

MHLA050001002020



ORDER BELOW EXHIBIT- 48

The plaintiff has filed this application under Order-XXXVIII Rule-5 of the Civil Procedure Code,1908 for attachment before judgment the amount of compensation of acquired land which is with defendants No. 3 and 4.

2) The defendants No. 5 to 7 have filed say on this application and they have taken strong objection.

3) Heard both sides at the length. It is submitted by the plaintiff that the plaintiff is owner and possessor of the suit land Block No.169 out of which 05R land is acquired by defendants No. 1 to 4. The amount of compensation is with defendants No. 3 and 4. The defendants No. 5 to 7 have no concern with the land. But they have claimed the amount. The defendants No. 3 and 4 are likely to disburse amount to them. It will cause the irreparable loss to the plaintiff. Hence the amount be attached before judgment and defendants No. 3 and 4 be directed to deposit the amount in this court.

4) The suit is filed by plaintiff for declaration of ownership on Block No. 169. It is contention of the plaintiff that

the plaintiff had purchased Block No.169 of village Gugdal Taluka Ahmedpur from Bhagwan Maroti Badane on 27-03-2012 by sale-deed No. 872/2012. Accordingly, mutation entry No. 446 was taken in the name of the plaintiff, but his name was entered in Block No.170. The revenue authority has not maintained the record of Block No.169, 170 and 171 of which old survey number is 46/1, 46/2 and 47 respectively. The plaintiff has possession in Block No.169 and he has set up his Hotel namely Vrandawan. The defendants No. 5 to 7 have no concern with this land. They are taking disadvantage of the mistakes in revenue record.

5) The defendants No. 5 to 7 have produced at Exhibit-53/16 the order dated 14-08-2019 passed by the competent authority and Land Acquisition Officer, Ahmedpur. It shows that the plaintiff had filed application against defendants No. 5 to 7 that he had purchased Block No.169 by sale-deed No. 872/2012. But in that order it was held that defendants No. 5 to 7 are owner of Block No.169 and amount of compensation be paid to them.

6) Advocate for the plaintiff relied on Section 3(H)(4) of the National Highway Act and submitted that the Land Acquisition Officer has no right to decide the ownership of the parties on the land and he ought to have refer the matter to Civil Court to decide the ownership and eligibility of parties to get amount.

7) Section 3(H)(4) of the National Highway Act reads that, *“if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal Civil Court of original jurisdiction within the limits of whose the land is”*.

8) In view of Section 3(H)(4) of the National Highway Act, the Land Acquisition Officer ought to have referred the matter to Civil Court instead of passing the order of disbursement of compensation amount.

9) The defendants No. 5 to 7 have filed at list Exhibit 53/22 a copy of Writ Petition No. 10499/2019 which was filed by the plaintiff against the order of Land Acquisition Officer passed on 14-08-2019 and made prayer that the Land Acquisition Officer be directed to not to disburse the amount of compensation to defendants No.5 to 7. On 26-08-2019 the Hon'ble High Court granted stay from referring the defendants No. 5 to 7 from withdrawing the amount till next date. That stay order was extended time to time and it is continued the order of Hon'ble High Court dated 26-08-2019 and 02-03-2020 are produced on record by defendants. Thus the Hon'ble High Court has granted stay on disbursing the amount of compensation to defendants. So there is no likelihood that defendants No. 3 and 4 will disburse the amount of compensation to the defendants No. 5 to 7. So there is no need to attach the amount before

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judgment and to deposit it in the Court. Hence the application is liable for rejection. In the result, I pass the following order :

ORDER

The application Exhibit-48 is rejected.

Date : 18-01-2022.

{ P.A. Savadikar }
Civil Judge Senior Division,
Ahmedpur District Latur.