

KAUK310013692023



**IN THE COURT OF THE PRINCIPAL CIVIL
JUDGE AND JMFC BHATKAL**

PRESENT

Smt.Dhanavathi. B.A.(law) LL.B.,
Prl. Civil Judge and J.M.F.C, Mundgod.

O.S.No.45/2023

Dated this the 1st day of April 2024

PLAINTIFF :

Jattappa S/o Durgappa Naik,
Aged about: 61 years, Occ: Agriculturist
R/o: Belke village, Bhatkal Taluk.

(By Sri.J.D.B., Advocate)

// Versus //

DEFENDANT :

Konkan Railway Corporation Ltd.,
Represented by its General Manager,
C.B.D. Belapur, Navi Mumbai-400614.

(By Sri.S.O.N., Advocate)

ORDERS ON PRELIMINARY ISSUE

The suit is for the relief of mandatory injunction against the defendant.

'A' SCHEDULE

Description of the properties situated at Belke Village of Bhatkal Taluk.

Sl. No.	Sy. No.	H.No.	Extent (A.G.A.)	Nature	Assessment Rs.	Boundaries
1.	292A	2	00-36-08	Garden Land	4.24	East: Sy.No.292B of Belke village, Bhatkal Taluk i.e., Railway land. West: Forest Land Sy.No.220A1A1 and Private land North: Belke Pinnupal River South: Sy.No.292A Hissa 1 of Belke village.
2.	292A	3	03-38-00	Garden Land	29.65	East: Rainy water channel after private land West: Sy.No.292B of Belke village Bhatkal Taluk i.e., Railway land North: Forest land Sy.No.220A1A1 South: Belke Pinnupal river.

2. The brief facts of the plaintiff case:

That the Plaintiff is the absolute owner in exclusive possession and enjoyment of the immovable properties morefully described in the schedule herein below and herein after referred to as 'A' schedule properties. The schedule properties are the garden lands and comprising of Areca, Coconut, Banana and other fruit bearing yielding trees. That a small river/halla by name Belke Pinnupal Halla runs over the northern side of the 'A' schedule properties runs

from East to West. The said river/halla is lower in level and the Plaintiff's 'A' schedule properties are upper in level. The Plaintiff has put up RCC revetment/kanta over the southern bank/bund of the said river/halla that is over the northern boundary of the 'A' schedule properties to protect 'A' schedule properties from soil erosion from the said river water and to protect the 'A' schedule property from the said river water. Earlier to the purchase of the 'A' schedule properties by the Plaintiff, the said revetment/kanta was made up of red stones and mud. Subsequently, the Plaintiff has replaced the same by RCC revetment out of his own fund. The Plaintiff has not only using the said revetment/kanta to protect 'A' schedule property, but also using it to carry head loads, agriculture implements etc. from one side to another side of the 'A' schedule properties and for daily routine agricultural work. The said kanta is very much required to the Plaintiff to protect the 'A' schedule property from soil erosion and from the said river water during rainy season and during flood and for the aforesaid use.

3. That the Defendant has acquired 01-03-00 (A-G-A) in S.No. As per podi present survey No. is S.No. 292B) if Belke Village, Bhatkal Taluk bounded by North: Hall, Sourth: Survey Line, East:

S.No. 292A/3, West: S.No.292A/1 to lay Railway Track. The said property touches the said halla on the northern side. The said property was originally belonged to the Plaintiff and it was the part of the 'A' schedule properties. The Defendant has constructed bridge/underpass to the said halla, to lay the Railway Track. While constructing the Railway bridge, the Defendant has changed the direction of the said river/halla by giving diversion to it and constructed the said bridge in an unscientific and in negligent manner. Earlier to the construction of the said bridge, the direction of the halla near the said bridge was in straight position that is the river water was running from East to West. At the time of construction of the said bridge, the defendant has changed the direction of the halla/river by giving curve shape diversion that is from north to south and then to west. On account of changing of the direction of the said halla/river, the river water directly splashes to the aforesaid revetment/kanta and then turns towards west. During rainy season the river water directly splashes to the said revetment/kanta with a high pressure and on account of continuous splashing of said river water to the said revetment has caused damage to the said revetment. The Plaintiff submits has orally objected and politely requested the authorized representative of

the defendant to construct the said bridge in a straight way without changing the direction of the halla/river, so that the river water does not directly splash to the said revetment. The Defendant representative assured and promised the Plaintiff that they will take all responsibility to reconstruct the revetment, in case any damage caused to it by the river water. The Plaintiff believed them in good faith and did not take any action against the Defendant at that movement.

4. The Plaintiff submits that on account of continuous splashing of said river water has caused damage to the said revetment. In the month of August 2022, the flood water from the said halla/river has completely destroyed the said RCC revetment and flood water directly entered into the 'A' schedule properties and destroyed the valuable trees growths therein and damaged the 'A' schedule properties. The damage thus caused to the Plaintiff on account of the said incidence was more than Rs. 4,00,000/-. The Defendant is liable and responsible for said cause that is for the destroying of the said revetment by the flood water of the said river/halla. It was happened on account of changing of the direction of the said river by the defendant and made the river water directly splashed to the said revetment. If the Defendant constructed the said bridge without changing direction of the said

river and in a scientific manner by taking all the feature care to protect the said kanta/revetment, the flood water might not have destroyed the said kanta/revetment. Hence, the said incident was happened on account of the negligence and carelessness on the part of the officials of the defendant while constructing the said bridge. The Defendant is liable and responsible to restore the said kanta/revetment into its original position by constructing new RCC revetment and they are liable to good the damage caused to the Plaintiff.

5. That after happening of the said incidence, the Plaintiff has approached the officials of the Defendant and politely requested them to restore the said kanta/revetment into its original position. The officials of the Defendant at the beginning assured the Plaintiff that, they will visit the property and they will take all the measure to restore the said kanta/revetment. But they went on postponing to do so and finally they orally refused to do so. The Plaintiff therefore issued a legal notice (notice U/Sec. 80 of C.P.C) to the authority of the defendant on 02/11/2022, and called upon them to restore and reconstruct the said kanta/revetment in to its original position within 15 days from the date of the receipt of the said notice by they and also warned for legal

action. The said notice duly served to the General Manager of the Defendant on 07/11/2022, and the notice issued to the project manager of the Defendant returned refused and the notice issued to the Chief Engineer of the Defendant served to him on 03/11/2022. Hence, in spite of the notice thus given the said officials of the Defendant neither replied to the said notice nor took any step to restore the said revetment as claimed in the said notice.

6. Therefore, in spite of the request made and notice thus given, the Defendant has not come up to restore the said revetment. The Defendant is liable and responsible to restore the said revetment into its original position by constructing new one. The Defendant is not amendable to reason. Without proper order from this court, the Plaintiff cannot restore the said revetment from the Defendant. The acts of the defendant are illegal and high handed. The defendant is not amendable to reasons. Since, the Plaintiff has no other efficacious remedy under law except to file this suit for mandatory and permanent injunction against the defendant. Hence, the Plaintiff is constrained to file this suit for mandatory and permanent injunction against the defendant.

7. After service of summons the defendant has appeared through his respective counsel and filed written statement and denies the contents of para No.1 and 2 of the plaint. Further stated that, the said revetment was constructed by the government funds by the Government bodies. However, no objection/license was not obtained from the Defendant organization when the proposed construction lies within a distance of 30 mtrs, from the railway boundary line as prescribed in the relevant rule and regulation of the railway department. Even if there is any damage to the alleged construction work, the defendant will not be liable in whatsoever ever manner. The defendant also denies the say of the Plaintiff that the said revetment was also being used as a road to approach his other portion of his schedule land and further state that the same is impossible due to the reason that the width of the said revetment is less than 01 ft. at its top end. It is pertinent to note that while awarding compensation in lieu of acquisition of land, the acquiring authority had to consider all the loss/damages that may be caused to the land owner and having given liberty/right to question the award in all respect and the land looser having failed to do so can not now put any claim regarding the same and hence this suit is not maintainable.

8. The defendant specifically denies that the Defendant organization has constructed the bridge in an unscientific manner and further denies that it has changed the direction of the flow of river which has resulted in direct and continuous splashing of river water to the revetment alleged to be constructed by the plaintiff during rainy season thus causing damage to it. The said claim is bald Claim made by the Plaintiff to put the defendant to loss and damage by seeking mandatory injunction against it. However, the defendant admits that an area of land ad measuring 01-03-00 situated at then undivided Sy. No. 292 was acquired for the purpose of commissioning of the project and accordingly compensation has also been paid in respect of the land acquired by it. This defendant states that there was no necessity for the defendant organization to divert the course of flow of river which might have required huge investment in that regard. The say of the plaintiff regarding he had requested officers of the defendant to reconstruct the revetment and they had assured him of reconstruction are all false and made with an intention of supporting the cock and bull story of the Plaintiff. This Defendant states that there is not even an iota of truth in such averments. The rest of the contents of the para 3 of the plaint are not admitted by the Defendant and the

Plaintiff be put to strict proof the said facts. It is pertinent to note that at the time of acquisition of some part of the suit schedule land he was not even the owner of the said land as he has purchased the suit schedule land from the land looser of the land which was larger extent of and forming part of the land which was in the ownership of the vendor of the Plaintiff.

9. The defendant states that if there was any damage to revetment as stated by the Plaintiff, the same is not due to any action or inaction on the part of the defendant. If at all there was any damage to the revetment the same is due to heavy downpour (rainfall) in the said period. It is also false to aver that there was caused damage to the grown up trees in the 'A' schedule land. It is further denied that there has been sustained Rs.4,00,000/- loss on account of damage to the revetment and trees. This defendant denies that action of the defendant has changed the course/direction of flow of river as named by Belke Pinnupal Halla. The Defendant further states that the alleged slashing of the water if it has really occurred is not at all due to any structure constructed by or any action undertaken by or not even due to any inaction or negligence or carelessness or faulty planning of the defendant organization in any manner. Even the Plaintiff deliberately did not aver the date of damage to

the revetment in order to mislead the court regarding real cause behind the damage to the revetment if the same has occurred in reality.

10. The contents of the para No.5 of the plaint except the one with regard to the issuance of 80 CPC notice to the defendant organization are false.

11. The defendant states that there does not arise any responsibility or liability on the part of the defendant organization to reconstruct the revetment or in any other manner. This defendant humbly submits to this court that its officers never transgress any law nor acts with high handedness in any case much less in this case.

12. This defendant states that if the damage, has occurred, is solely due to splashing of water of the river, the same might have happened much earlier and it would not have taken these long years as stated by the plaintiff himself and the alleged damage to the revetment if any, is solely due to the floods during the year 2022 and not due to any action or inaction or negligence on the part of the defendant organization on the part of the Defendant organization.

13. This defendant states that no proper court fees is paid over the plaint, as the plaintiff himself has valued the damages at Rs.4,00,000/- in the plaint para

No.4 and hence the ad valorem court fees over the said sum is payable by the plaintiff over the plaint and hence this is liable to be dismissed as no proper court fees is paid over the plaint.

14. This suit is time barred as it is the say of the plaintiff himself that the bridge was constructed as far back as in the 1996 and the limitation started running from the said year and it would be barred from the year 1999 it self.

15. This suit is not maintainable in view of the bar of jurisdiction of the civil court as per section 15 of the Railways Claims Tribunals Act, 1987. Hence, prays to dismiss this suit with cost.

16. On the basis of pleadings, this court has framed issues and in which issue No.3 is treated as preliminary issue as bellow.

ISSUE

Whether defendant proves that, this court has no jurisdiction as per Sec.15 of the Railways Claims Tribunals Act of 1987?

17. Both parties have not lead evidence on preliminary issue.

18. Heard arguments on both sides and perused the documents.

19. On the materials available on record, this court answered the above preliminary issue in the Negative for the reasons bellow;

:R E A S O N S:

20. **Issue No.3:** On the basis of pleadings of the parties, this Court has framed the preliminary issue No.3.

21. The defendant has taken contention at Para No. 12 of written statement that, the suit is not maintainable in view of the bar of jurisdiction of the Civil court as per Section 15 of the Railways Claims Tribunal Act 1987.

22. The plaintiff has filed this suit against defendants seeking the relief of mandatory injunction directing the defendant to restore the Northern side Kanta/ revetment of the halla/ river by name Belke/ Pinnupal river runs over the Northern side of the 'A' schedule properties into its original position by constructing new RCC Kanta/ revetment and if defendant fails to do so, the plaintiff may given liberty to reconstruct the same through the process of the court at the cost of defendant.

23. It is the contention of the defendant that, this court has no jurisdiction to try the case as per Sec.15 of the Railways Claims Tribunal Act of 1987. The said

Act is enacted to provide for the establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents and for matters connected therewith or incidental thereto. In the present case the plaintiff has sought for mandatory injunction against the defendant. The plaintiff has not sought for any damages from the defendant. Further in the said provision, there is no specific bar to Civil court with regard to the injunction suit. The defendant has not made out any grounds in support of his contention. Hence, I answer issue No.3 in the **Negative** and I proceed to pass the following:-

:ORDER:

It is held that the suit is not hit by Sec.15 of the Railways Claims Tribunals Act of 1987 and this court has jurisdiction to try the suit.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open court this the 1st day of April 2024)

Sd/-
(Smt.Dhanavathi)
Prl. Civil Judge and
JMFC, Bhatkal.