Exh.15

नेवासा येथील मे. सिव्हील जज्ज साहेब, ज्यु. डी.

यांचे कोर्टात

रे.मु.नं.

५५०/२०२४

वादी

चांगदेव विठ्ठल टकले, वगैरे

प्रतिवादी

खंडू ठकाजी कोकरे, वगैरे

याकामी प्रतिवादी नं. १ व ३ कडून दाव्याची कैफियत व मनाई अर्जावर म्हणणे असे ते खालील प्रमाणे.

Order

Read & record

१) वादीचा संपूर्ण दावा व मनाई अर्ज खोटा व बनावट असून तो या प्रतिवादी नं. १ व ३ यांना मान्य व कबुल नाही, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

२) वादीने सदरच्या दाव्यामध्ये व मनाई अर्जामध्ये केलेली सर्व कथने, विधाने खोटी व बनावट आहेत, ती या प्रतिवादी नं. १ व ३ यांना मुळीच मान्य व कबुल नाही.

३) सदर दाव्यातील वादी नं. ३ बाळासाहेब माधव ढेपे यांनी त्यांचे नावावरील क्षेत्राची विक्री केलेली आहे, त्यामुळे सदर गटामध्ये त्यांचे क्षेत्र राहिलेले नाही, त्यामुळे त्यांना मनाई हुकूम मागण्याचा कोणत्याही प्रकारचा कायदेशिर अधिकार नव्हता व नाही.

SANDHYA YUVRAJ SUL

Digitally signed by SANDHYA YUVRAJ SUL
Date: 2025.01.18 16:37:55 +0530

2nd Jt. CJJD Newasa

४) सदर दाव्यामध्ये वादीने योग्य ते पक्षकार सामिल केलेले नसल्यामुळे सदरचे दाव्यास नॉन जॉईंडर ऑफ नेसेसरी पार्टीजचा बाध येत आहे, सबब सदरचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

५) वादीने सदरचे दाव्यामध्ये सप्रेशन ऑफ मटेरियल फॅक्ट्स केलेले आहे, त्यामुळे वादीचा दावा हा मेंटेनेबल नाही, सबब दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

६) वादी यांनी सदर दावा मिळकतीमध्ये ज्या रस्त्याचा उल्लेख केलेला आहे, त्या रस्त्याबाबत अद्यापपावेतो मा. तहसिलदार साहेब यांचे कोणत्याही प्रकारची रस्ता केस चाललेली नाही व कारणही नाही. व सदर रस्त्याबाबत तहसिलदार साहेब यांचेकडे रस्ता केस दाखल नाही, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

७) वादी यांनी सदर दाव्यामध्ये जो रस्ता नमुद केला तो रस्ता अस्तित्वात नाही. केवळ प्रतिवादी नं. १ व ३ यांना त्रास द्यावयाचा व त्यांचे क्षेत्रातुन नविन रस्ता बळजबरीने तयार करावयाचा म्हणून सदरचा दावा दाखल केलेला आहे, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

८) वादी व प्रतिवादी यांच्यामध्ये रस्त्याबाबत तक्रार होण्याचा प्रश्नच उद्भवत नाही, कारण वादी म्हणतात त्याप्रमाणे प्रतिवादींच्या क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. नेवासा तहसिलदार यांचेकडे रस्ता केस क्रं. ३६/२०२३ ही मुक्ता केरु कोकरे , आणि प्रतिवादी यांचेमध्ये रस्त्यासंदर्भात केस होती, त्या केसमध्ये वादी नं. १ ते ८ पैकि कोणीही पार्टी नव्हते. त्यामुळे रस्ता केस क्र. ३६/२०२३ चा आदेश हा

या दाव्यास लागू होत नाही. कारण की वादी नं. १ ते ८ कोणीही पार्टी नव्हते. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

९) प्रतिवादी व मुक्ता केरु कोकरे यांचेमध्ये रस्ता केस क्रं. ३६/२०२३ दाखल होती, त्या निकालावर नाराज होऊन प्रतिवादी यांनी प्रांत साहेब, उपविभागीय अधिकारी साहेब, अहिल्यानगर यांचेकडे रितसर अपील दाखल केले असून त्याचे कामकाज चालू आहे. रस्ता केस क्रं. ३६/२०२३ मधील रस्ता व वादी म्हणतात तो रस्ता दोन्ही वेगवेगळे रस्ते आहेत. केवळ रस्ता केस क्रं. ३६/२०२३ या आदेशाचा गैरफायदा घेऊन वादी मे. कोर्टाची दिशाभूल करुन खोटा मनाई हूकूम घेऊन नविन रस्ता घेण्याचे विचारात आहेत, जेणे करुन प्रतिवादींचे नुकसान होईल, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१०)वादी नं. ३ बाळासाहेब माधव ढेपे यांनी त्यांचे नावावरील क्षेत्राची विक्री केलेली आहे. त्यांचे नावावर कोणत्याही प्रकारचे क्षेत्र शिल्लक राहिलेले नाही, त्यामुळे त्यांना मनाई हुकूम मागण्याचा प्रश्नच उद्भवत नाही. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

११)सदर रस्त्याबाबत वादी यांना या मे. कोर्टामध्ये कोणत्याही प्रकारचा रिलीफ मागण्याचा अधिकार नाही. त्यासाठी महाराष्ट्र महसुल अधिनियम कलम ५(२) व कलम १४३ प्रमाणे तरतुद असल्यामुळे वादींनी रेव्हेन्यू खात्याकडे त्याबाबत योग्य ती कायदेशिर कारवाई करावी, या मे. कोर्टामध्ये त्यांना दावा चालविण्याचा कोणत्याही प्रकारचा हक्क, अधिकार हितसंबंध नाही. वास्तविक पहाता वादींचा दावा हा

कायद्याने टेनेबल, मेंटेनेबल नाही. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१२) वादी नं. १ ते ८ यांना प्रतिवादी यांच्या क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. वादी नं. १ ते ८ यांना त्यांच्या क्षेत्रामध्ये येण्या जाण्यासाठी दुसरीकडून रस्ता असून त्या रस्त्याने ते नेहमी ये जा करतात व त्यांचे शेतीउपयोगी सर्व औजारे ने आण करतात. प्रतिवादी यांच्या क्षेत्रामधून वादींना कधीही रस्ता व कारण नाही. केवळ वादी हे मनगट शाहीचे जोरावर नविन रस्ता करण्याचे विचारात आहेत. तसे झाल्यास प्रतिवादी यांचे कधीही, कशानेही न भरुन येणारे फार मोठे नुकसान होणार आहे. व प्रतिवादी यांना न्याय हक्कापासून वंचित रहावे लागेल. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१३)वादी यांनी मिळकत वर्णनामध्ये नमुद केलेल्या मिळकती संपूर्णपणे चुकिच्या व बनावट आहेत. तसेच रस्त्याबाबत केलेले वर्णन देखिल चुकिचे आहे. सबब वादीचा दावा व मनाई अर्ज हा रद्द होण्यास पात्र आहे.

१४) वादी नं. १ ते ८ यांनी दाव्यामध्ये नमुद केलेला रस्ता हा कधीही अस्तित्वात नव्हता केवळ प्रतिवादी यांना त्रास देण्याचे दुष्ट हेतुने सदरचा दावा दाखल करण्यात आलेला आहे. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१५) वादी हे खुप वर्षापासुन त्यांना दुसरीकडून असलेला नेहमीच्या रस्त्याने ये जा करीत आहेत. त्यांना प्रतिवादींचें क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. सदर वादी व प्रतिवादी यांचेमध्ये तहसिलदार

यांचेकडे रस्त्याबाबत कधीही वाद दाखल नव्हता व आजही नाही. वादी यांना रस्त्याबाबत कोणत्याही प्रकारची तक्रार करावयाची असेल तर त्यांनी मा. तहसिलदार साहेब यांचेकडे रितसर रस्त्या बाबत तक्रार करावी. या मे. कोर्टात खोट्या मजकुराचा दावा दाखल करुन मनाई हुकूम घेऊन बेकायदेशिर नविन रस्ता करण्याचा प्रयत्न करु नये. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१६) वादी यांनी खोट्या मजकुराचा दावा दाखल करुन प्रतिवादी नं. १ व ३ यांना शारिरीक, मानसिक व आर्थिक त्रास दिला याबद्दल वादी यांना रुपये ५०,०००/- (पन्नास हजार रुपये मात्र) दंड करावा, कॉस्ट करावी. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

येणे प्रमाणे प्रतिवादी नं. १ व ३ कडून दाव्याची कैफियत व मनाई अर्जावर म्हणणे असे.

नेवासा

दि.१८/१/२०२५

१) स.नि.आं.खंडू ठकाजी कोकरे यांचे डा.हा.असे.

२) स.नि.आं.प्रकाश खंडू कोकरे यांचे डा.हा.असे.

प्रतिवादी

प्र.वा.१,३ तर्फे ॲडव्होकेट
(ॲड. एस.एस. गव्हाणे)

याकामी आम्ही प्रतिवादी नं. १ व ३ सत्य प्रतिज्ञेवर कथन करतोत कि, वरील कैफियत कलम नं. १ ते १६ मधील संपूर्ण मजकूर आमचे माहीती व समजुती प्रमाणे खरा व बरोबर असुन त्याचे सत्यतेसाठी या लेखाखाली आम्ही आमचे स.नि.आं. आजरोजी नेवासा येथे केले असे.

नेवासा

दि.१८/१/२०२५

१)  स.नि.आं. खंडू ठकाजी कोकरे यांचे डा. हा. असे

३)  स.नि.आं. प्रकाश खंडू कोकरे यांचे डा.हा.असे.

प्रतिवादी

Exh.16

// ॲफिडेव्हीट //

नेवासा येथील मे. सिव्हील जज्ज साहेब, ज्यु. डी.

यांचे कोर्टात

रे.मु.नं.

५५०/२०२४

वादी

चांगदेव विठ्ठल टकले, वगैरे

प्रतिवादी

खंडू ठकाजी कोकरे, वगैरे

Order

Seen & filed

SANDHYA YUVRAJ SUL

Digitally signed by SANDHYA YUVRAJ SUL
Date: 2025.01.18 16:38:04 +0530

2nd Jt. CJJD Newasa

याकामी मी खंडु ठकाजी कोकरे, वय ६१ धंदा शेती, रा. देडगाव, ता. नेवासा, जि. अहिल्यानगर (अहमदनगर) सत्य प्रतिज्ञेवर ॲफिडेव्हीट करतो कि,

१) वादीचा संपूर्ण दावा व मनाई अर्ज खोटा व बनावट असून तो या प्रतिवादी नं. १ व ३ यांना मान्य व कबुल नाही, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

२) वादीने सदरच्या दाव्यामध्ये व मनाई अर्जामध्ये केलेली सर्व कथने, विधाने खोटी व बनावट आहेत, ती या प्रतिवादी नं. १ व ३ यांना मुळीच मान्य व कबुल नाही.

३) सदर दाव्यातील वादी नं. ३ बाळासाहेब माधव ढेपे यांनी त्यांचे नावावरील क्षेत्राची विक्री केलेली आहे, त्यामुळे सदर गटामध्ये त्यांचे

सहा.अधिक्षक
सह दिवाणी न्यायालय क.स्तर
नेवासा

क्षेत्र राहिलेले नाही, त्यामुळे त्यांना मनाई हुकूम मागण्याचा कोणत्याही प्रकारचा कायदेशिर अधिकार नव्हता व नाही.

४) सदर दाव्यामध्ये वादीने योग्य ते पक्षकार सामिल केलेले नसल्यामुळे सदरचे दाव्यास नॉन जॉईंडर ऑफ नेसेसरी पार्टीजचा बाध येत आहे, सबब सदरचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

५) वादीने सदरचे दाव्यामध्ये सप्रेशन ऑफ मटेरियल फॅक्ट्स केलेले आहे, त्यामुळे वादीचा दावा हा मेंटेनेबल नाही, सबब दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

६) वादी यांनी सदर दावा मिळकतीमध्ये ज्या रस्त्याचा उल्लेख केलेला आहे, त्या रस्त्याबाबत अद्यापपावेतो मा. तहसिलदार साहेब यांचे कोणत्याही प्रकारची रस्ता केस चाललेली नाही व कारणही नाही. व सदर रस्त्याबाबत तहसिलदार साहेब यांचेकडे रस्ता केस दाखल नाही, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

७) वादी यांनी सदर दाव्यामध्ये जो रस्ता नमुद केला तो रस्ता अस्तित्वात नाही. केवळ प्रतिवादी नं. १ व ३ यांना त्रास द्यावयाचा व त्यांचे क्षेत्रातुन नविन रस्ता बळजबरीने तयार करावयाचा म्हणून सदरचा दावा दाखल केलेला आहे, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

८) वादी व प्रतिवादी यांच्यामध्ये रस्त्याबाबत तक्रार होण्याचा प्रश्नच उद्भवत नाही, कारण वादी म्हणतात त्याप्रमाणे प्रतिवादींच्या क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. नेवासा तहसिलदार यांचेकडे रस्ता केस क्रं. ३६/२०२३ ही मुक्ता केरु कोकरे , आणि प्रतिवादी यांचेमध्ये रस्त्यासंदर्भात केस होती, त्या केसमध्ये वादी नं. १ ते ८ पैकि

कोणीही पार्टी नव्हते. त्यामुळे रस्ता केस क्र. ३६/२०२३ चा आदेश हा या दाव्यास लागू होत नाही. कारण की वादी नं. १ ते ८ कोणीही पार्टी नव्हते. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

९) प्रतिवादी व मुक्ता केरु कोकरे यांचेमध्ये रस्ता केस क्रं. ३६/२०२३ दाखल होती, त्या निकालावर नाराज होऊन प्रतिवादी यांनी प्रांत साहेब, उपविभागीय अधिकारी साहेब, अहिल्यानगर यांचेकडे रितसर अपील दाखल केले असून त्याचे कामकाज चालू आहे. रस्ता केस क्रं. ३६/२०२३ मधील रस्ता व वादी म्हणतात तो रस्ता दोन्ही वेगवेगळे रस्ते आहेत. केवळ रस्ता केस क्रं. ३६/२०२३ या आदेशाचा गैरफायदा घेऊन वादी मे. कोर्टाची दिशाभूल करुन खोटा मनाई हूकूम घेऊन नविन रस्ता घेण्याचे विचारात आहेत, जेणे करुन प्रतिवादींचे नुकसान होईल, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१०)वादी नं. ३ बाळासाहेब माधव ढेपे यांनी त्यांचे नावावरील क्षेत्राची विक्री केलेली आहे. त्यांचे नावावर कोणत्याही प्रकारचे क्षेत्र शिल्लक राहिलेले नाही, त्यामुळे त्यांना मनाई हुकूम मागण्याचा प्रश्नच उद्भवत नाही. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

११)सदर रस्त्याबाबत वादी यांना या मे. कोर्टामध्ये कोणत्याही प्रकारचा रिलीफ मागण्याचा अधिकार नाही. त्यासाठी महाराष्ट्र महसुल अधिनियम कलम ५(२) व कलम १४३ प्रमाणे तरतुद असल्यामुळे वादींनी रेव्हेन्यू खात्याकडे त्याबाबत योग्य ती कायदेशिर कारवाई करावी, या मे. कोर्टामध्ये त्यांना दावा चालविण्याचा कोणत्याही प्रकारचा हक्क, अधिकार हितसंबंध नाही. वास्तविक पहाता वादींचा दावा हा

रेक्षक
यालय क.स्तर
रत

कायद्याने टेनेबल, मेंटेनेबल नाही. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१२) वादी नं. १ ते ८ यांना प्रतिवादी यांच्या क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. वादी नं. १ ते ८ यांना त्यांच्या क्षेत्रामध्ये येण्या जाण्यासाठी दुसरीकडून रस्ता असून त्या रस्त्याने ते नेहमी ये जा करतात व त्यांचे शेतीउपयोगी सर्व औजारे ने आण करतात. प्रतिवादी यांच्या क्षेत्रामधून वादींना कधीही रस्ता व कारण नाही. केवळ वादी हे मनगट शाहीचे जोरावर नविन रस्ता करण्याचे विचारात आहेत. तसे झाल्यास प्रतिवादी यांचे कधीही, कशानेही न भरुन येणारे फार मोठे नुकसान होणार आहे. व प्रतिवादी यांना न्याय हक्कापासून वंचित रहावे लागेल. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१३)वादी यांनी मिळकत वर्णनामध्ये नमुद केलेल्या मिळकती संपूर्णपणे चुकिच्या व बनावट आहेत. तसेच रस्त्याबाबत केलेले वर्णन देखिल चुकिचे आहे. सबब वादीचा दावा व मनाई अर्ज हा रद्द होण्यास पात्र आहे.

१४) वादी नं. १ ते ८ यांनी दाव्यामध्ये नमुद केलेला रस्ता हा कधीही अस्तित्वात नव्हता केवळ प्रतिवादी यांना त्रास देण्याचे दुष्ट हेतुने सदरचा दावा दाखल करण्यात आलेला आहे. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१५) वादी हे खुप वर्षापासुन त्यांना दुसरीकडून असलेला नेहमीच्या रस्त्याने ये जा करीत आहेत. त्यांना प्रतिवादींचे क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. सदर वादी व प्रतिवादी यांचेमध्ये तहसिलदार

यांचेकडे रस्त्याबाबत कधीही वाद दाखल नव्हता व आजही नाही. वादी यांना रस्त्याबाबत कोणत्याही प्रकारची तक्रार करावयाची असेल तर त्यांनी मा. तहसिलदार साहेब यांचेकडे रितसर रस्त्या बाबत तक्रार करावी. या मे. कोर्टात खोट्या मजकुराचा दावा दाखल करुन मनाई हुकूम घेऊन बेकायदेशिर नविन रस्ता करण्याचा प्रयत्न करु नये. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१६) वादी यांनी खोट्या मजकुराचा दावा दाखल करुन प्रतिवादी नं. १ व ३ यांना शारिरीक, मानसिक व आर्थिक त्रास दिला याबद्दल वादी यांना रुपये ५०,०००/- (पन्नास हजार रुपये मात्र) दंड करावा, कॉस्ट करावी. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

हे ॲफिडेव्हीट केले असे.

नेवासा

दि.१८/१/२०२५

स.नि.आं.खंडू

ठकाजी कोकरे यांचे डा.हा.असे

ॲफिडेव्हीट करणार

ओळख-

(ॲड. एस.एस. गव्हाणे)

याकामी मी खंडु ठकाजी कोकरे, वय- ६७ धंदा शेती, रा. देडगाव, ता. नेवासा, जि. अहिल्यानगर (अहमदनगर) सत्य प्रतिज्ञेवर कथन करतो कि, वरील ॲफिडेव्हीट मधील संपूर्ण मजकूर माझे माहीती

व समजुती प्रमाणे खरा व बरोबर असुन त्याचे सत्यतेसाठी या लेखाखाली मी माझा स.नि.आं. आजरोजी नेवासा येथे केला असे.

नेवासा

दि.१८/१/२०२५

स.नि.आं. खंडू ठकाजी कोकरे यांचे डा. हा. असे

ॲफिडेव्हीट करणार

MP 3438.

solemnly affirmed before me by Khanduji Thakaji Kokare, Age 61, Occ Agri who is identified before me by Adv. S.S. Gavhane Khandgaon whom I personally know

Adv. S.S. Gavhane
Advocate
Nevasa

नेवासा येथील मे. सिव्हील जज्ज साहेब, ज्यु. डी.

यांचे कोर्टात

रे.मु.नं.

५५०/२०२४

वादी

चांगदेव विठ्ठल टकले, वगैरे

प्रतिवादी

खंडू ठकाजी कोकरे, वगैरे

याकामी प्रतिवादी नं. १ व ३ कडून दाव्याची कैफियत व मनाई अर्जावर म्हणणे असे ते खालील प्रमाणे.

१) वादीचा संपूर्ण दावा व मनाई अर्ज खोटा व बनावट असून तो या प्रतिवादी नं. १ व ३ यांना मान्य व कबुल नाही, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

२) वादीने सदरच्या दाव्यामध्ये व मनाई अर्जामध्ये केलेली सर्व कथने, विधाने खोटी व बनावट आहेत, ती या प्रतिवादी नं. १ व ३ यांना मुळीच मान्य व कबुल नाही.

३) सदर दाव्यातील वादी नं. ३ बाळासाहेब माधव ढेपे यांनी त्यांचे नावावरील क्षेत्राची विक्री केलेली आहे, त्यामुळे सदर गटामध्ये त्यांचे क्षेत्र राहिलेले नाही, त्यामुळे त्यांना मनाई हुकूम मागण्याचा कोणत्याही प्रकारचा कायदेशिर अधिकार नव्हता व नाही.

४) सदर दाव्यामध्ये वादीने योग्य ते पक्षकार सामिल केलेले नसल्यामुळे सदरचे दाव्यास नॉन जॉईंडर ऑफ नेसेसरी पार्टीजचा बाध येत आहे, सबब सदरचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

५) वादीने सदरचे दाव्यामध्ये सप्रेशन ऑफ मटेरियल फॅक्ट्स केलेले आहे, त्यामुळे वादीचा दावा हा मेंटेनेबल नाही, सबब दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

६) वादी यांनी सदर दावा मिळकतीमध्ये ज्या रस्त्याचा उल्लेख केलेला आहे, त्या रस्त्याबाबत अद्यापपावेतो मा. तहसिलदार साहेब यांचे कोणत्याही प्रकारची रस्ता केस चाललेली नाही व कारणही नाही. व सदर रस्त्याबाबत तहसिलदार साहेब यांचेकडे रस्ता केस दाखल नाही, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

७) वादी यांनी सदर दाव्यामध्ये जो रस्ता नमुद केला तो रस्ता अस्तित्वात नाही. केवळ प्रतिवादी नं. १ व ३ यांना त्रास द्यावयाचा व त्यांचे क्षेत्रातुन नविन रस्ता बळजबरीने तयार करावयाचा म्हणून सदरचा दावा दाखल केलेला आहे, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

८) वादी व प्रतिवादी यांच्यामध्ये रस्त्याबाबत तक्रार होण्याचा प्रश्नच उद्भवत नाही, कारण वादी म्हणतात त्याप्रमाणे प्रतिवादींच्या क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. नेवासा तहसिलदार यांचेकडे रस्ता केस क्रं. ३६/२०२३ ही मुक्ता केरु कोकरे , आणि प्रतिवादी यांचेमध्ये रस्त्यासंदर्भात केस होती, त्या केसमध्ये वादी नं. १ ते ८ पैकि कोणीही पार्टी नव्हते. त्यामुळे रस्ता केस क्र. ३६/२०२३ चा आदेश हा

या दाव्यास लागू होत नाही. कारण की वादी नं. १ ते ८ कोणीही पार्टी नव्हते. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

९) प्रतिवादी व मुक्ता केरु कोकरे यांचेमध्ये रस्ता केस क्रं. ३६/२०२३ दाखल होती, त्या निकालावर नाराज होऊन प्रतिवादी यांनी प्रांत साहेब, उपविभागीय अधिकारी साहेब, अहिल्यानगर यांचेकडे रितसर अपील दाखल केले असून त्याचे कामकाज चालू आहे. रस्ता केस क्रं. ३६/२०२३ मधील रस्ता व वादी म्हणतात तो रस्ता दोन्ही वेगवेगळे रस्ते आहेत. केवळ रस्ता केस क्रं. ३६/२०२३ या आदेशाचा गैरफायदा घेऊन वादी मे. कोर्टाची दिशाभूल करुन खोटा मनाई हूकूम घेऊन नविन रस्ता घेण्याचे विचारात आहेत, जेणे करुन प्रतिवादींचे नुकसान होईल, सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१०)वादी नं. ३ बाळासाहेब माधव ढेपे यांनी त्यांचे नावावरील क्षेत्राची विक्री केलेली आहे. त्यांचे नावावर कोणत्याही प्रकारचे क्षेत्र शिल्लक राहिलेले नाही, त्यामुळे त्यांना मनाई हुकूम मागण्याचा प्रश्नच उद्भवत नाही. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

११)सदर रस्त्याबाबत वादी यांना या मे. कोर्टामध्ये कोणत्याही प्रकारचा रिलीफ मागण्याचा अधिकार नाही. त्यासाठी महाराष्ट्र महसुल अधिनियम कलम ५(२) व कलम १४३ प्रमाणे तरतुद असल्यामुळे वादींनी रेव्हेन्यू खात्याकडे त्याबाबत योग्य ती कायदेशिर कारवाई करावी, या मे. कोर्टामध्ये त्यांना दावा चालविण्याचा कोणत्याही प्रकारचा हक्क, अधिकार हितसंबंध नाही. वास्तविक पहाता वादींचा दावा हा

कायद्याने टेनेबल, मेंटेनेबल नाही. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१२) वादी नं. १ ते ८ यांना प्रतिवादी यांच्या क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. वादी नं. १ ते ८ यांना त्यांच्या क्षेत्रामध्ये येण्या जाण्यासाठी दुसरीकडून रस्ता असून त्या रस्त्याने ते नेहमी ये जा करतात व त्यांचे शेतीउपयोगी सर्व औजारे ने आण करतात. प्रतिवादी यांच्या क्षेत्रामधून वादींना कधीही रस्ता व कारण नाही. केवळ वादी हे मनगट शाहीचे जोरावर नविन रस्ता करण्याचे विचारात आहेत. तसे झाल्यास प्रतिवादी यांचे कधीही, कशानेही न भरुन येणारे फार मोठे नुकसान होणार आहे. व प्रतिवादी यांना न्याय हक्कापासून वंचित रहावे लागेल. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१३)वादी यांनी मिळकत वर्णनामध्ये नमुद केलेल्या मिळकती संपूर्णपणे चुकिच्या व बनावट आहेत. तसेच रस्त्याबाबत केलेले वर्णन देखिल चुकिचे आहे. सबब वादीचा दावा व मनाई अर्ज हा रद्द होण्यास पात्र आहे.

१४) वादी नं. १ ते ८ यांनी दाव्यामध्ये नमुद केलेला रस्ता हा कधीही अस्तित्वात नव्हता केवळ प्रतिवादी यांना त्रास देण्याचे दुष्ट हेतुने सदरचा दावा दाखल करण्यात आलेला आहे. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१५) वादी हे खुप वर्षापासुन त्यांना दुसरीकडून असलेला नेहमीच्या रस्त्याने ये जा करीत आहेत. त्यांना प्रतिवादींचे क्षेत्रातुन कधीही रस्ता नव्हता व कारणही नाही. सदर वादी व प्रतिवादी यांचेमध्ये तहसिलदार

यांचेकडे रस्त्याबाबत कधीही वाद दाखल नव्हता व आजही नाही. वादी यांना रस्त्याबाबत कोणत्याही प्रकारची तक्रार करावयाची असेल तर त्यांनी मा. तहसिलदार साहेब यांचेकडे रितसर रस्त्या बाबत तक्रार करावी. या मे. कोर्टात खोट्या मजकुराचा दावा दाखल करुन मनाई हुकूम घेऊन बेकायदेशिर नविन रस्ता करण्याचा प्रयत्न करु नये. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

१६) वादी यांनी खोट्या मजकुराचा दावा दाखल करुन प्रतिवादी नं. १ व ३ यांना शारिरीक, मानसिक व आर्थिक त्रास दिला याबद्दल वादी यांना रुपये ५०,०००/- (पन्नास हजार रुपये मात्र) दंड करावा, कॉस्ट करावी. सबब वादीचा दावा व मनाई अर्ज रद्द होण्यास पात्र आहे.

येणे प्रमाणे प्रतिवादी नं. १ व ३ कडून दाव्याची कैफियत व मनाई अर्जावर म्हणणे असे.

नेवासा

दि.१८/१/२०२५

१) स.नि.आं.खंडू ठकाजी कोकरे यांचे डा.हा.असे.

३) स.नि.आं.प्रकाश खंडू कोकरे यांचे डा.हा.असे.

प्रतिवादी

प्र.वा.१,३ तर्फे ॲडव्होकेट
(ॲड. एस.एस. गव्हाणे)

याकामी आम्ही प्रतिवादी नं. १ व ३ सत्य प्रतिज्ञेवर कथन करतोत कि, वरील कैफियत कलम नं. १ ते १६ मधील संपूर्ण मजकूर आमचे माहीती व समजुती प्रमाणे खरा व बरोबर असुन त्याचे सत्यतेसाठी या लेखाखाली आम्ही आमचे स.नि.आं. आजरोजी नेवासा येथे केले असे.

नेवासा

दि.१८/१/२०२५

१) स.नि.आं. खंडू ठकाजी कोकरे यांचे डा. हा. असे

३) स.नि.आं. प्रकाश खंडू कोकरे यांचे डा.हा.असे.

प्रतिवादी

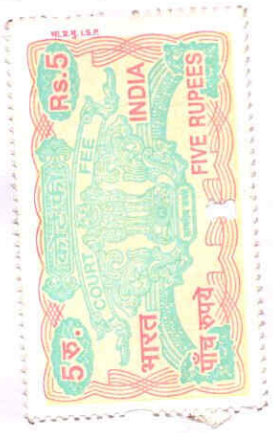
Exh.17

नेवासा मेजीस्ट्रेट मे. सिव्हील जज्ज साहेब (ज्यु.डी)

यांचे कोर्टात,

दे.मु.नं 550
2024

वादी
यांगदेव टकले
प्र.वादी
यांचे कोर्टात व
इतर



आजामी प्र.वादी १ व ३ तर्फे विनंती अर्जी की,

सदर दाव्याची तारीख आजरोजी मेमनेली आहे. सदर दाव्यातील प्र.वादी नं.१ व ३ हे महत्वाची कागदपत्र दाखल करत आहे. तरी मे. कोर्टास विनंती की सदर प्र.वादी यांचे कागदपत्र दाखल करुन घेण्यात यावे

अजी मंजुर व्हावा ही विनंती.

Order

Production of documents is allowed.

SANDHYA YUVRAJ SUL
Digitally signed by SANDHYA YUVRAJ SUL
Date: 2025.01.18 16:38:40 +0530

2nd Jt. CJJD Newasa

दि. 18/01/25

नेवासा

प्र.वादीतर्फे अॅड.

Exh.18

नेवासा येथील मे. सिव्हील जज्ज साहेब (ज्युडी.)
यांचे कोर्टात,

वादी
चांगदेव टकले
प्र.वादी
यांचे कोकरे व
इतर

रे.मु.नं 440
2024

प्रकरणी प्र.वादी १ व ३ तर्फे दाखल कागदपत्र
असे की -

1) नेवासा येथील मा. तहसिलदार साहेब यांचेकडे
अदर मिळकतींबाबत दाखल रस्ता केस.

2) ऑल इंडिया रिपोर्ट 2007(2) बॉम्बे हायकोर्ट
बाबुराव गणपती भाबी
विरुद्ध
बाबासाहेब आण्णा पाटील

3) इस्माइल गुलाम शेख
विरुद्ध
मुनिसिपल कार्पोरेशन, मुंबई

4) 2008(3) म.मुल.आर वर बॉम्बे हायकोर्ट पेज नं 523 ते
येणेप्रमाणे दाखल कागदपत्र असे. 532

दि. 28/01/25
नेवासा.

प्र.वादी नं-१ व ३ तर्फे
ॲडव्होकेट

Order

Seen & filed

SANDHYA YUVRAJ SUL
Digitally signed by SANDHYA YUVRAJ SUL
Date: 2025.01.18 16:39:07 +0530

2nd Jt. CJJD Newasa

Tahasildar Newasa, Tahasildar Newasa Date : 17-01-2025 12:40:15pm

Year & Case Number	Date of filling	Whether original or appeal?	If appeal, the details of original order		Description of the dispute?	Status
			Name of the lower Authority	Number and date of the order		
2023/00053	01-04-2023	Application or Suit		-	Notice	Next Date Of Hearing

Sr.No	Name of the parties to the dispute
1	Petitioner बाळासाहेब माधव ढपे / Balasaheb Madhav Dhape
2	Responders खंडु ठका कोकरे / Khandu Thaka Kokare

नेवासा येथील मा.तहसिलदार साहेब, तहसिल कार्यालय, नेवासा,
यांचे कोर्टात...

अर्जदार

रस्ता केस नं.
53/2023.

श्री.बाळासाहेब माधव ढेपे, वय-४० धंदा शेती, रा.निंभेळे पिंपरी, ता.राहाता, जि.अहमदनगर.

सा.सालै

१) खंडु ठका कोकरे, वय-७५ धंदा शेती,
२) कारभारी ठका कोकरे, वय-३६ धंदा शेती,
३) एकनाथ कल्याण बनसोडे, वय-४१ धंदा शेती,
४) प्रकाश खंडु कोकरे, वय-२५ धंदा शेती,
सर्व रा.देडगांव, ता.नेवासा, जि.अहमदनगर.

याकामी अर्जदार ता.वाजीवरुन मामलेदार कोर्ट ॲक्टचे कलम १४३ प्रमाणे रस्त्यासाठी अर्ज करतो तो खालीलप्रमाणे असे...

१) मिळकतीचे वर्णन :- डि.अहमदनगर सब डि.ता.नेवासा पैकी मौजे देडगांव येथील शेतजमिन मिळकती...

गट नंबर	क्षेत्र हे.आर.	आकार रु.पै.	पु.	वर्तु:सिमा.. द.	प.	उ.
अ) 300/4	0.81	1.30	---	---------रेकॉर्डप्रमाणे ---------		
ब) 312/1	2.64 ख.06	2.84	---	---------रेकॉर्डप्रमाणे ---------		

येणेप्रमाणे दावा मिळकती अनुसदर मिळकतीमध्ये जाण्या-येण्याच्या रस्त्याचे वाग वहीवाटीसहित, त्यातील झाड, झुडुप, दगड, माती वगैरे तदंगभुतवस्तुसह व हक्कासह काहीएक राखुन न ठेवितां असे.

(..२..)

२) याकामी अर्जदाराचा अर्ज असा आहे की, अर्जदार यांच्या खरेदी मालकीची दावा मिळकत अ) मौजे देडगांव, ता. नेवासा येथील ग. नं. ३००/४ क्षेत्र ०.८१ आर ही मिळकत असुन त्यांच्या प्रत्यक्ष कब्जे, वहीवाटीत आहे. दावा मिळकत ब) ग. नं. ३१२/१ ही मिळकत सा.वाले नं. १, २, ३, ४ यांच्या मालकीची आहे.

३) अर्जदार यांना सदरची मिळकत खरेदीखताने कायमस्वरुपी विकत घेतली असुन अर्जदार यांना त्यांचे मिळकतीमध्ये येण्या जाण्यासाठी दावा मिळकत ब) ग. नं. ३१२/१ च्या क्षेत्रामधुन पश्चिमेकडुन पुर्वेकडे रस्ता जातो, आणि पुढे तो उत्तरेकडुन दक्षिणेकडे जातो, असा वहीवाटीचा रस्ता अर्जदाराच्या मिळकती मध्ये जातो, तसेच सदरचा रस्ता पुढे हा ग. नं. ३००/१, ३००/२ व ३००/३ या क्षेत्रामधुन अर्जदाराच्या जमिनीकडे जातो. सदरचा रस्ता हा ग. नं. ३००/१ , ३००/२ , ३००/३ या गटापुरता सध्या चालु आहे. फक्त सदरचा रस्ता ग. नं. ३१२/१ सा.वाले यांनी बेकायदेशिरपणे सुध्द बंद केला. सदरच्या रस्त्याने अर्जदार हे खरेदी घेतल्यापासुन जा . ये करुन वहीवाट करीत होते व याच रस्त्याने शेती उपयोगी सर्व औजारे ट्रॅक्टर, बैलगाडी व इतर सर्व औजारे ने-आण करीत होते. अशी सर्व परिस्थीतीअसतांना सा.वाले यांनी बेकायदेशिर-पणे दि. २६/१/२०२३ रोजी अर्जदार यांचा असलेला वहीवाटीचा रस्ता हा बेकायदेशिरपणे बंद केला व त्यामुळे अर्जदार यांना त्यांचे क्षेत्रामध्ये येण्या-जाण्यासाठी रस्ता राहिलेला नाही. अर्जदार यांची सर्व उपजिविका ही शेती व्यवसायावरच असुन सदरची अर्जदाराची शेतजमिन पडिक राहिल्यास अर्जदाराच्या संपुर्ण कुटूंबावर उपासमारीची वेळ येईल. अर्जदार यांनी सा.वाले यांना अनेकवार सदरचा रस्ता खुला करुन मिळण्यासाठी विनंती केली. परंतु सदरचा रस्ता खुला करण्यास सदर सा.वालेंनी नकार दिला. त्यामुळे सदरचा अर्ज नविन रस्ता मिळण्यासाठी व त्यास सा.वाले यांनी हरकत, अडथळे करु नयेत म्हणुन अर्जदारास सदरचा अर्ज सा.वालेविरुद्ध दाखल करणे भाग पडलेले आहे.

४) <u>अर्जास कारण</u> :- सदर सा.वाले यांनी बेकायदेशिरपणे दिनांक

२६/०१/२०२३ रोजी अर्जदार यांचा वहीवाटीचा रस्ता बंद केला.अर्जदाराने सा.वालेंना विनंती करुनही त्यांनी सदरचा रस्ता खुला केला नाही, त्यावेळी अर्जास कारण घडले व पुढे वेळोवेळी कारण घडत आहे.

५) कोर्ट अधिकार :- अर्जदार व सा.वाले ,तसेच अर्जातील मिळकती या या मे.कोर्टाच्या स्थानिकमेतील असल्याने सदरचा अर्ज चालविण्याचा या मा. कोर्टास पुर्ण अधिकार आहे.

६) कोर्ट-फी स्टॅम्प :- सदरचा अर्ज अर्जदाराने मामलेदार कोर्ट ॲक्टचे कलम १४३ प्रमाणे केलेला असल्याने सदर अर्जास कायदयाप्रमाणे योग्य तो कोर्ट फी स्टॅम्प लावला आहे.

७) तरी अर्जदाराची विनंती की, :-

अ) वरीलकथनास व हकीगतीस अनुसरुन अर्जदार यांना त्यांच्या शेतजमिन गट नं.३००/४ मध्ये येण्या- जाण्यासाठी ग.नं.३१२/१ या मिळकतीतुन नश्चिमेकडुन पुर्वेकडे व पुढे एल.आकारात उत्तरेकडुन दक्षिणेकडे जाणारा रस्ता खुला होवुन त्यास नविन रस्ता मिळावा व सदरच्या रस्त्याने सा.वाले यांनी अर्जदार यांना येण्या- जाण्यासाठी ,ट्रॅक्टर, बैलगाडी इत्यादी प्रकारची शेतीची औजारे ने-आण करण्यासाठी कुठल्याही प्रकारचे स्वत:,अगर इतरांमार्फत हरकत, अडथळे करु नयेत असा सा.वालें- विरुध्द हुकुम व्हावा ही नम्र विनंती.

ब) अर्जदारास ऐनवेळी अर्जामध्ये दुरुस्ती करण्याची परवानगी असावी.

क) या अर्जाचा संपुर्ण खर्च अर्जदारास सा.वालेंकडुन मिळावा.

ड) इतर योग्य ते न्यायाचे हुकुम अर्जदाराचे लाभांत व्हावेत.

येणेप्रमाणे अर्जदाराचा अर्ज असे.

नेवासा.

दि.१५/०३/२०२३.

अर्जदार

(..४..)

याकामी मी अर्जदार- बाळासाहेब माधव ढेपे, वय- ४० धंदा शेती. रा. निर्मळपिंपरी, ता.राहाता, जि.अहमदनगर सत्य प्रतिज्ञेवर कथन करतो की, वरील अर्जे कलम १ ते ७ मधील संपुर्ण मजकुर माझे माहिती व समजुती-प्रमाणे खरा व बरोबर असुन त्याचे सत्यतेसाठी मी नेवासा येथे या लेखाखालो माझी सही केली आहे.

नेवासा.

दि.१४/०३/२०२३.

अर्जदार

पक्षकाराने दिलेल्या माहितीवरुन
व दाखविलेल्या कागदपत्रावरुन वरील
अर्जाचा मसुदा तयार करुन अर्ज दाखल
केला आहे.

अर्जदारातर्फे ॲडव्होकेट.

referred Apex Court judgment, is appropriate. Thus, decree is required to be set aside and it is accordingly set aside. The decree passed by the City Civil Court, Bombay in Summary Suit No.538 of 1983 dated 1st December 1984 is hereby quashed and set aside. Leave to defend granted on 3.3.1984 subject to deposit of Rs.18,000/- is hereby quashed and modified and, in stead, the defendant - appellant herein is permitted to defend the said suit unconditionally. In view of this order, the matter is remitted to the City Civil Court. The City Civil Court is further directed to dispose of the suit as expeditiously as possible and in any event within a period of six months from the date of receipt of order. The amount deposited in this Court be refunded to the appellant.

V. With these directions, Appeal stands disposed of.

Appeal allowed.

2007(2) ALL MR 364

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

S. R. SATHE, J.

Baburao Ganpati Mali (Since Deceased through L.Rs.)
Vs.
Balasaheb Anna Patil & Anr.

Second Appeal No.122 of 1990
27th March, 2006.

A. P. S. APTE, for the Appellant.
S. C. PAGE, for the Respondent No.2.

Civil P.C. (1908), O.39, Rr.1, 2 - Suit for permanent injunction - Plaintiff suppressing material facts - Plaintiff not coming to court with clean hands - Plaintiff not entitled to get the relief of injunction.

The land in question was initially owned by one Kulkarni and thereafter it was taken by Government and for quite long time the same was being cultivated by the society. Thereafter, it was given to one Shinde, an ex-serviceman and ultimately the said land was purchased in 1976 by the present plaintiff in auction sale. It is very clear that the plaintiff has tried to show that there was no road at all in existence when he purchased the land and the defendants for the first time made an attempt to create a new road through his land and as such he filed the present suit. However, the entire evidence on record shows that the plaintiff is trying to mislead the court because there is ample evidence on record to show that even at the time when the plaintiff purchased the property, the road in question was in existence. However, suppressing the said fact the plaintiff made a show to indicate that the new road is being created for the first time by the defendants. So, the learned trial Judge was right in observing that the plaintiff had not come to the court with clean hands and as such was not entitled to get the relief of injunction.

Merely because the defendants have not specifically pleaded in certain terms that they have acquired the right of prescription in respect of the land in question, that would not make any difference if once it is proved that the road in question was being used by the villagers continuously, openly for a period of more than 35 years. That will also indicate that though the land in question was purchased by the plaintiff he was not actually put in possession of the road in question which was going through the said land. So, merely because the plaintiff is having title to the suit land that does not mean that he is entitled for the injunction in question.

(Paras 9 & 10)

JUDGMENT:- Appellant, the Original Plaintiff in Regular Civil Suit No.199 of 1976 has preferred this Appeal against the Judgment and Order passed by the Court of 3rd Additional District Judge, Sangli in Civil Appeal No.94 of 1989 whereby the order passed by the 3rd Jt.C.J.J.D. Miraj dismissing the plaintiff's suit for permanent injunction restraining defendants from obstructing plaintiffs possession of the suit land and for mandatory injunction directing

the defend
the road in
was dismis
hereafter t
plaintiff an

2.

are as unde

On 2
bearing sur
at village M
in auction
the same o
found that
constructi
therefore, f
injunction
be directed
have laid o

3.

defendants.
was origina
and as he
was taken
village soci
a period of
the Govern
Shinde, an
taken by the
contention
the said lan
one road w
the same w
village Mh
according t
in exclusive
and as such
injunction p
having righ

4.

Judge frame
the plaintiff
the defenda
and also pr
considering
parties, the
conclusion

the defendants to remove the Murum laid on the road in question was confirmed and appeal was dismissed. For the sake of convenience, hereafter the parties shall be referred to as plaintiff and defendants.

2. Brief facts giving rise to this appeal are as under :

On 3.6.1976 plaintiff purchased the land bearing survey No.449/5 Gat No.1991 situated at village Mhaisal, Taluka Miraj, District Sangli in auction and thereafter he got possession of the same on 26.6.1976. Few days thereafter he found that the defendants 1 and 2 had started constructing a road through his land. He, therefore, filed a suit simplicitor of permanent injunction and also prayed that the defendants be directed to remove the Murum which they have laid on the road in question.

3. The said suit was opposed by the defendants. They contended that the suit land was originally owned by one Narsingh Kulkarni and as he died without any heir the suit land was taken by the Goverument. Thereafter the village society was cultivating the said land for a period of about 10 to 12 years on behalf of the Government and then it was given to one Shinde, an ex-military man and lastly it was taken by the plaintiff in an auction sale. It is the contention of the defendants that since the time the said land was being cultivated by the society, one road was in existence in the suit land and the same was being used by the villagers of village Mhaisal, Kutwal and Dhawli. Thus, according to Defendant Plaintiff was not at all in exclusive possession of the road in question and as such he was not entitled to claim any injunction particularly when all the villagers were having right to use the said road.

4. On these pleadings the learned trial Judge framed issues. In order to prove the case the plaintiff examined himself. As against this the defendant examined in all three witnesses and also produced certain documents. After considering the evidence adduced by both the parties, the learned trial Judge came to the conclusion that though the land bearing survey No.449/5 is owned by the plaintiff he has failed to prove that he was in actual possession of the portion of the land on which there was a road. The learned trial Judge also held that there is sufficient evidence to show that the said road was being used by the villagers for last more than 30-32 years. Naturally, he dismissed the plaintiff's suit for injunction.

5. Being aggrieved by the said decision the plaintiff filed the first appeal. The same also came to be dismissed. Hence plaintiff filed the present appeal.

6. From the perusal of the record it appears that while admitting the appeal the Court (Coram : Mohta, J.) has passed the following order:

"Grounds 1 and 3 raises Substantial Question of Law. Admit."

The said grounds are as under :

1) Whether in view of the fact that the appellant-plaintiff is the owner of the suit land, a decree of injunction ought to have been passed ?

3) Whether in view of the proof of the title of the appellant-plaintiff and in view of the fact that no easementary rights are claimed by the defendants, nor they have any such rights, a decree for injunction should have been passed in favour of the appellant-plaintiff ?

7. In this appeal before me Shri. R. S. Apte, learned Advocate for the plaintiff has urged only two points. Firstly, he submitted that the learned First Appellate Court has not formulated proper question while deciding the said appeal. Secondly, he canvassed before me that once it is held that the plaintiff is the owner of the suit land then the order refusing to grant permanent injunction was incorrect. He, therefore, submitted that the appeal be allowed and the plaintiff's suit be decreed. As against this, Shri. S. R. Page, learned Advocate for the Defendant No.2 supported the judgment and order passed by the learned trial Judge.

8. From the perusal of the judgment of the First Appellate Court, it does appear that

the said Court has not properly formulated the question to be decided in the said appeal. However, from the perusal of the entire judgment it does appear that both the sides were fully aware as to the real points involved in the matter and both of them had made submissions on the said points. Not only that, but the First Appellate Court has considered the real point involved in the said matter, namely whether the road in question was in existence and if so since when and whether the defendants and the villagers were using the said road if so under what capacity or whether the same was in exclusive possession of the plaintiff. All these points have been considered by the First Appellate Court. So, merely because question was not formulated in a particular manner, it cannot be said that there is sufficient ground to allow the appeal. Hence, I am not inclined to accept the arguments advanced by the learned advocate for the plaintiff in time.

9. It is not in dispute that the land in question was initially owned by one Kulkarni and thereafter it was taken by Government and for quite long time the same was being cultivated by the society. Thereafter, it was given to one Shinde, an ex-serviceman and ultimately the said land was purchased in 1976 by the present plaintiff in auction sale. If we peruse the plaint it is very clear that the plaintiff has tried to show that there was no road at all in existence when he purchased the land and the defendants for the first time made an attempt to create a new road through his land and as such he filed the present suit. However, if we peruse the entire evidence on record then it is very clear that the plaintiff is trying to mislead the court because there is ample evidence on record to show that even on the time when the plaintiff purchased the property, the road in question was in existence. However, suppressing the said fact the plaintiff made a show to indicate that the new road is being created for the first time by the defendants. So, the learned trial Judge was right in observing that the plaintiff had not come to the court with clean hands and as such was not entitled to get the relief of injunction.

10. It is needless to say that title to the land bearing Survey No 449/5 is not at all a matter of issue in this appeal. The main question is whether there is a road which is going through the plaintiff's land and if so, since when it was in existence and who were using the said road. From the perusal of the evidence of witnesses as well as from the 7 x 12 extract that have been produced on behalf of the defendants it is crystal clear that the villagers from village Mahisal, Kutwal and Dhawli were in fact using the said road even at the time when the land was being cultivated by the society. Not only that, but there is documentary evidence in the form of 7 x 12 extract which also goes to show that there is mention of Rasta Pad in the said extract. So, this is not a case where besides the interested words of defendants there is no other evidence. On the contrary, this documentary evidence clearly supports the defendant's contention. Merely because the defendants have not specifically pleaded in certain terms that they have acquired the right of prescription in respect of the land in question, that would not make any difference if once it is proved that the road in question was being used by the villagers continuously, openly for a period of more than 35 years. That will also indicate that though the land in question was purchased by the plaintiff he was not actually put in possession of the road in question which was going through the said land. So, merely because the plaintiff is having title to the suit land that does not mean that he is entitled for the injunction in question. A feeble attempt has been made on behalf of the plaintiff to show that some of the witnesses of the defendants have stated that there was crop in the entire land. It is needless to say that such stray admission will not help the plaintiff. If we read the entire evidence in its proper perspective then it goes to show that by giving such answer, all that the witness wants to indicate is that the entire land except road is being cultivated by the plaintiff and there is crop. So, I have absolutely no hesitation to hold that there is abundant evidence on record to show that on the date of the suit the plaintiff

was not at all in actual exclusive possession of the suit road. On the contrary, the same was being used by the defendants as well as by the other villagers. Merely because there is some other way for going to the factory, that will also not make any difference so far as the fate of this suit is concerned. Thus, both the courts below have recorded concurrent finding of fact that the suit road in question is in existence for last several years and the same is in exclusive possession of the plaintiff. There is no necessity to interfere with the said finding of fact. Thus, there is no substance in this appeal. The appeal is dismissed with cost.

Appeal dismissed.

2007(2) ALL MR 367

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(FULL BENCH)

R. M. LODHA, S. A. BOBDE & S. J. VAZIFDAR, JJ.

J. S. Ocean Liner LLC
Vs.
M.V. Golden Progress & Anr.

Notice of Motion No.2780 of 2005
AND Notice of Motion No.3287 of 2005
IN Admiralty Suit No.11 of 2005
25th January, 2007.

Mr. J. P. SEN with Mr. ASHWIN SHANKAR, VISHAL SETH and Mr. R. A. FERNANDES, for the plaintiffs.
Mr. A. M. VERNEKAR with Ms. BHARTI NARICHANIA and Ms. REENA SHARMA i/by. M/s. Vibha Juris Consult & Co., for the Defendants.
Mr. V. C. KOTWAL, Senior Counsel with Mr. V. R. DHOND, for the Intervenor.
Mr. PRASHANT PRATAP with Mr. H. G. PRATAP and Ms. MONICA KOHLI, for the Intervenor.

(A) Arbitration and Conciliation Act (1996), S.9 - Admiralty jurisdiction - Arrest of Vessel - Power of District Court - District Court is not empowered to exercise admiralty jurisdiction - It cannot make any order for arrest of vessel - For any order u/s.9 of the Act of 1996, the court must have jurisdiction to decide the questions forming subject matter of arbitration if the same had been subject matter of the suit.

The principal civil court of original jurisdiction in district that is District Court is not empowered to exercise the admiralty jurisdiction. It cannot make any order for arrest of vessel. For any order under section 9 of the Act of 1996, the court must have jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of the suit. The pecularity of the admiralty action in rem is that the coastal authorities in respect of any maritime claim can assume jurisdiction by arrest of the ship, irrespective of the nationality of the ship or that of its owners, or place of business or dismissal or residence of its owners or the place where the cause of action arose wholly or in part. In admiralty, the vessel has a juridical personality. Admiralty law confers upon the claimant right in rem to proceed against the ship or cargo as distinguished from a right in personam to proceed against the owner. A ship may be arrested: (i) to acquire jurisdiction; (ii) to obtain security for satisfaction of the claim when decreed or (iii) in execution of the decree. Section 9(ii)(b) of Act of 1996 cannot be construed so as to read into it in rem jurisdiction. This provision does not cover the arrest of the ship or the keeping of a ship under arrest in the exercise of the court jurisdiction in rem at all. What is provided by section 9(ii)(b) is securing the amount in dispute in the arbitration by way of an interim measure which in our considered view does not include the arrest of vessel. (2002)4 SCC 105 - Ref. to. (Paras 29, 30, 31)

(B) Arbitration and Conciliation Act (1996), S.9 - Application under S.9 - Arrest of vessel - An application under S.9 of Arbitration and Conciliation Act is not maintainable for the arrest of vessel - S.9(ii)(b) "Securing the amount in dispute in arbitration" -

5. The tribunal has considered the spot panchnama at Exh. 58 and has held that the driver side cabin of the S. T. Bus was damaged; the door was broken; the head light and other accessories were also broken along with screen glass. The collusion occurred when the S.T. Bus crossed the bridge. The relevant findings are in paragraph 15 of the judgment of the tribunal, which is reproduced below.

> *"The petitioner himself was driver of the Bus. As per his evidence, one truck came from opposite direction and dashed against the bus and thereafter fell down from the bridge. The bus had crossed the bridge. The very fact that the panchanama of the spot of offence and the evidence of the petitioner shows that the driver of the truck was driving the vehicle rash and negligently and after having seen the bus coming from opposite direction, he has not reduced the speed and control the truck. The driver of the truck has not taken any precaution to avoid the accident. It is the contention of the Insurance Company that the driver of the S.T. Bus was at fault or equally responsible for the accident. The best person who could explain the exact occurrence of the accident is the driver of the truck, who has not examined by the respondent. Therefore, the basis of the evidence on record, only inference could be drawn is that the accident was due to rash and negligence on the part of the driver of the truck."*

The driver of the truck has not entered the witness box to depose and there is no evidence on record to show that the claimant who was the driver of the S.T. Bus was in any manner rash and negligent in driving the vehicle. The tribunal, therefore, did not commit any error.

6. In the result, the first appeal is dismissed with costs. The respondent No. 1-claimant shall be entitled to withdraw the entire amount deposited by the appellant along with interest accrued thereon.

Appeal dismissed.

GRANT OF INJUNCTION : ENTITLEMENT OF

(R. D. Dhanuka, J.)

MOHD. ISMAIL GULAM SHAIKH *Appellant.*

vs.

MUNICIPAL CORPORATION OF GR. MUMBAI and another *Respondents.*

(a) **Civil Procedure Code, O. 39, R. 1** — *Grant of injunction — Reliefs under Rule 1 of Order 39 are equitable and discretionary — Claimant is entitled to such equitable relief only if he has come to Court with clean hands — Where plaintiff claimant has suppressed material facts and violated status quo order, equitable relief cannot be granted.* (Paras 22 and 23)

(b) **Civil Procedure Code, O. 39, R. 1 and Maharashtra Regional and Town Planning Act (37 of 1966), S. 55** — *Injunction claimed against order of demolition — Entitlement of — Evidence showed that after obtaining order of*

Appeal from Order No. 75 of 2015 with Civil Appln. No. 89 of 2015 decided on 1-2-2016. (Bombay)

status quo, plaintiff has extended temporary structure — Plaintiff himself violated status quo order — Plaintiff not entitled to equitable relief — Such relief can be granted only if party comes to Court with clean hands and makes out prima facie case in his favour. (Para 22)

For appellant : *D. H. Mehta with Ms. A. Castellino* instructed by *Bruno Castellino and P. R. Yadav*

For respondent No. 1-B.M.C. : *R. A. Thorat, Senior Counsel with S. K. Sonawane and A. V. Diwate*

For applicant : *S. U. Kamdar, Senior Counsel* instructed by *Alok Bagla* (in Civil Appln. No. 1334 of 2015) and *Rajesh Bindra* (in Civil Appln. No. 91 of 2016)

ORAL JUDGMENT :— By this appeal from order, the appellant has impugned the order passed by the learned trial Judge on 2nd January, 2015 refusing to grant ad-interim relief in favour of the appellant (original plaintiff) in the notice of motion *inter alia* praying for an injunction against the Municipal Corporation (original defendants) from acting upon or from taking any steps pursuant to the notice dated 16th December, 2014 issued under section 55 of the M.R.T.P. Act, 1966 as against the plaintiff and the suit premises being 43-45, Mathuradas Estate Chawl, Ground Floor, Behind Apollo Floweriest, Causeway, Colaba, Mumbai 400 005.

2. Mr. Mehta, learned counsel appearing for the appellant invited my attention to various averments made in the plaint and the documents annexed to the plaint and submits that the impugned structure, which was the subject matter of the notice issued under section 55 of the M.R.T.P. Act is in existence since 1961-1962 and the appellant has been carrying on business in the said premises since then. He submits that since the structure in question was not a temporary structure, notice itself issued under section 55 of the M.R.T.P. Act by the Municipal Corporation was without jurisdiction. He submits that the appellant has been also residing in the suit premises. In support of his submission that the suit structure is not a temporary structure and that the appellant has been carrying out the business in the suit premises since 1961-1962, Mr. Mehta, learned counsel for the appellant invited my attention to the alleged Deed of Declaration dated 11th May, 1949 alleged to have been executed by one Mr. N. Saliyan. He submits that by the said document alleged to have been executed by the said Mr. N. Saliyan, the said Mr. N. Saliyan had given the space between two buildings at Mathuradas Estate Bombay to Mossa Korachamkandil. The appellant is claiming through the said Mossa Korachamkandil.

3. Learned counsel also placed reliance on a copy of the power of attorney alleged to have been executed in the month of June, 2014. He submits that even the said power of attorney would indicate the address of the suit premises in the month of June, 2014. He also placed reliance on the notice dated 10th November, 2005 issued by the Municipal Corporation under section 381 of the Mumbai Municipal Corporation Act (M.M.C. Act). Reliance is also placed on the notices dated 10th December, 2005 and 14th November, 2005. He also placed reliance on the ration card issued at the suit address.

4. It is submitted by the learned counsel for the appellant that even the telephone bills as well as electricity bills issued by various authorities would clearly indicate the address of the suit premises. He submits that all these documents were produced for perusal of the authorities in respect of which the notice under section 55 of the M.R.T.P. Act has been issued. He submits that though the appellant had demanded oral hearing from the Municipal Corporation, no oral hearing was provided to him. He submits that the entire action on the part of the Municipal Corporation is without jurisdiction.

5. It is submitted that this Court has already taken a *prima facie* view in favour of the plaintiff and has granted *status-quo* which is in force for quite some time. It is submitted that the appellant has no objection if hearing of the notice of motion is expedited and is heard within a reasonable period of time after the defendants filing affidavit in reply.

6. Mr. Thorat, learned senior counsel appearing for the Municipal Corporation invited my attention to various documents referred to and relied upon by Mr. Mehta, learned counsel for the appellant. He also invited my attention to the notice issued under section 55 of the M.R.T.P. Act, 1966 and would submit that upon inspection of the suit property, the officers of the Municipal Corporation found that the appellant had erected temporary structure, which was totally unauthorized as described in the notice issued under section 55 of the M.R.T.P. Act. He submits that since the Municipal Corporation found an unauthorized structure of a temporary nature, action under section 55 of the M.R.T.P. Act cannot be challenged. He submits that whether authorized structure is of temporary nature or not, the opinion of the Municipal Corporation under section 55(2) of the M.R.T.P. Act is final and cannot be challenged.

7. It is submitted by the learned senior counsel for the Municipal Corporation that the appellant cannot be granted any discretionary relief in view of the fact that after obtaining *status-quo* order from this Court, the appellant has violated the said order of *status-quo* and has created further encroachment on the public road and also on the open space and has expanded the unauthorized construction. In support of this submission, learned senior counsel invited my attention to the photographs of the temporary structure taken on the date of issuance of such notice and also recently to indicate that after obtaining the order of *status-quo*, the appellant has created further extension.

8. Mr. Kamdar, learned senior counsel for the intervenor invited my attention to each and every documents referred to and relied upon by the appellant and would submit that none of the documents would indicate that the appellant's suit structure was in existence since 1961-1962 or that the same was permanent in nature. Insofar as the alleged Deed of Declaration dated 11th May, 1949 relied upon by Mr. Mehta, learned counsel for the appellant is concerned, it is submitted that said Deed of Declaration does not indicate any complete address of the suit premises. It also does not indicate whether the alleged predecessor-in-title was carrying on any business in the pacca structure in the said open space.

9. My attention is also invited to various notices issued by the Municipal Corporation and it is submitted that even those notices which were issued in the year 2005 or subsequently, which documents are relied upon by the appellant.

would clearly indicate that even in the year 2005 or even thereafter, the notices were issued in view of the appellant keeping certain wooden boxes in the open space between the two buildings. He submits that even if the Municipal Corporation would have found any pacca structure even in the year 2005, the notices issued by the Corporation would not have indicated any open space between the two buildings. He submits that it was not the case of the appellant that when the notices issued by the Municipal Corporation there was no open space and the entire area between the two buildings was covered by pacca structure. He submits that the order passed by the Criminal Court also would assist the case of the respondents and the intervenor and not the case of the appellant. My attention is also invited to some of the annexures annexed to the civil application filed by the intervenor.

10. Learned senior counsel submits that even in the application made for certificate under Shops and Establishment Act, the appellant has alleged that in the year 2014, the business was commenced by the appellant. He submits that the appellant has suppressed this fact from the trial Court and also from this Court.

11. My attention is also invited to some of the photographs annexed to the civil application and would submit that after obtaining the *status-quo* order from this Court, the appellant has carried out substantial unauthorized construction in the suit structure.

12. There is no dispute that the Municipal Corporation has issued a notice under section 55 of the M.R.T.P. Act A perusal of section 55(1) of the M.R.T.P. Act clearly indicates if it is found that any person has carried out any development of a temporary nature unauthorizedly as indicated in section 52 of the M.R.T.P. Act, the Corporation is empowered to order such person to remove or discontinue the use of the land unauthorizedly. The Municipal Corporation has to be satisfied that the authorized construction of a temporary nature is carried out as provided in section 52 of the M.R.T.P. Act. A perusal of section 55(2) of the M.R.T.P. Act clearly indicates that the decision of the planning authority on the question whether the development is a temporary in nature shall be final. In my view, the action taken by the Municipal Corporation under section 55 of the M.R.T.P. Act thus in the facts and circumstances of the case and in view of section 55 read with section 55(2) is final and conclusive.

13. With the assistance of the learned counsel for the parties, I have perused the documents referred to and relied upon by the appellant in support of the submission of the appellant that the suit structure was not of a temporary nature and that the appellant has been carrying on business in the suit structure since 1961-1962.

14. I have given an opportunity to the learned counsel appearing for the appellant to demonstrate before this Court from the documents produced before the learned trial Judge in support of his contention that the suit structure was not temporary structure and that the appellant has been carrying on business in the suit premises since 1961-1962. Pursuant to this opportunity granted by this Court, the learned counsel for the appellant invited my attention to some of the documents which were on record before the learned trial Court, which are dealt with in the later part of the order.

15. Insofar as the alleged Deed of Declaration relied by the appellant dated 11th May, 1949 is concerned, a perusal of the said alleged Deed of Declaration does not indicate any description of the alleged structure between the two buildings. If according to the appellant, the appellant was carrying on business since 1961-1962 in the suit premises, such structure would have been definitely assessed by the Municipal Corporation in last several decades till date. Admittedly the temporary structure of the subject matter of the suit is not assessed between 1961 till date.

16. In my view merely on the basis of the said alleged Deed of Declaration dated 11th May, 1949, this Court cannot accept the submission of the learned counsel for the appellant that the appellant had been carrying on business in the said premises from 1961-1962.

17. Insofar as the notices issued by the Municipal Corporation under different provisions of the M.M.C. Act issued in the year 2005 and thereafter relied upon by the appellant is concerned, a perusal of such notices clearly indicates that the Municipal Corporation in the year 2005 had found that the appellant had stored some of the empty boxes in the open space between two buildings. The said empty boxes stored were without obtaining permission from the Municipal Corporation. The prosecution was launched against the appellant pursuant to such action initiated by the Municipal Corporation. All such documents which are relied upon by the appellant would clearly indicate that there was no shed found by the Municipal Corporation on its visit in the year 2005. The empty boxes were stored in the open space. It is thus clear beyond reasonable doubt that whatever structures are put up by the appellant were after the year 2005.

18. In my view, none of these documents which are relied by the appellant would indicate that the suit structure which is the subject matter of the notice was a pacca structure or is in existence since 1961-62.

19. It is not the case of the appellant that the appellant had obtained any permission from the Municipal Corporation for erection of such structure.

20. A perusal of the application, which was filed by the appellant for the purpose of obtaining the license under the provisions of the Shops and Establishment Act, which is annexed to the civil application filed by the intervenor clearly indicates that it was the case of the appellant himself that he started business in the premises some time in the year 2014.

21. Even copy of the passport, electricity bill and telephone bill, produced on record by the appellant would not indicate that the suit premises was a pacca structure or that the appellant was carrying on business in the premises since 1961-1962. If the appellant was carrying on any business in the premises since 1961-1962, the appellant would have in his possession several documents and/or permission from the Municipal Corporation or other authorities to indicate that such business was being carried on since 1961-1962.

22. A perusal of record further indicates that after obtaining ad-interim order of *status-quo* from this Court, the appellant has extended the temporary structure in the suit premises. A perusal of the photographs produced on record by the Municipal Corporation as well as by the intervenor clearly indicates such

further extension carried out by the appellant. In my view, the reliefs under the provisions of Order 39, Rule 1 of the Code of Civil Procedure are equitable reliefs and are discretionary and such discretion can be exercised by the Court only when the person has come to the Court with clean hands and has not suppressed and/or material facts and makes out a *prima-facie* case. In my view if a person violates the order of *status-quo* granted by this Court, cannot be granted any relief by exercising discretionary power by Court. A perusal of the order passed by the learned trial Judge clearly indicates that the appellant was given an opportunity to produce all the documents. The learned trial Judge considered each and every document produced by the appellant before him and has rightly rejected the ad-interim relief. Though this Court has granted sufficient opportunity to the appellant to convince this Court that the suit structure was a pacca structure and that the appellant was carrying on business in the suit premises since 1961-1962. In my view, the learned counsel appearing for the appellant could not demonstrate any of these crucial facts to seek any interim relief from this Court.

23. In my view the appeal is devoid of merits. The appellant has taken law in his hand by committing *prima-facie* violation of the *status-quo* order granted by this Court. It is for the respondents to file appropriate proceedings for contempt of Court against the appellant for committing violation of the *status-quo* order passed by this Court. The appeal from order is accordingly dismissed.

24. In view of the dismissal of the appeal from order, the civil application does not survive and is accordingly dismissed. No order as to costs.

25. Learned counsel for the appellant seeks continuation of the *status-quo* order. In view of the fact that this Court has come to the conclusion that the appellant has violated the order of *status-quo* granted by this Court, the application of Mr. Mehta, learned counsel for the appellant for continuation of the *status-quo* order is rejected.

Appeal dismissed.

ENHANCEMENT OF COMPENSATION IN LAND ACQUISITION PROCEEDINGS : CONSIDERATIONS

(R. K. Deshpande, J.)

MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION *Appellant.*

vs.

BHAGATDASI w/o RAJENDRAKUMAR VERMA and another *Respondents.*

Maharashtra Industrial Development Act (3 of 1962), S. 32(2) and Land Acquisition Act (1 of 1894), SS. 4 and 18 — *Acquisition of land for industrial purpose — Compensation — Enhancement of — Justifiability — Considerations — Enhancement in compensation made only on ground that it is in industrial area having more value than agricultural land — No sale instance relied in support of said finding — Even if land is treated as non-agricultural,*

F. A. No. 265 of 2004 with Cross Objection St. No. 18482 of 2004 decided on 4-2-2016. (Nagpur)

certain deductions are to be made — Market value cannot be determined on basis of future development and potential prospective user — Enhancement in compensation by Reference Court not justified. (1995) 2 SCC 424, Foll. (Paras 4 and 6)

M. M. Agnihotri for appellant (in F. A. No. 265 of 2004) and for respondent No. 2 (in Cross Objection St. No. 18482 of 2004)

Maheshwari holding for Anand Parchure for respondent Nos. 1 and 2 (in F. A. No. 265 of 2004) and for appellant (in Cross Objection St. No. 18482 of 2004)

A. M. Deshpande, AGP for respondent No. 2-State (in F. A. No. 265 of 2004) and for respondent No. 1 (in Cross Objection St. No. 18482 of 2004)

Case referred :

1. *Tarlochan Singh and another vs. State of Punjab and others, (1995) 2 SCC 424* (Para 6)

ORAL JUDGMENT :—By notification issued under section 32(2) of the Maharashtra Industrial Development Act, which is equivalent to section 4 of the Land Acquisition Act on 4-1-1992, the land admeasuring 2.75 HR from Survey No. 185 situated at Mouza Tadali, Tq. And District : Chandrapur, was acquired for industrial purpose by the Maharashtra Industrial Development Corporation (in short "the M.I.D.C."). The award was passed on 4-5-1995 and the Land Acquisition Officer awarded compensation at the rate of ₹ 26,500/- per hectare, working out the total compensation payable as ₹ 4,18,028/-.

2. In the reference preferred under section 34 of the Maharashtra Industrial Development Act read with section 18 of the Land Acquisition Act, registered as Land Acquisition Reference Case No. 3 of 1996, the learned Judge of the Reference Court by its judgment and award dated 20-12-2003 enhanced the compensation at the rate of ₹ 50,000/- per acre, which is equivalent to ₹ 1,25,000/- per hectare, along with all statutory benefits. The acquiring body i.e. the M.I.D.C., is before this Court in this first appeal challenging the enhancement of the compensation, whereas the cross objection has been filed by the claimant to claim further enhancement of compensation at the rate of ₹ 3,00,000/- per hectare.

3. The point for determination is as under;

Whether the enhancement granted by the Reference Court is based upon evidence available on record?

4. The only consideration by the Reference Court is in paragraph 17 which is reproduced below;

> *"(17) ..... As such, we have to determine the market value of the applicant's field by applying pragmatic test. We have, therefore, to apply the test as to at what price the willing vendor will prepare to purchase the applicant's land and at what price, the willing vendor would prepare to sell such land in the open market. I have already observed about that. since the field of applicant comes under industrial area, it has got Non agricultural potentiality. Therefore, the market value of the land would not be as the market value of the dry crop land. The market value of the*

Non-agricultural land is always more than that of the agricultural land. In absence of any other evidence on record, I find that, if a prudent man wants to purchase the land of the applicant, then he would purchase it at the rate of ₹ 50,000/- per acre, considering in mind that the field is within the industrial area and has got nonagricultural potentiality. Therefore, in my humble opinion, ₹ 50,000/- per acre would be the proper and reasonable market value of the applicant's land. I, therefore, hold that the applicant is entitled for the market value of the field at the rate of ₹ 50,000/-. As such, deducting the amount of per acre market value already awarded from ₹ 50,000/-, the applicant is entitled for the balance market value per acre. I, therefore, answer Issue No. 2 accordingly."

The enhancement is only on the ground that it is an industrial area, having non-agricultural potentiality and therefore, the market value of the land would not be as the market value of the dry crop land. The Reference Court holds that the market value of the non-agricultural land is always more than that of the agricultural land and therefore, it would be proper and reasonable to fix the market value at ₹ 50,000/- per acre. The findings are not supported by any sale instances produced by the claimants. The Reference Court has also rejected the claim based upon the rates mentioned in the ready-recknor published after the Government Resolution was issued on 31-10-1994, to determine the market value of the land on the basis of value recorded in such ready-recknor. There is absolutely no evidence on record to grant enhancement of compensation. If the land is to be treated as non-agricultural land, then appropriate deductions are also required to be considered on account of development. That has also not been done.

5. The learned counsel for the respondent No. 1 submits that the State Government had directed the Collector to re-determine the price of the field on the basis of the rates given in the ready-recknor and accordingly the report was prepared and sent to the Town Planning Officer for verification. The Collector has thereafter submitted the proposal to the Government and the action of the Government is awaited on such report.

6. There is absolutely no evidence laid by the respondents-claimants to establish all these facts. The persons from the concerned department have not been called as witnesses. The rates mentioned in the ready-recknor have not been placed on record. In terms of section 24 of the Land Acquisition Act, the Court is prohibited from taking into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired. Hence, the future development and potential prospective use of the acquisition are not the relevant circumstances to be taken into consideration by the Court to determine the market value of the land as has been held by the Apex Court in its decision in the case of *Tarlochan Singh and another vs. State of Punjab and others*, reported in *(1995) 2 SCC 424.*

7. In view of above, the Reference Court has committed an error in holding that the claimant is entitled to enhancement of compensation from ₹ 26,500/- per

hectare to ₹ 1,25,000/- per hectare (₹ 50,000/- per acre). The enhancement granted is without any basis and cannot, therefore, be sustained.

8. In the result, first appeal is allowed. The judgment and award dated 20-12-2003 passed by the learned 3rd Ad hoc Additional District Judge, Chandrapur, in Land Acquisition Reference Case No. 3 of 1996 is hereby quashed and set aside. The Cross Objection filed by the Respondent No. 1/claimant is dismissed. The reference under section 34 of the Maharashtra Industrial Development Act, registered as Land Acquisition Reference Case No. 3 of 1996 is also dismissed. No order as to costs.

9. On 20-7-2004, this Court had directed the appellant to deposit 50% of the amount of enhanced compensation awarded by the Reference Court. Accordingly, the Respondent No. 1/claimant has withdrawn the amount of ₹ 1,62,208/-, and as per the order passed by this Court on 6-12-2004, the claimant is required to refund the amount so withdrawn with interest from the date of withdrawal till its payment. The respondent No. 1/claimant is, therefore, directed to redeposit the amount so withdrawn along with 6% interest per annum as per order passed by this Court within a period of eight weeks from today and the appellant shall be permitted to withdraw the said amount upon such deposit. If the respondent No. 1/claimants fails to redeposit the amount along with interest then the appellant shall be at liberty to execute this order as a decree of the Court.

Appeal allowed.

WAIT LISTED CANDIDATE : ENTITLEMENT TO APPOINTMENT

(S. S. Shinde and P. R. Bora, JJ.)

MAHADU s/o SHYAMRAO PAWAR *Petitioner.*

vs.

STATE OF MAHARASHTRA and another *Respondents.*

Appointment — *Appointment to Post of Peon in Zilla Parishad — Petitioner at Sr. No. 1 in wait list published in year 2012 — Post falling vacant due to resigning of selected candidate — Petitioner's claim to appoint rejected on ground that wait list operates only for one year — Petitioner had already challenged appointment of person who resigned — Petitioner already crossed age to participate in future selection process — Held, petitioner is entitled to seek appointment on said post falling vacant due to resignation.* (Paras 11 to 13)

For petitioner : *Santosh B. Gastgar*

For respondent/State : *U. H. Bhogle, AGP*

For respondent No. 2 : *Vijay Sharma*

JUDGMENT

S. S. SHINDE, J. :— Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition takes exception to the impugned order dated 8th November, 2014, passed by the respondent No. 2 and further seeks direction to respondent No. 2 to issue appointment in favour of petitioner on the post of

---

W. P. No. 1274 of 2015 decided on 1-2-2016. (Aurangabad)

proceedings. The learned trial Court was not at all justified in referring to Article 1503 of the Civil Code which had no relevance at all in the context of the controversy between the parties.

21. Although the dismissal of the suit by both the Courts below on the grounds alleged by the plaintiff could not be faulted, the findings in the light of the substantial question of law framed have got to be modified. Not doing so, will deprive the plaintiffs all the rights in the suit property. Therefore it is held that the suit property was the only property of the deceased testatrix and she was entitled to dispose of the same by way of Will. The remedy of the plaintiffs who claim right to it is to apply for reduction in appropriate inventory proceedings. Consequently, this second appeal is allowed partly, the substantial question framed is answered in favour of the plaintiffs and the impugned judgments modified accordingly, with no order as to costs.

Appeal partly allowed.

[2008 (3) Mah L R 523]

BOMBAY HIGH COURT

(Panaji Bench)

BEFORE : N.A. BRITTO, J.

MRS. ASSUNCENA DO REGO .. Appellant

Versus

MR. SIMPLICIO P.C. FERNANDES AND OTHERS .. Respondents

First Appeal No.206 of 2000 and Cross Objection No, 14 of 2001, decided on 3rd July,2008

A. Civil Procedure Code,1908, Section 9--Jurisdiction of Civil Court--When a special statute creates a machinery for granting relief which are awardable under said statute, jurisdiction of Civil Court can not be invoked for same relief. [Para 21]

B. Civil Procedure Code, 1908, Section 9-Land Acquisition Act, 1894,S.18--Suit for compensation and dispute regarding measurement of land under acquisition held would not be maintainable before Civil Court. [Paras 21 and 22]

Case law : *Referred, discussed and overruled*

Dr. G.H. Grant v.The State of Bihar, AIR 1966 SC 237

Asher Ali v.Sukhna Seikh (dec. by LR's) & Ors. AIR 1992 Gau. 1 .

State of Mizoram v.Biakchhawna 1995 (1) SCC 156.

State of Bihar v.Dhirendra Kumar & Ors. 1995 (4) SCC 229

Laxmi Chand & Ors. v.Gram Panchayat, Kararia & Ors. 1996 (7) SCC 218

Shyamali Das v.Illa Chowdhry & Ors. 2006 (12) SCC 300

Communidade of Bambolim v.Manguesh Betu Kankonkar (2000 (2) Goa L.T. 374).

Shri Deo Sansthan Chinchwad & Ors. v.Chintaman Dharnidhar Deo and anr. AIR 1962 Bom. 214

Advocates appeared :- First Appeal No.206 of 2000 : Mr. S.D. Lotlikar, Senior Advocate with Mr. P. Lotlikar, Advocate for the Appellant. Mr. M.S. Sonak, Advocate for Respondent No.1. Mr. R.G. Ramani, Advocate for Respondent No.2.

Cross Objection No, 14 of 2001 : Mr. M.S. Sonak, Advocate for the Cross Objectioner. Mr. S.D. Lotlikar, Senior Advocate with Mr. P. Lotlikar, Advocate for the Respondent.

IMPORTANT POINT

When special statute creates a machinery for granting relief which are awardable under said statute, jurisdiction of Civil Court can not be invoked for same relief.

JUDGMENT

N.A. BRITTO, J. :- This appeal and cross objections are directed against the judgment dated 15/07/2000 of the learned Civil Judge, Senior Division at Panaji, by which the suit filed by the plaintiff has been dismissed.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the suit.

3. By notification issued under Section 4(1) of the Land Acquisition Act, 1894 and award dated 4/10/1985, the Government acquired vast land situated at Calapur and other villages. In that they included the land belonging to the Communidade of Calapur/defendant no. 3 of which the plaintiff and defendants no. 1 & 2 (defendants, for short) were the tenants. Compensation was paid to them on 50.50 basis i.e. to defendant no.3/ Communidade half of the amount and to the plaintiff and the defendants the remaining half. The said payment was done on the basis of the survey records. Compensation relating to survey no. 225 was taken by the plaintiff and Compensation relating to survey nos. 226, 227 and 196 was taken by the defendants on 30.20 basis. In fact, the entire property claimed by the plaintiff as well as the defendants, as tenants of defendant no. 3/ Communidade has been acquired and the dispute which now remains is only as regards the compensation.

4. The plaintiff on or about 21/07/1986 sent a notice to the defendants claiming that she was the tenant of the property of the said Communidade known as 'Premeiro Lanco Cajuaria Por Sul' admesuring 45.072 sq. mts. and that the plaintiff was in possession of the same and that by mistake an area of 19,600 sq. mts. was wrongly included in survey no. 226 of village Calapur of which the said defendants claim to be the tenants, although the said area formed part of the property of the plaintiff and which was always in her possession. The plaintiff also stated that defendants had illegally and without having any right collected compensation of Rs. 1,20,756/- from the Land Acquisition Officer, being the compensation awarded for the said area of 19,600 sq. mts. and therefore called upon the defendants to pay the said compensation to the plaintiff.

5. The plaintiff then filed the suit on or about 30/09/1986 and thereafter got a surveyor appointed namely Shri Prazares Gonsalves/PW2 and on the basis of his opinion amended the plaint on or about 6/12/1995 and while maintaining that she was the tenant of the said property admeasuring 45,072 sq. mts., the plaintiff conceded that the plaintiff's property was not properly surveyed. She further stated that the property ought to have been surveyed as per the plan of Communidade and that an area of 24,880 sq. mts. was wrongly included in Survey No. 226, 1,600 sq. mts. was wrongly included in Survey No. 227 and parts were also wrongly included in other neighbouring properties surveyed under Survey No. 223, 228, 226, 202 and 222, road and drain of the said village. It was also the case of the plaintiff that a part of the said entire property was surveyed under no. 225 but in a wrong name. The plaintiff also stated that a part of it was surveyed under no. 224 regarding which one Domingos Vincent Dias has collected the compensation. It was the case of the plaintiff that the total area of survey no. 226 was 29,270 sq. mts. and total compensation paid was Rs. 3,60,812/- and similarly the total area of survey no. 227 as shown in the award was 26,078 sq. mts. and the compensation awarded was Rs. 2,65,905.10 paise. As per the plaintiff, the amount corresponding to the area 24,880 of survey no. 226 is Rs. 3,06,696.35 and the compensation of the area of 1,600 sq. mts. of survey no. 227 is Rs. 16,314.45. As per the plaintiff, out of the said amount of Rs. 3,06,696.35, the Communidade collected Rs. 1,53,348.17 while defendants no. 1 & 2 collected Rs. 1,53,348.17, and similarly out of the said amount of Rs. 16,314.45, the Communidade collected Rs. 8,157.23 while defendants no. 1 & 2 collected Rs. 8,157.25. It was the case of the plaintiff that defendants no. 1 & 2 had no right to the said amount of Rs. 1,61,505.42 which she claimed with interest at the rate of 18% per year from the date of filing of the suit. The plaintiff claimed that the suit portion is part of the property known as 'Primeiro Lanco Cajuaria Por Sul' and she has been in possession of the same from the year 1971. The plaintiff also sought a declaration that the suit plot of land was part and parcel of the said property belonging to defendant no. 3 of which the plaintiff was the tenant.

6. Defendant no. 3/Communidade of Calapur did not contest the suit. The defendants contested the suit. It was the case of the defendants that the plaintiff was duly represented by an Advocate before the Land Acquisition Officer and necessary objections were filed but nowhere did the plaintiff mention or represent to the Land Acquisition Officer that a portion of the property bearing survey no. 227 pertained to her plot and this shows that the defendant was making the present claim as the matter of afterthought. The defendants stated that the defendant no. 1 is in possession of the property surveyed under no. 226 and after the death of the father of defendant no. 1, in the year 1976, both the defendants were in exclusive possession of the said property as tenants of defendant no.3 and the defendant no.1 along with his father was in possession of the said property for the last about 35 years. The defendants stated that the new survey was done on the basis of title and possession held by the

parties. The defendants stated that the plaintiff was duly represented before the Land Acquisition Officer and she had put her case before the Land Acquisition Officer in writing, but had raised no dispute of inclusion of area of the said property in other survey numbers nor raised the dispute that the defendants were not entitled for compensation of alleged encroached area. The defendants denied that any portion of the property was possessed by the plaintiff or wrongfully included in survey no. 226 and in fact no property was surveyed in the name of the plaintiff, though she might have been awarded the property by defendant no. 2 in public auction and the records of defendant no.3 might have shown her as tenant of the property. Defendants stated that there is a dispute pending between Ispiano Fernandes in relation to survey no. 225 and in that suit it is not the case of either of the parties that any portion of that property has gone to defendant no.1. The defendants denied that the area of the said property has been wrongly included in survey no. 226 or 227 and further stated that no portion of the property possessed by the plaintiff was included either in survey no. 226 or survey no. 227.

7. The learned trial Court framed as many as 11 issues. The plaintiff examined herself in support of her case and produced several documents including certificate from the Communidade in relation to her property as well as in relation to the property of Casiano Fernandes, presumably the father of defendant no.1. The learned trial Court amongst the issues framed, framed issue no. 10 in relation to the plea taken by the defendants that the Court had no jurisdiction to entertain and decide the suit as the jurisdiction was barred under Section 9 of CPC and decided the said issue against the defendants and in the light of that the defendants have filed cross objections.

8. The learned trial Court observed that it was not understood as to exactly when and how the plaintiff came to know of the alleged wrong inclusion of her area in survey no. 226 and 227 and that it appeared that she came to know of the said wrong entry after she got her land surveyed with the help of private surveyor namely the said Shri Gonsalves/PW2 but according to him he was engaged in the year 1988 which meant that he was engaged after the filing of the suit in the year 1986 and if that was so, it is not understood as to on what basis the plaintiff had filed the suit against the defendants no. 1 & 2 to collect the said amount of Rs. 1,61,505.42 when she herself did not know about the inclusion of the area in the suit property on the date of filing of the suit. The learned trial Court also noted that the survey of village Calapur was promulgated in the year 1972 and the land was acquired in the year 1982 and the compensation was collected by the respective parties in the year 1986 and admittedly survey records were kept for public objection before their promulgation but it appeared that the plaintiff did not object to the same, reason being that she was illiterate which did not appear to be convincing. The learned trial Court observed that once the record of rights disclose that defendant no.1 was the occupant of the suit plot of land, presumption under Section 105 of the Land Revenue Code would follow in favour of the defendants.

Referring to the evidence of Danial Araujo/PW3, the learned trial Court observed that the said evidence was not sufficient to rebut said presumption as the said witness had not thrown much light on the exact extent of the area of the property in possession of the plaintiff. The learned trial Court therefore came to the conclusion that the plaintiff had failed to prove that the area of a property was included either in survey no. 226 or 227 as claimed by the plaintiff.

9. Admittedly, as of now there is no question of any declaration being granted in favour of the plaintiff that the property claimed by her is part and parcel of the property belonging to the Communidade since the entire property now belongs to the Government. The relief that the plaintiff is the tenant could not be granted by the Civil Court. The only question is whether the plaintiff was entitled to receive the compensation which has been paid to the defendants.

10. Shri Sonak, the learned Counsel on behalf of the defendant has submitted that the plaintiff participated in the proceedings before the Land Acquisition Officer and collected compensation from him. Learned Advocate further submits that the plaintiff did not raise any objection as to the measurement of the property claimed by her and therefore the plaintiff was not entitled to maintain a separate suit, since the questions raised could have been raised and settled before the Land Acquisition Officer. Shri Sonak has also submitted that the Act is complete Code in matters of dispute as regards area of land, compensation, etc. and the plaintiff not having raised any dispute before the Land Acquisition Officer, she is precluded to file a suit and raise the same. In support of his submission that the Act is a complete Code in matters relating to acquisition and the jurisdiction of the Civil Court is ousted, learned Counsel has placed reliance on several decisions of the Apex Court as well as of this Court.

11. On the other hand, Shri Lotlikar, the learned Senior Counsel, on behalf of the plaintiff, has submitted that the claim of the plaintiff was based on title and therefore the suit is maintainable. Learned Senior Counsel has further submitted that stray statements in the evidence cannot be taken to prove ouster of jurisdiction of the Civil Court. Learned Senior Counsel further submits that the objection as regards jurisdiction is not because the plaintiff had participated in the proceedings before the Land Acquisition Officer. Learned Senior Counsel has placed reliance on the decision in the case of *Dr. G.H. Grant v.The State of Bihar*[1] and in the case of *Asher Ali v.Sukhna Seikh (dec. by LR's) & Ors.*[2].

12. Issue no. 10 was framed in the light of the plea taken by the defendants that the Court had no jurisdiction as jurisdiction was barred as there was special procedure provided under the Act. I will deal with this issue first. Admittedly, the plaintiff had appeared before the Land Acquisition Officer and collected the compensation payable to her without any murmur or demur, either as regards the area of her land acquired or

1. AIR 1966 SC 237
2. AIR 1992 Gau. 1

compensation to whom it was payable. There is no dispute that all the parties did appear before the Land Acquisition Officer and did collect the compensation payable to them in terms of the award. In other words, they accepted the award. It is only after the collection of the compensation that the plaintiff sent the said letter and then filed the suit. Was such a course open to her?

13. In the case of *State of Mizoram v.Biakchhawna*[3] referring to the Land Acquisition Act, 1894, the Apex Court stated that:

> "The scheme of the Act envisages that on making an application under section 18, making a reference under Section 18 of the Act in the manner prescribed under Section 19 to the Court is mandatory and is sine qua non for the Court to proceed 'thereupon' since it gets jurisdiction to issue a notice to the persons enumerated therein specifying the day to appear before it.
>
> The Award is a decree and the statement of grounds of such award a judgment under sub-section (2) of Section 26 of the Act for the purpose of appeal under Section 54. *Since this is* a special procedure provided in the Act, by necessary implication, the civil court under Section 9 of the Civil Procedure Code 1908 has been prohibited to take cognizance of the objections arising under the Act for determination of the *compensation for the land acquired under the Act.*"

14. In *State of Bihar v.Dhirendra Kumar & Ors.*[4] the Apex Court stated that:

> "The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the Act as amended by Act 68 of 1984.
>
> *Thus it could be seen that the Act is a complete code in itself and is meant to serve public purpose.* 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 of 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. When such is the situation, the finding of the trial court that there is a prima facie triable issue is unsustainable."

3 1995 (1) SCC 156
4 1995 (4) SCC 229

15. In *Laxmi Chand & Ors. v.Gram Panchayat, Kararia & Ors.*[5] the Apex Court again observed that:

> "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 cognizance of the cases arising 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."

16. In the case of *Shyamali Das v.Illa Chowdhry & Ors.*[6] the Apex Court has again reiterated that:

> "The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired *but* also to those who claim the awarded amount or any *apportionment thereof.* A Land Acquisition Judge derives its jurisdiction from the order of reference and is bound thereby. His jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector. It is not within his domain to entertain any application of *pro interesee suo* or in the nature thereof."

17. In the case of *Asher Ali v.Sukhna Seikh (dec. by LR's) & Ors.*(supra), the learned Single Judge of Gauhati High Court held that:

> "It is well accepted proposition of law that the civil court has jurisdiction to try all suits of civil nature except those expressly or impliedly barred. So far as the exclusion of jurisdiction is concerned, it is equally well-settled that such exclusion is not be readily inferred. It must be explicit or clearly implied. Even in cases where the jurisdiction of the Civil Court is excluded there are circumstances under which a Civil Court may entertain a suit. So also, the mere fact that a special statute provides for certain remedies does not by itself necessarily exclude the jurisdiction of the Civil Court to deal with the case brought before it in respect of some of the matters covered by the same statute. The Court therefore observed that a person claiming a part of the compensation awarded by the Collector in Land Acquisition Proceedings under the Land Acquisition Act, 1894 is entitled to file a Civil Suit."

18. The cases of *State of Bihar v.Dhirendra Kumar & Ors.* (supra) and *Dr. G.H. Grant v.The State of Bihar* (supra) were considered by this Court in the case of *Communidade of Bambolim v.Manguesh Betu Kankonkar*[7]. In this case,

5. 1996 (7) SCC 218
6. 2006 (12) SCC 300
7. 2000 (2) Goa L.T. 374

the Court was faced with the question as to whether the suit, at the instance of a person, who claims entitlement to compensation awarded or to a part thereof in acquisition proceedings, to which he was not a party, is maintainable and the said question was answered in the affirmative. In other words, a person who claimed entitlement to compensation, if he was not a party to the acquisition proceedings, he could file a suit. Nevertheless, this Court referred to the Division Bench judgment of this Court in the case of *Shri Deo Sansthan Chinchwad & Ors. v.Chintaman Dharnidhar Deo and anr.*[8] wherein it was observed as follows:

> "Unless the claim of a person who is lawfully entitled to a share in the compensation money, is already adjudicated upon under the provision of the Land Acquisition Act or such person having had notice of such proceedings, appears therein and fails to assert and prosecute his claim to a share in accordance with the provisions of that Act, he would be entitled under Section 31(2) Proviso 3, to file a Suit to recover his share from the person who may have received the whole or any part of the compensation amount awarded under the Act."

19. Referring to *Dr. G.H. Grant v.The State of Bihar* (supra), this Court observed that it was clear that the Apex Court while dealing with the scheme of the Land Acquisition Act in general and in the light of Section 30 of the Act, in particular, specifically held that a separate suit was maintainable.

20. Section 18 of the Land Acquisition Act, 1894 provides that:

> (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

Sub-section 2 further provides that:

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made, -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire. Section 30 of the Act deals with dispute as to apportionment and it provides that:

When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part

8. AIR 1962 Bom. 214

thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

21. Admittedly, the plaintiff did not raise any issue before the Land Acquisition Officer as regards the measurements of the land acquired or the amount of the compensation which was paid to her or to the defendants but accepted the award and compensation paid without any protest. When a special statute has created a machinery for granting reliefs which are awardable under the statute, the jurisdiction of the civil court under section 9 of the CPC cannot be invoked for the same relief. As stated by this Court in *Communidade of Bambolim v.Manguesh Betu Kankonkar* (supra), a civil suit for enhancement of compensation is not maintainable in case the amount is not accepted by the party under protest and reference under Section 18 is not prayed. The second proviso to sub-section (2) of section 31 of the Act makes it clear that if a person has received compensation without registering his protest, he is not entitled to make an application under Section 18 and the remedy provided by the statute is barred. Needles to say the general remedy by recourse to the Civil Court is also barred. To receive compensation for the land compulsorily acquired is a right created by the Land Acquisition Act and will have to be exercised by following the procedure laid down by the statute.

22. Considering the law led down by the Apex Court, particularly in *State of Mizoram v.Biakchhawna* (supra) the Division Bench of this Court as well as the learned Single Judge of this Court in the case of *Communidade of Bambolim v.Manguesh Betu Kankonkar* (supra), the plaintiff having raised no dispute as regards measurement of land or the compensation or the persons to whom it was payable, before the Land Acquisition Officer, would not be entitled to maintain a separate suit as regards the same. Viewed thus, the civil suit filed by the plaintiff after accepting the award as to the measurements of her acquired land as correct, and not having raised any dispute as regards the same the suit was clearly barred for want of jurisdiction.

23. Coming to the merits of the case, it could be broadly stated that Lote No. 633 claimed by the plaintiff and known as 'Premeiro Lanco Cajuaria Por Sul' admeasured 45,072 sq. mts. and was located to the South of Lote No. 634 known as Segundo Lanco Cajuaria admeasuring about 34,622 sq. mts., as can be seen from the certificates produced by the plaintiff, though the defendants have claimed the property in their possession to be known as 'Chowat'. However, it does not at all appear that the plaintiff ever came in possession of the said property claimed by her to the extent of the area shown on the records of the Communidade. The plaintiff's case has always been inconsistent. The plaintiff has not even stated as to how much compensation she received and of what area. Presumably, she received compensation as regards survey nos. 224 and 225. The plaintiff in her notice dated 21/07/1986 stated that an area of 19,600 sq. mts. was included in survey no. 226 of Village Calapur but in her plaint she further stated that an area of 1,600 sq. mts. was also included in survey no. 227. In addition, she also claimed that the area of Lote No. 633 was also included

in survey nos. 223, 228, 226, 202 and 222 besides a road and a drain. However, according to the surveyor Shri Gonsalves/PW2, the area of Lote No. 633 of 120 sq. mts. was shown in survey no. 197/0, 1,880 sq. mts. in survey no. 202/0, 9,000 sq. mts. in survey no. 224/0, 6,400 sq. mts. in survey no. 225/0, 24,880 sq. mts. in survey no. 226/0 and 1,600 sq. mts. in survey no. 227/0 and 50 sq. mts. in 228/0 and 1,142 sq. mts. of the nalla. The plaintiff claimed that her property was demarcated at site. The plaintiff also stated that the lessees and tenants of the properties have to enjoy and possess their respective properties as per the plan of defendant no. 3/ Communidade. At the same time, she stated that she was in possession of the said property (of Lote no. 633) from the year 1971, but in cross-examination she stated that her plea that she had obtained the property in auction in the year 1971 was not correct and that she also could not explain as to why it was so mentioned. Regarding the notice, she stated that it was not as per her say. She considered that she was not taken to the site to show the property, presumably after the auction in her favour. On the contrary, she admitted that she had form no. III and form No. I and XIV in her possession since long and this shows that she was fully aware about the area of the property claimed by her. The plaintiff's witness Danial Araujo/PW3 has not at all advanced her case. On the contrary, the defendant no.1/DW1 has stated that his property is bounded on all four sides by a cactus (niwal kanti) plants and that the property to the South of his property was being enjoyed by the plaintiff and in between the two there is a said fence like on other three sides. He also stated that whiles granting the said property to his late father in the year 1951, the attorney of defendant no. 3/Communidade had granted it at site. Moreover, the case set out by the defendant is supported by the promulgated survey records which carried a presumption in the favour of the defendants that they were in possession of the suit property. It is more than probable that the defendants came in possession of the area subsequently surveyed in their name, in the year 1951 or there about much before Lote no. 633 was taken on auction by the plaintiff and the defendants continued to be in possession of the said area until its acquisition by the Government. On behalf of defendants reference is also made to the notification no. 1/1/93/ RD published on gazette dated 9/11/2006 by which the records prepared under Land Revenue Code, 1968 shall be deemed to be service made and maintained under the provisions of Goa, Daman and Diu Agricultural Tenancy (Revenue Survey and Record of Rights) Rules, 1967. Plaintiff has failed to rebut the presumption available to the defendants by virtue of Section 106 of the Land Revenue Code and now under the said Goa, Daman and Diu Agricultural Tenancy (Revenue Survey and Record of Rights) Rules, 1967. The defendants being in possession of the property of the Communidade were rightly paid half share of the compensation and in between themselves as agreed by them in the ratio of 30.20.

24. I find there is no merit in this appeal and, consequently, the same is hereby dismissed.

Appeal dismissed.