

02/03/2019

For orders,

**ORDERS ON IA NO.XI, XII and XIV UNDER
SECTION 94(b) AND 94(e) R/W SEC.151 OF
CPC**

The plaintiff counsel filed the above application praying to directed the second defendant to deposite a sum of Rs.73,05,762/- before the this court, to attach the property of the second defendant as a security for Rs.73,05,762/- which she received as compensation in respect of the suit schedule property, and pray to direct the second defendant to deposite a sum of RS.83,74,000/- before this court in the interest of justice and equity.

2. In the annexed affidavit, it is stated that plaintiff has filed the suit for declaration and possession of the suit schedule property. During the pendency of the suit the KIADB has acquired a portion of the schedule property measuring about 50 meters for Bengaluru Metro Rail Project for the purpose of Viaduct area. It has also acquired a portion of the property measuring 48 meters situated on eastern side of the suit

schedule property which is now claimed by the second defendant as owner. The KIADB has passed an award by granting compensation of Rs.1,43,19,294/- and sum of Rs.83,74,000/- by its order dated 0703.2017. The award amount has been transferred to the Bank account of the second defendant ie., Andra Bank, HSR Layout Branch, Bangalore bearing account No.114010100049802 on 15.05.2017. The second defendant has also executed the receipt for having received the said amount. That apart the second defendant has also executed an indemnity Bond on 15.05.2017 declaring that there is case is pending in respect of the title of the property. There is case the plaintiff in respect of the schedule property to the extent of 50 meters suppressing the pendency of this suit to which she is not entitled. The award amount in respect of the suit schedule property comes to Rs.73,05,762/-. The second defendant could be entitled to this amount only if she succeeds in her claim made in this suit and till then she is not entitled to hold the said amount. In case if plaintiff has succeed in this suit, they are entitled to the above said amount and in that

event it is very difficult to recover the same from the second defendant as she might have utilize the same. In order to avoid future complications it is just and necessary to direct the second defendant to deposit the sum of Rs.73,05,762/-. The second defendant has received the said amount by making a false representation. While executing the indemnity bond in favour of the government.

Further contends that the award amount in respect of the suit schedule property comes to Rs.73,05,762/-. In order to avoid future complications it is just and necessary to direct the second defendant to disputed the sum of Rs.73,05,762/- and also amount of Rs.83,74,000/-. Hence, prayed that allow the applications.

3. The defendant No.1 counsel filed the objection to said applications and also defendant No.2 counsel adopt the objection filed by the defendant No.2. In objection statement it is stated that defendant No.2 has rightly made her claim before the SLAO, KIADB- Metro Rail

Project, seeking disbursement of compensation amount in respect of the award passed by him for the portion of the acquired land belongs to the defendant No.2 and awarded compensation of Rs.1,43,19,294/-. Payment of said compensation was after holding due and proper enquiry and having satisfied with all the documentary evidences placed on record. The above suit was filed in the year 2007. The Special Land Acquisition Officer who constituted under the special statue has proceeded to acquire 50 meters of land bearing Sy.No.48 of Singasandra Village for Metro Rail Project for formation of via duct area, which absolutely belongs to the defendants herein. Subsequently the said authority, has also acquired 48 square meters which belongs to the defendants, but name of either the plaintiffs or his LRs does not find place in the preliminary or final notifications. Thus neither the deceased plaintiff nor his LRs are the notified Kathadars under the above acquisition proceedings nor an award was passed in their favour. None of the documents produced by LRs of the plaintiff discloses the identity, location and existence of

the alleged suit schedule property in Sy.No.48 of Singasandra. Name of the plaintiff or his LRs were not entered in any revenue records. The Revenue records does not disclose the exercise of alleged right, title, interest and possession of either the deceased plaintiff or his alleged LRs over the property bearing Sy.No.48 or any portion of the said property. The LRs of the deceased plaintiff have filed their objection before the Spl. LAO, after holding due and proper enquiry, the special LAO has rightly determined the compensation and passed award in favour of the defendant No.2 herein as per the provision of KIADB Act, Land Acquisition Act. Hence after conclusion of the acquisition proceedings impleadment of Special LAO in this suit is not at all required. The Spl. LAO, after passing the award becomes functus officio and has no jurisdiction to reopen the proceedings. The defendant No.2 herein has rightly claimed compensation by placing all necessary documents in support of out claim and after being satisfied with the same, the Spl. LAO has disbursed the amount in favour of defendant No.2.

Necessary indemnity bond was obtained by the SLAO, KIADB, while disbursing the compensation amount. If the Lrs of the plaintiff are claiming to be entitled for a portion of the award amount of Rs.73,05,762/- on the alleged ground that a portion out of the acquired land falls within the alleged suit schedule property and to that extent they are they made frivolous and vexatious claim. In fact, when no such suit schedule property is in existence and when the very identity, location of the property in question and hence the question of seeking any payment for the acquired land belongs to the defendant No.2 and any direction to be made to deposit as sum of Rs.73,05,762/- before this court does not arise as their claim is wholly false, frivolous, illegal and vexatious claim. The defendant No.2 has rightly claimed compensation by producing all necessary documents to the satisfaction of the Spl. LAO and award has been passed in her favour by following all rules and regulations as per provisions of KIADB Act and Land Acquisition Act. The suit filed in the year 2007 the Spl. LAO who is constituted under the special statute has proceeded to acquire 50 meters of

land bearing Sy.No.48 of Singasandra Village for Metro Rail Project for formation of via duct area,are absolutely belongs to the defendants. Hence, prayed that dismissed the applications.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the applications I.A. No.XI, XII and XIV filed by the plaintiff deserves to be allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the **Negative**

Point No.2: As per final order for the following:

REASONS

6. **Point No.1:** The plaintiffs have filed the suit for permanent injunction restraining the defendants, their agents interfering with the peaceful possession and enjoyment of the suit schedule property or in any way dispossessing the plaintiff from the suit schedule property. By virtue of sale deed Pushpa in favour of plaintiff

and consequently declared that registered sale deed dated 10.09.2003 alleged to be executed by Smt.Sunandamma, in favour of second defendant is near and not binding on him. And permanent injunction against the defendants restraining them in type of construction or from the possession of the suit schedule property. When the case was posted for further plaintiff evidence at that time plaintiff counsel filed above applications prayed to deposed that award amount of Rs.83,74,000/-, 73,05,762/- which was awarded by KIADB to deposit the said amount before this court. According to plaintiff they having a land which was acquired by KIADB. Hence, prayed direct to deposit to said amount which was awarded by the KIADB. But plaintiff in his plaint averments no way stated that KIADB has acquired a schedule property measuring 50 meters and 48 meters for Bangalore Metro Rail Project for the purpose of via duct area. According to the plaintiff during the pendency of the suit has passed a award by the its order dated 07.03.2017 it is pertinent to note that plaintiff was filed this suit in the year 2007 but no material produced by the plaintiff to

show that they challenging the proceeding before KIADB. In this case has not sought declaration relief. No material produced by the plaintiff to show that he was one of the applicant before the KIADB proceedings. In the absence of material the question of direction given to the second defendant to deposit security amount has mentioned in the applications or does not arise at all. Further question of attach the property of the defendant No.2 has a security for RS.73,05,762/- has mentioned in the applications does not arise at all. If plaintiff is entitled for compensation amount he can approach KIADB in this case. Further plaintiff has not filed the suit for recovery of amount. Moreover the plaintiff has not produced to show that the KIADB has acquired land for the purpose of Metro Rail Project for formation of via duct area. Hence, plaintiffs not made out reasonable grounds to allow the application. Accordingly, I answer point No.1 in Negative.

7. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.XI, XII and XIV under Section 94(b) and 94(e) r/w 151 CPC filed by the plaintiff is hereby rejected.

No order as to costs.

For argument on merit by 07/03/2019.

(Dictated to the Judgment Writer, transcribed by her, transcribed by her, corrected and then pronounced by me in open court this the ^{2nd} day of March, 2019).

(NAGAVENI)
V ADDL.CITY CIVIL JUDGE