



**ORDER PASSED BELOW EXH. 5**

1. This application is filed by plaintiff under Order 39 Rule 1 and 2 r.w. Section 151 of the Code of Civil Procedure praying therein to restrain defendant Nos.1 to 3 from causing obstruction to possession of plaintiff over agriculture land bearing Gat No. 7 total area 2 H. 67 R. out of that 5.92 R. situated towards southern side within the limits of village Tamdalge, Tal.- Shirol, District Kolhapur of which detail description is given in para No.1 of the application (which is hereinafter referred as suit property for the sake of brevity and convenience), changing nature of suit property and taking possession of it till decision of this suit finally.

2. **Facts of application in short as under :-**

It is contention of plaintiff that suit property is ancestral and joint family property of plaintiff and his other brothers. Plaintiff had filed suit for partition and separate possession of his share from this property in the Court of Civil Judge Junior Division, Jaysingpur bearing Reg. Civil Suit No. 19/1997. That suit was dismissed. Against that decree,

plaintiff filed Appeal before the Hon'ble District Court. However, that appeal was also dismissed and thereafter plaintiff has filed Second Appeal before the Hon'ble Bombay High Court bearing Second Appeal No. 176/2006. According to plaintiff, Second Appeal is admitted by the Hon'ble High Court by framing issue that - *whether findings of the Court below that land bearing Gat No. 7 was exclusively property of deceased Ramu is perverse in as much as the Court below have not taken into account categorical statement of the respondent No.1 in his cross-examination that Ramu was holding property bearing Gat No. 7 as 'Karta' of Joint Hindu family on behalf of the members of the family ?*

3. Thus, by framing said substantial question of law, Court has admitted Second Appeal and same is now pending.

4. Now, defendants have initiated proceeding for acquisition of suit property for winding up Shirol-Hatkanangale-Jaysingpur-Ankali road. Notice U/s. 4 (1) of the Land Acquisition Act was given and to that notice plaintiff has taken written objection. In spite of objection of plaintiff and informing to defendant regarding pendency of suit, they passed Award in respect of said land and issued notice to plaintiff for taking possession on 20.1.2016. Thereafter again plaintiff filed reply to that notice by attaching copy of Second

Appeal filed by him before the Hon'ble Bombay High Court. Still, again on 15.12.2018, defendant issued notice to plaintiff for removal of encroachment within a period of seven days. Thus, defendants are illegally taking possession of suit property. Hence, this application.

5. In spite of time given, defendants failed to file their say to this application and hence application proceed further without say of the defendants. However, learned advocate for defendants has raised his argument on this application.

6. Heard learned advocate for plaintiff and advocate for defendants. Considering contentions of plaintiff, following points arise for my determination and I have recorded my findings therein along with reasons to follow.

Sr. No.	Points	Findings
1.	Whether plaintiff has made out prima facie case in their favour ?	<b>In the negative.</b>
2.	Whether balance of convenience lies in favour of plaintiff ?	<b>In the negative.</b>
3.	Whether plaintiff will suffer irreparable loss, if injunction is	<b>In the negative.</b>

	not granted in his favour?	
4.	What order?	<b>As per final order.</b>

### REASONS

#### As to point Nos.1 to 3 :-

7. Heard both sides and gone through the record. It is contention of plaintiff that act of the defendants, is totally illegal and hence he prayed to restrain them from taking possession of suit property.

8. On the other hand, learned advocate for defendants has argued that Civil Court has no jurisdiction to try and entertain this suit and on that ground alone application deserves to be rejected.

9. Section 63 and 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are relevant to that effect and hence for ready reference, I have reproduced the same as under :-

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

64. ***Reference to Authority*** :- (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 Authority, as the case may be, whether his objection be to the

*measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettled under Chapters V and VI or the apportionment of the compensation among the persons interested :*

*Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority :*

*Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.*

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

*Provided that every such application shall be made -*

(a) *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 21, or within six months from the date of the Collector's award, whichever period shall first expire :*

*Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.*

10. From perusal of aforesaid two sections, it becomes clear that Civil Court has no jurisdiction to try and entertain any dispute relating to land acquisition in respect of which Collector or authority empowered by or under this Act. Learned advocate for plaintiff tried to say that he is seeking relief of injunction and same can be granted only by the Civil Court. Therefore, he has rightly moved application for injunction. According to him, he is not challenging any notification issued by the Collector or order of

Collector. Argument advanced by learned advocate for plaintiff apparently seems to be attractive. However, I am not impressed with this argument. Section 63 clearly says that jurisdiction of Civil Court is barred and Civil Court shall not have jurisdiction to entertain any dispute relating to land acquisition. It is tried to say on behalf of plaintiff that by way of this suit, he is raising issue of title. It is needless to say that already plaintiff has raised that issue by filing civil suit, seeking partition. That suit as well as appeal against that decree, is dismissed by the Hon'ble District Court. Now, Second Appeal is pending before the Hon'ble High Court. Definitely, now it will be decided in the matter before the Hon'ble High Court as to whether plaintiff is having any share in the suit property of that suit or not.

11. By way of this application and suit also plaintiff is indirectly challenging the acquisition proceeding, which is initiated by the Collector. Merely there is earlier dispute pending between plaintiff and his brothers regarding ownership of said property, that can not be ground to restrain the Government from acquiring this property as per provisions given in Land Acquisition Act or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. At the most, plaintiff will be entitled for the amount of compensation or he can file a proceeding for enhancement of compensation after deciding his title. As per Section 64 of the said Act, he can take objection for disbursing the amount of compensation to his brothers. In such circumstances, plaintiff is not entitled to the relief of injunction as

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prayed. There is neither prima facie case nor balance of convenience lies in favour of plaintiff. Hence, application deserves to be rejected. Hence, following order.

**ORDER**

Application (Exh. 5) is rejected with costs.

Sd/-

**( K.G. Sawant )**

Civil Judge Senior Division,  
**Jaysingpur.**

Dt.: 27.02.2019.

