

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
AT KUNIGAL**

**Present : Sri. Kishor Kumar .M. B.A. LLB.,
Addl. Civil Judge & JMFC,
Kunigal.**

Dated this the 11th day of September 2018

O.S. NO. 14/2018

Plaintiffs :

1. Sri Hafizulla
S/o Hayath Peer Khan,
Aged about 45 Years,
R/at Chowdeshwari Beedi, Kunigal.

2. Sri Shawar Pasha
S/o Late Mohd Murtuza,
Aged about 60 Years,
R/at Sharif Mohalla, Kunigal.

3. Sri Mohammed Tanzeem Pasha
S/o Late Aihaz Mohammed Shafiulla,
Aged about 30 Years,
R/at Tanjavor Mohalla,
Maddur Road, Kunigal Town.

4. Sri Arshad Rizwan
S/o Late Abdul Haq,
Aged about 35 Years,
R/at Maddur Road, Kunigal.

5. Sri Mohammed Shafi Ulla
S/o Abdul Khayum Sab,
Aged about 65 Years,
R/at Maddur Road, Kunigal Town.

6. Sri Obed Ulla
S/o Late Abdul Rahaman,
Aged about 56 Years,
R/at Tanjavor Mohalla, Kunigal Town.

7. Sri K.H. Mohamed Sattar
S/o Late K.S. Mohammed Hayath,

Aged about 48 Years,
R/at Fort Road, Kunigal Town.

8. Sri Habeebulla Khan

S/o Late Ahamed Khan,
Aged about 67 Years,
R/at Maddur Road, Kunigal Town.

(Rep. by pleader Sri C.P.D)

V/s

Defendants : **1. Central Majlis-E-Shuara**
Jamia Masjid,
Hakim Ali Sha Complex,
B.M. Road, Kunigal.

(Rep by its President)

2. Central Majlis-E-Shuara
Jamia Masjid,
Hakim Ali Sha Complex,
B.M. Road, Kunigal.

(Rep by its Secretary)

(Rep. by pleader Sri. J.K)

I.A. No. II

Defendants/Applicants : The President and Another,
Central Majalise Shura
Jamia Masjid, Kunigal.

V/s

Plaintiff/Opponent : Sri Hafizulla and Others

ORDERS ON IA NO. II

The Applicants/Defendants filed this application under Sec. 9 of CPC and prayed for dismissal of the suit as this court has no jurisdiction to try the suit.

2. In support of the application the defendant No.2 sworn to an affidavit stating that the plaintiffs filed the instant suit against the defendants restraining them from ousting the plaintiff from suit schedule premise without due process of law. Defendant No.2 further submitted that as per Sec. 63 of The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Civil court has no jurisdiction to try any suit in respect of land acquisition matter. Hence, the present suit is barred Under Section 63 of above said Act. On the same ground the defendants prays for dismissal of the suit.

3. Per contra, the plaintiffs filed their objections to IA No.2 stating that application is not maintainable either in law or on facts. The present suit is for bare injunction. Further, this suit is not instituted against K-ship, the plaintiffs have not challenged any acquisition proceedings or they are not claiming any compensation from concerned authority. As such the present suit is maintainable and this court has got jurisdiction to try the same. The sole intention of the defendants is to demolish the suit schedule properties and to construct new shopping complex. Hence, they are trying to evacuate the plaintiffs from suit properties. In fact, K-ship has already widened the Kunigal-Huliyurdurga Road. The plaintiffs and their family members are wholly depending on the respective businesses of the plaintiffs. In fact neither the defendants nor K-

ship informed or given any notice in respect of acquisition proceedings to the plaintiffs. On all these grounds the plaintiffs prays for rejection of the application.

4. Heard on both side and perused the records.

5. On the basis of rival contentions of both the parties the following points that arise for my consideration are:

1. Whether the defendants proves that this court has no jurisdiction to try the above suit?

2. What order?

6. My answers to the above points are as under:

Point No.1 – In the Affirmative,

Point No.2- As per final order.

for the following:-

REASONS

Point No.1:

7. Brief facts of the plaintiff's case is that:-

Suit property and other properties belongs to Central Majalise Shura Jamia Masjid, Kunigal. suit properties is belongs to Central Majalise Shura Jamia Masjid, Kunigal. Defendant No.1 and 2 are President and Secretary of the said Committee. The said committee is landlord of the suit properties and plaintiffs are tenants of the said Committee. The plaintiff No.1 is running a Scrap business in shop No.1, plaintiff No.2 is running a Cement Shop in Shop No.2,

plaintiff No.3 is running a Cement Shop in Shop No.3, plaintiff No.4 is running a Paint Shop in Shop No.4, plaintiff No.5 is running a Cement & Paint Shop in Shop No.5, plaintiff No.6 is running a Hotel in Shop No.6 and 7, plaintiff No.7 is running a Furniture Shop in Shop No.8 and plaintiff No.8 is running a Meat Shop in Shop No.9. Plaintiff No.1 to 8 are doing their respective business in suit schedule premises since 35-40 years and eking out their livelihood from the income of the shops. The plaintiffs and their family members are wholly depending on the business of the respective shops. Govt., of Karnataka through its Dept., i.e., KSHIP has acquired a portion of suit properties for widening of Kunigal-Malavalli State Highway. The defendants have received compensation amount from the Government. But the defendants neither paid any compensation to the plaintiffs nor helped them to alter their shops. With no other option the plaintiffs have altered their shops with new rolling shutters on their own cost. The defendants are trying to evacuate the plaintiffs from suit schedule properties with an ill motive. Hence, the plaintiff instituted this suit.

8. Per contra, it is the specific defense of the defendants that Govt., of Karnataka has acquired the land for widening of Kunigal-

Huliyurdurga Road. Board of Wakf, Bangalore had written a letter Dt. 14.12.2017 and directed the defendants to hand over vacant possession of 495 square meters. It clearly establishes that these defendants have nothing to do with the plaint schedule shops as the property now belongs to Government of Karnataka. Defendant No.2 sworn to an affidavit stating that suit schedule premises/shops comes within the purview of 495 square meters of property acquired by Govt., of Karnataka for the purpose of widening of road.

9. It is not in dispute that the plaintiffs were tenants under the defendants for schedule premises/shops. The documents produced by the defendants indicates that 495 square meters of property of defendants bearing Khatha No. 822/762 acquired for road widening by K-Ship and compensation amount has already paid to the defendants. Notices Dt. 10.07.2018 and 18.07.2018 issued by Asst., Executive Engineer, K-Ship Sub-Division, Maddur indicates that K-ship has repeatedly directed the defendants to evacuate 19 shops and hand over the identified property to an extent of 495 square meter to the K-Ship in accordance with law. On perusal of the documents produced by the defendants it is apparent that property of defendants to an extent of 495 square

meters acquired for road improvement and compensation award was passed on 24.05.2017. These documents compliment the assertion of the defendants that the suit schedule premise was subjected to acquisition as pleaded in the written statement. The instant suit is filed on 28.12.2017. Since the acquisition proceedings have become final, then necessarily possession has to be taken by the K-Ship for the public purpose for which the acquisition was made. After completion of acquisition proceedings the defendants no longer remained as owner of the suit schedule premises. Hence, there is no jural relationship of landlord and tenant between the defendants and plaintiffs and no cause of action arose for filing the present suit.

10. It is not the case of the plaintiffs that the defendants have renewed their lease in respect of plaint schedule premises. Acquisition proceedings have been completed, compensation award was passed and compensation amount in respect of acquisition of property paid in the office of Karnataka State Board of Auqaf, Bangalore. Therefore, though the plaintiffs continues to be in occupation of the premises, their occupation is not authorized. They are an unauthorized occupants. It is worthwhile to refer the Judgment of **Hon'ble Apex Court** reported in **(1995) 3 SCC 33** in

between **Mahadeo Savlaram Shelke and Others V/s Pune Municipal Corporation and Another** wherein it is held that '*No injunction could be granted against the true owner at the instance of persons in unlawful possession*'. Further in the same Judgment it is held that '*Public interest is, therefore, one of the material and relevant consideration in either exercising or refusing to grant ad interim injunction*'.

11. As per the provisions of Sec. 3 (c) of The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 the plaintiffs come within the purview of affected family since they were tenants for schedule premises for three years prior to acquisition of the land. As such the remedy available to them is that to give representation to administrator who is an officer appointed for the purpose of rehabilitation and resettlement of affected families under sub section (1) of Sec. 43 of the Act seeking compensation. On perusal of documents produced by the plaintiffs i.e., endorsements issued by Project Director, Project Improvement Unit, KSHIP Dt.06.01.2018 reveals that plaintiffs (tenants) have not submitted the petitions claiming compensation to K-Ship within the time limit, as such the project director issued an endorsement stating

that since the plaintiffs have not submitted their petitions within the time limit, as such their applications cannot be considered.

12. Learned counsel for defendants vehemently argued that acquisition proceedings have become final, compensation award was passed and compensation amount in respect of acquisition of property is paid to the defendants. Further, L/c for defendants argued that as per the provisions of Sec. 63 of 2013 Act, the jurisdiction of Civil Court is barred. Hence, suit of the plaintiffs is liable to be dismissed. At this stage it is worthwhile to refer Sec. 63 of The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Sec. 63 of 2013 Act which reads as under:-

Sec. 63:- Jurisdiction of Civil Court barred:- No civil court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.

13. As aforementioned the documents produced by the defendants clearly indicates that property of defendants to an extent of 495 square meters acquired for road improvement and compensation award was passed on 24.05.2017. After completion of the acquisition proceedings the defendants no longer remained as owner of the schedule premise. The plaintiffs are claiming injunction against the defendants restraining them from ousting the plaintiffs from the schedule premises. If injunction is granted as sought by the plaintiffs it is against to the provisions of Sec. 63 of 2013 Act, since including the schedule premises property of defendants to an extent of 495 square meters acquired for public purpose i.e., to widening of road by K-Ship. Sec. 63 of 2013 Act clearly excludes the jurisdiction of civil court to entertain any dispute relating to land acquisition in respect of which the collector or the authority is empowered by under this Act.

14. In support of their application learned counsel for defendants relied on the decision of **Hon'ble High Court of Karnataka** reported in **ILR 2017 KAR 1319** in between **Bangalore Development Authority V/s Sri Bhagavan Das Patel**. The Hon'ble High Court in the afore cited Judgment has been pleased to hold as follows:-

“ 33. In view of the above finding, the inescapable conclusion that this Court must arrive at is, that the suit schedule property is part of the layout called Anandaram Slum which has been formed out of the lands acquired by the defendant under the acquisition notifications produced as Exs.D1 and D2.

In the light of the above conclusion, the contention of the defendant that the civil court has no jurisdiction to entertain the suit, assumes significance in the light of the law laid down by the Hon'ble Apex Court in the case of Commissioner, Bangalore Development Authority and Another - vs - Brijesh Reddy and Another reported in (2013) 3 Supreme Court Cases 66 and is required to be upheld.

34. The Hon'ble Apex Court in the afore cited judgment has been pleased to hold as follows :-

"8. The only point for consideration in this appeal is: whether a civil court has jurisdiction to entertain a suit when the schedule lands were acquired under the land acquisition proceedings and whether the High Court was justified in remanding the matter to the trial court without examining the question with regard to the maintainability of the suit?

14. Section 9 of the Code of Civil Procedure, 1908 provides jurisdiction to try all suits of civil nature excepting those that are expressly or impliedly barred which reads as under:

"9. Courts to try all civil suits unless barred:- The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

From the above provision, it is clear that courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of civil court with

regard to a particular matter can be said to be excluded if there is an express provision or by implication it can be inferred that the jurisdiction is taken away. An objection as to the exclusion of civil court's jurisdiction for availability of alternative forum should be taken before the trial court and at the earliest failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice.

15. In State of Bihar v. Dhirendra Kumar the core question was whether a civil suit is maintainable and ad interim injunction could be issued where proceedings under the Land Acquisition Act, 1894 was taken pursuant to the notice issued under Section 9 of the Act and possession delivered to the beneficiary. On going through the entire proceedings initiated under the Land Acquisition Act, this Court held as under: (SCC p.230, para3) " 3... We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9 CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable"

After holding so, this Court set aside the finding of the trial Court that there is a prima facie triable issue. It also held that the order of injunction was without jurisdiction.

19. No doubt, in the case on hand, the plaintiffs approached the civil court with .a prayer only for permanent injunction restraining Defendants 1 and 2 i.e. BDA, their agents, servants and anyone claiming through them from interfering with the peaceful possession and enjoyment of the schedule property. It is true that there is no challenge to the acquisition proceedings. However, in view of the assertion of BAD, in their written statements, about the initiation of acquisition proceedings ending with the passing of award, handing over possession and

subsequent action, etc. the said suit is not maintainable. This was rightly concluded by the trial court. For proper compensation, the aggrieved parties are free to avail the statutory provisions and approach the court concerned. All these aspects have been clearly noted by the trial court and ultimately it rightly dismissed the suit as not maintainable. On the other hand, the learned Single Judge of the High Court though adverted to the principles laid down by this Court with reference to acquisition of land under the Land Acquisition Act and Section 9 CPC committed an error in remanding the matter to the trial court on the ground that the plaintiffs were not given opportunity to adduce evidence to shown that their vendor was in possession which entitles them for grant of permanent injunction from evicting them from the scheduled property without due process of law by the defendants. In the light of the specific assertion coupled with materials in the written statement about the acquisition of land long ago and subsequent events, suit of any nature including bare injunction is not maintainable, hence, we are of view that the High Court is not right in remitting the matter to the trial court for fresh disposal (underlining by me).

35. It is pertinent to note the prohibition contained in the said ruling. The Hon'ble Apex Court has held that in the light of specific assertion coupled with the material in the written statement about the acquisition of the land, suit of any nature, including one for bare injunction is not maintainable”.

16. In view of the provisions of Sec. 63 of 2013 Act and in the light of the above legal position suit of any nature including bare injunction with respect to dispute relating to land acquisition is not maintainable. Of course, the plaintiffs are not disputing or challenging the acquisition proceedings, but they are seeking injunction against the defendants restraining them from interfering

with the plaintiffs peaceful possession and enjoyment over the suit schedule properties. As aforementioned after completion of acquisition proceedings the property is vest with Government of Karnataka and the defendants are no longer remained as owner of property to an extent of 495 square meters which is acquired for widening of road. As such, there is no jural relationship between them as landlord and tenant. As such no cause of action arise for the plaintiffs to file the instant suit against the defendants. In view of the embargo created in Sec. 63 of 2013 Act, suit of the plaintiffs is not maintainable in view of Sec. 9 R/w Order 7 Rule 11(d) of CPC and plaint is liable to be rejected. In view of these facts and in the light of the above legal position this court is of the humble opinion that this court has no jurisdiction to try the suit of this nature. Accordingly, I answer Point No. 1 in the **Affirmative**.

17. **Point No.2:-**For the above reasons, I proceed to pass the following:

ORDER

IA No. II filed by the Applicants/
Defendants U/Sec. 9 of Code of Civil
Procedure, 1908 is hereby allowed.

Consequently plaint is rejected U/o VII
Rule 11(d) of CPC as the Civil Court is devoid

of jurisdiction to entertain and take cognizance of the suit U/Sec 9 of CPC in view of the bar under Sec. 63 of The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

No order as to cost.

(Dictated to the Typist directly on the computer, typed by her, printout taken by her and corrected by me and then pronounced by me in the open court on this the 11th day of September 2018.)

(Sri. Kishor Kumar .M.)
Addl. Civil Judge & JMFC.,
Kunigal.