was not maintainable and therefore, the Appellate Court had no authority to set aside the Judgment as it would be a judgment without jurisdiction.

17 Learned AGP has also submitted that in fact, the
Talwalkar

proper course to be adopted by the plaintiff would have been to challenge the award by filing writ petition.

18 Learned Counsel for the respondent has vehemently submitted that in fact, it was incumbent upon the State Government to find out the title holder of the said property. It is also argued that the very fact that notice of encroachment was issued to the plaintiff on 1/7/1981 would clear establish that the plaintiff was in possession of the said land. In any case, this Court cannot be oblivious of the fact that the notice of encroachment was issued practically after more than 2 years of passing of the award. The plaintiff had also approached the Civil Court after 2 years i.e. on 15th April, 1982.

19 In view of the above discussion, the Second Appeal deserves to be allowed. Hence, following order is passed :

ORDER

- (i) The Second Appeal is allowed.
- (ii) The Judgment and Order dated 17/8/1993 passed by the 4th Additional District Judge, Kolhapur in Reg. Civil Appeal No. 271 of 1988 in Regular Civil Suit No. 372 of 1982 decided

Talwalkar

on 2/3/1988 passed by Civil Judge, S.D. Kolhapur is hereby quashed and set aside. There shall be no order as to cost.

(iii) Decree be drawn up accordingly.

(iv) Civil Application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J]

Talwalkar