

SPECIAL CIVIL SUIT NO. 64 OF 2021**ORDER BELOW EXH. 5**

Advocate:

Mr. R.P.Patel, Ld. Advocate for the plaintiffs.

Exparte order passed against defendant

1). The present application is preferred by the plaintiffs for ad-interim injunction against the defendant under Order 39 Rule 1 and 2 and as per Section 151 of the Civil Procedure Code.

2). The brief facts of the present application preferred by the plaintiffs are that land bearing old survey No. 144, 145, block No. 129 admeasuring 5-32-13 Hector-Are-Sq.Mts. Paiki 3-65-67 Hector-Are-Sq.Mts. Paiki except 0-63-43 land acquire for the purpose of Narmada canal, remaining non-agriculture land 3-02-24 Hector-Are-Sq.mts. situated at village Vansajada (D), Taluka Kalol, District Gandhinagar, sold to defendant Hiteshbhai Rajnikant Shah by plaintiffs by way of executing registered sale deed No.388/2007, in consideration of Rs. 4,50,000/-. Thus, acquired land for Narmada canal bearing 6343 sq. mts. has not been sold to the defendant by plaintiff, so, plaintiffs are entitle for the amount of compensation for the land acquired for the Narmada canal. Plaintiffs have filed the suit to avail amount of

compensation for the land bearing 6343 Sq. Mts. acquired for Narmada canal. (For sake of convenience and brevity, said land hereinafter referred to as 'suit land').

Plaintiff No.2 to 4 are illiterate and defendant by way of giving confidence to plaintiff No. 1 that land from survey No.129 acquired for Narmada canal and for the amount of compensation of the said acquired land, defendant will make proceedings on behalf of plaintiffs and whatever compensation of land bearing 6343 Hecter-Are-Sq.Mts. will come, defendant will give it to the plaintiffs, in this regard, plaintiff has signed on different blank papers. Further, to avail more compensation, LAR was filed by defendant. Plaintiff No. 1 can sign only but not known reading and writing in Gujarati. It is submitted that in the sale deed executed by plaintiffs in favour of defendant, it is clearly mentioned that except the land bearing 6343 sq. mts., remaining land sold in favour of defendant. So, plaintiffs are entitled to get amount of compensation of suit land. Plaintiffs are having receipt of land hand over to the defendant. For the said land, LAR No.418/2012 filed before the Additional Senior Civil Judge, Kalol alongwith main LAR No.417/2012, which is already decided and amount of award Rs.1,79,86,372/- deposited by the Sardar Sarovar Narmada Nigam Limited in the Court and though plaintiffs are entitle to avail amount of compensation of suit land,

defendant is not ready and willing to give such amount to the plaintiff, so, plaintiffs are constrained to file the present suit to restrain defendant from withdrawing such amount. Plaintiffs have prayed that if injunction as prayed is granted in favour of plaintiffs, than it will not cause any damage to the defendant. That plaintiffs have prima-facie case, so, injunction order may be granted as prayed for. It is further prayed to restrain defendant himself or by servant, agent, assignee, power of attorney holder, successor etc. from withdrawing amount of compensation of suit land, deposited before the Court by passing injunction order in favour of plaintiffs.

3). On presentation of suit as well as present application, summons - notice were issued against defendant and the same were duly served to the defendants. Thereafter, the defendant was not appeared before the court, therefore, exparte order passed against him.

4). In support of their case, plaintiffs have placed reliance on the documents produced in the record vide Mark 3/1 to 3/8 and 8/1.

5). In support of his case, defendant has not produced any

documents.

6). Considering the pleadings, documentary evidence and submission advanced by the Id. Advocate for the plaintiff, for deciding the present application the following points raised to decide the present application as follows :

- (1) Whether the plaintiffs prove that they are having a prima facie case ?
- (2) Whether the plaintiffs prove balance of convenience in their favour ?
- (3) Whether the plaintiffs prove that if injunction as prayed is not granted then they will suffer an irreparable loss which cannot be compensated in the terms of money ?
- (4) What order ?

7). My finding regarding the above issues are as follows :

- 1) In the affirmative
- 2) In the affirmative
- 3) In the affirmative
- 4) As per final order.

:- Reasons -:

Point No. 1, 2 & 3 :

8). I have perused the records and submissions of the learned advocate for the plaintiffs. The plaintiffs have prayed interim injunction under Order 39 Rule 1 & 2 of CPC, which is purely a discretionary power of the Court. This power has to be exercised by the Court fairly and equitably. Plaintiffs must establish three ingredients, viz. prima-facie case, irreparable loss and the balance of convenience in their favour. In absence of any of three ingredients, the plaintiffs cannot be held entitled for the interim injunction. It is well settled position of law that at the time of interim application, the Court should not evaluate all the evidence strictly as per the Law of Evidence. The aim of the interim application is to protect the suit property from probable obstruction or disturbance and to maintain it will till the legal rights are ascertained. Considering all these settle principles of Law, this application is to be considered.

9). The plaintiffs have emphasized upon sale deed Mark 3/1, wherein, it is clearly stated that non-agriculture land bearing block N0.129 admeasuring 5-32-13 Hector-Are-Sq.Mts. Paiki, admeasuring 3-84-00 Hector-Are-Sq.Mts. Paiki except the land admesuring 0-63-43 Hector-Are-Sq.Mts. land bearing 3-20-57

Hector-Are-Sq.Mts. sold to the defendant by plaintiffs. The said fact apparently prima-facie proves that the plaintiffs have legal and lawful interest in the suit land and the amount of compensation awarded of suit land, which must be protected. Hence, there is prima-facie case of the plaintiff.

The plaintiff has shown the Court which kind of loss they have to suffer if the application is refused. Injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages or where it is beyond the possibility of repair. It would not be possible to be compensated in terms of money if the defendant withdrawn the amount of compensation of suit land. There is reasonable apprehension of withdrawal of amount of compensation of suit land as plaintiffs have given sign on blank paper to avail compensation on behalf of plaintiffs. Hence, there is irreparable loss to the plaintiffs.

The plaintiffs have stated that how the balance of convenience is in their favour. The plaintiffs have shown what kind of inconvenience, they have to face, if the interim relief is not granted to them. Hence, the plaintiffs have satisfied the Court balance of convenience in their favour.

Considering the above discussion, I answer issue No. 1, 2 & 3 as affirmative. Hence, I pass the following order in the larger interest of justice as follows :

ORDER

- 1) The ad-interim application as filed vide Exh. 5 by the plaintiffs is hereby ordered to be allowed.
- 2) The defendant and his agents, power of attorney, men, servants, assignees are hereby restrained from withdrawing the amount of compensation regarding suit land deposited before the Court till final disposal of the suit.
3. Order of cost will follow final decision of the suit.

Signed and pronounced in the open Court today on 12th day of September, 2022.

Date : 12.09.2022

Place: Kalol

(Prem Hansraj Singh)
Principal Senior Civil Judge,
Kalol
(Code No.GJ 00746)

/pbshah/