

MHND110000722022



Received on : 15-02-2022
 Registered on : 15-02-2022
 Decided on : 13-07-2026
 Duration : 04Y. 04M. 28D.

IN THE COURT OF DISTRICT JUDGE-1, BHOKAR
DISTRICT NANDED.

(Presided over by Mr. Mohammad Nasir M. Saleem)

Misc. Civil Appeal No.03/2022

Exh. (13)

- 1] The State of Maharashtra
Through District Collector,
Nanded.
- 2] Sub-Divisional Office, Nanded,
Through Sub-Divisional Officer,
Nanded.
- 3] Executive Engineer,
National Highway Department,
Nanded.
- 4] Sub-Divisional Officer,
National Highway Department,
Sub-Division, Bhokar.

] Appellants/
Ori. Defendants.

V e r s u s

Swapnil S/o. Parmeshwar Waghmare,
Age: 31 years, Occu: Labour,
R/o.: Opp. Panchayat Samiti, Bhokar,
Tq. Bhokar, Dist. Nanded.

] Respondent/
Ori. Plaintiff.

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Appearances:

Mr. A. S. Dawkare for the appellants.

Mr. S. C. Kadam for the respondent.

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ORAL JUDGMENT
(Delivered on 13th July, 2026)

Being aggrieved with the order dated 05-01-2022 passed below Exh.8 in Regular Civil Suit No.166/2021 by learned Civil Judge, Senior Division, Bhokar, whereby the application seeking temporary injunction invoking Order 39 Rule 1 and 2 of the Code of Civil Procedure came to be partly allowed, the appellants/original defendants have preferred this appeal under Order 43 Rule 1(r) of the Civil Procedure Code.

For the brevity and convenience, the parties to this appeal are hereinafter referred to as per their status before the Trial Court as plaintiff and defendants.

2] Description of suit property :

The land Gut No.373 admeasuring 00H 99R out of 02R bearing Municipal Property No.1289 situated at Bhokar, Tq. Bhokar, Dist. Nanded.

3] The plaintiff claims himself to be a lawful owner and possessor of the suit property. He pleaded that the suit property was purchased by his mother vide registered sale deed dated 28-02-1996 from Ghanshyam Asawa. After the demise of his mother, the suit property got mutated in his name. He alleged that the defendants dismantled fencing of the suit property and started digging pits therein. On enquiry, he was informed by the defendants that the suit property was acquired for the extension

of by pass road. He contended that the suit property was not legally acquired by the defendants and they have no right to interfere with his possession over the suit property. Hence, he prayed to restrain the defendants from carrying out the extension work of bypass and not to cause to obstruction to his possession.

4] The defendants caused their appearance before the Trial Court but the defendant nos.1 and 2 have not contested the application by filing their reply. According to defendant nos.3 and 4, the suit property was acquired by the Government for the extension of bypass road and compensation was duly paid to the erstwhile owner Nasim Begum. It is in this background, rejection of application is sought.

5] Having regard to the respective submissions of both the parties and on consideration of evidence, the learned Civil Judge found the plaintiff as a lawful owner and possessor of suit property and restrained the defendants from causing interference with the plaintiff's possession over the suit property till the decision of suit on merit.

6] The defendants contend that the impugned order is bad in law. Once the property has been legally acquired for the infrastructure project, there is no reason for the plaintiff to seek a prohibitory order against the defendants. Thus, they prayed to set aside the impugned order.

7] Heard both the sides.

8] The following points arise for my determination and

findings are recorded against each of them for the reasons given below:

POINTS

FINDINGS.

- | | |
|---|-------------------------|
| 1] Whether the impugned order is just, legal and proper ? | . Yes. |
| 2] What order ? | ... As per final order. |

REASONS

AS TO POINT NOS.1 AND 2 :-

9] The plaintiff has prima facie succeeded in proving his lawful possession over the suit property. There is no challenge to the plaintiff's title in the suit property. The defendants' contention is that the suit property has been acquired by following due process of law.

On perusal of record, it appears that only 39R land out of Gut No.373 has been acquired by the Government for the extension work of the bypass road. The award passed by the LAO on 29-04-2004 and 'E' statement produced on record would not show that the suit property has also been acquired or it is a part of 39 R land acquired out of Gut no.373.

10] The learned Civil Judge rightly held that the defendants cannot be permitted to initiate infrastructure project upon any private property without complying with due process of law. There is nothing on record to find that the plaintiff's land has also been acquired by the Government. It is in this background, the learned Civil Judge has rightly exercised discretion in favour of the plaintiff and thereby directed the defendants not to cause

obstruction to the plaintiff's possession over the suit property. This Court do not find any reason to alter the view taken by the learned Civil Judge. In the result, the point no.1 is answered in affirmative and in answer to point no.2, I pass the following order.

ORDER

- 1] The appeal is dismissed.
- 2] The impugned order dated 05-01-2022 passed below Exh.8 in Regular Civil Suit No.166/2021 is hereby confirmed.
- 3] Cost in cause.

Date: 13-07-2026.

(Mohammad Nasir M. Saleem)

Place: Bhokar

District Judge-1, Bhokar.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : M. K. Pawde,

Court Name : District Judge, Bhokar.

Date : 13-07-2026.

Judgment signed by the
Presiding Officer on : 13-07-2026.

Judgment uploaded on : 13-07-2026.