

(1) Order Below Exh.5 in Spl. Civil Suit No.91/2022 contd....

MHRG040010322022



SPECIAL CIVIL SUIT NO.91/2022

Mr. Dnyaneshwar Tukaram Patil
Sole Proprietor of
M/s. Jivdani Enterprises **Plaintiff**

Vs.

Maharashtra Industrial and
Development Corporation a
Statutory Corporation under MIDC **Defendant**

ORDER BELOW EXH. 5
(Declared on 23/09/2022)

01] The plaintiff has claimed Temporary Injunction restraining defendant from demolishing, disposing structure of suit plot as well as evicting plaintiff or disturbing his peaceful possession over the suit plot till final disposal of the suit. The main suit is filed for declaration and injunction. The defendant appears in the suit and filed his say. Heard arguments of both parties accordingly.

02] It is the case of plaintiff that, plaintiff is a proprietary concern namely M/s. Jivdani Enterprises, carrying business of manpower supply, transport and as construction contractor, material supplier etc. Defendant is a statutory corporation registered under MIDC Act. It is formed with an object to establish and develop various notified industrial

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Zones in State of Maharashtra.

03] It is further stated by plaintiff that, he is a resident of village Tondare. Defendant had acquired certain landed properties from village Tondare as well as from adjoining the villages as per notification dated 12/04/1973. The plaintiff and his family members had few landed properties bearing survey No.30/1B, 30/2C and 94/5, which were acquired in said acquisition process. It is further stated by plaintiff that, plaintiff is in use and occupation of portion of plot No.116/1 at village Tondare. The said plot was also acquired by defendant under acquisition process. The present case is filed for suit plot i.e. portion of plot of 116/1 at village Tondare. After acquisition process defendant MIDC started claiming rights in respect of entire plot of 116/1 which is admeasuring about 13 hectares. Plaintiff further stated that, after acquisition process was completed, the said acquired lands mentioned in the notification were claimed by defendant as it's property. Plaintiff was under the impression that, only portion of plot No.116/1 was acquired by MIDC. According to him, he being agriculturist still owns and occupies certain lands adjoining to the said MIDC plot.

04] One M/s. Bharat Udyog Limited was allotted the said suit plot bearing survey No.116/1, plot No. AM19 totally admeasuring 41967 sq.meters for the purpose of construction and use of suit plot as "Truck Terminal". Even at that time

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also the suit plot was possessed by plaintiff. The Managing Director of M/s. Bharat Udyog Limited approached to the plaintiff for availing plaintiffs services for construction of Truck Terminal, as contractor including supply of labourer, building material etc.

05] Plaintiff being native of village Tondare as well as owner of adjacent plots, have accepted offer to provide man power for construction of Truck Terminal on the suit plot admeasuring 41,967 sq.meters. Accordingly, plaintiff entered into articles of agreement dated 09/12/2010 with M/s. Bharat Udyog Limited as a contractor. As per work orders, plaintiff is supplying man power, material, soil etc. for construction activities as per requirement of M/s. Bharat Udyog Limited and is allied companies. He further submitted that, evenafter accepting bills, M/s. Bharat Udyog Limited has not issued any acknowledgment submitting that, there were some issues between M/s. Bharat Udyog Limited and MIDC. Hence, on the suggestion of M/s. Bharat Udyog Limited plaintiff has continued with the work of constructing Truck Terminal and simultaneously carry on and conduct the business of parking of trucks in the said Truck Terminal and the collection / income received from it would belong to the plaintiff which he may appropriate towards his receivable amount in respect of services already provided by him in development of suit plot and construction of Truck Terminal. According to plaintiff, as he has incurred substantial expenses

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and also availed services material and man power from the suppliers, vendors on credit, in order to repay the same, he had no choice but to accept the said offer of M/s. Bharat Udyog Limited.

06] The plaintiff accordingly continued his services with said companies, took over the physical possession of partly constructed Truck Terminal and started to conduct and operate business of parking trucks from January 2013. He further submitted that from the collection of amounts he has completed Truck Terminal. As said M/s. Bharat Udyog Limited and allied companies has expressed their inability to pay the dues to the plaintiff, they assured plaintiffs to keep Truck terminal with him till fulfillment of dues. Hence, plaintiff is handling the same till then. He further submitted that he has constructed fencing to the entire suit plot and also installed CCTV footage system over there. He also constructed office in the premises of suit plot. Plaintiff is also doing some agriculture activities in suit plot. As M/s. Bharat Udyog Limited and company has not paid dues to the plaintiff which are in crores, hence, plaintiff filed Spl. Civil suit No. 447/2018. Evenafter, filing suit plaintiff has been continuously using and possessing suit property and carrying out business over there.

07] He further submitted that, on 02/03/2022, defendant officer came with the police force, even without prior

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intimation to the plaintiff and demolished few structures. According to plaintiff, defendant was neither owner nor acquiring authority because the said suit plot No.116/1 is not part of notified lands, which were subject matter of acquisition process. It is also not mentioned in the award. The defendant used to claim it vide M.E.No.1085. According to plaintiff, he is lawful occupant of the said plot since generations till today. Defendant is disturbing possession of plaintiff and trying to demolish structure over suit plot without following due process of law. Hence, plaintiff filed this suit and claimed temporary injunction against defendant.

08] Defendant has filed his reply vide Exh.12 submitting that plaintiff has no locus standi to file this suit. He has filed the present suit wrongfully believing that he is owner of suit land and on the basis of alleged contract between himself and M/s. Bharat Udyog Limited. According to defendant, suit land was handed over to MIDC by the Collector Alibag in pursuance of the memorandum dated 04/08/1960 issued by Government of Maharashtra, revenue and forest department. Entire survey No.116 situated in Tondare village was handed over to the defendant MIDC by letter dated 15/12/1960. Thereafter, Government of Maharashtra vide it's letter dated 11/06/2010 written about diversion of forest land for mutation of land record from forest department to MIDC. Accordingly, Chief Conservator of Forest at State of Maharashtra has written letter dated 14/04/2010 to the

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Additional Chief Secretary, revenue and forest department about the diversion of land in the name of MIDC and hence defendant MIDC is in possession of suit plot.

09] It is further submitted by defendant that, plaintiff himself accepted that land belongs to MIDC and he has received compensation from the same. Hence, plaintiff can not claim any relief against defendant. The plaintiff has filed this suit as sole proprietor of M/s. Jivdani Enterprises. According to defendant in that circumstances, the claim that the suit land belongs to plaintiff and he is in possession of the same since his ancestors does not hold water. Plaintiff is claiming his entitlement and possession over suit land through M/s. Bharat Udyog Limited. As discussed there was oral agreement between plaintiff and M/s. Bharat Udyog Limited for retaining possession of suit plot. According to defendant, the suit land was allotted to M/s. Bharat Udyog Limited for construction of Truck Terminus. The allotment in favour of said M/s. Bharat Udyog Limited was terminated by MIDC and it had resumed possession back. Hence, under this circumstances according to defendant as plaintiff is claiming through M/s. Bharat Udyog Limited regarding suit plot and possession of suit plot has been resumed back by defendant, plaintiff cannot claim in the suit plot. Hence, defendant prayed to reject the application.

10] Heard both the contesting parties i.e. the

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plaintiff and defendant and also gone through the documents on record. The points arise for my determination along with my findings thereon are as under :

<u>Sr.No.</u>	<u>POINTS</u>	<u>Findings</u>
1	Whether the plaintiff has prima facie case ?	No.
2	Whether the balance of convenience tilts in his favour ?	No.
3	Whether the irreparable loss will be caused to him if the Temporary Injunction is refused ?	No.
4	What order ?	As per final order.

REASONS

AS TO POINT NOS. 1 to 4 :

11] As it is settled law that, for the grant of injunction plaintiff has to satisfy three main ingredients in his favour i.e. prima facie case, he will cause irreparable loss if injunction is not granted and balance of convenience is lying in his favour. In order to prove the ingredients required, plaintiff put his reliance on certain documents as well as citations of Hon'ble Apex Court. They include award copy dated 08/10/1966, 7x12 extract and mutation entry no.1218, copy of certificate issued by PAP, work order received from Bharat Udyog Limited to the plaintiff dated 9/12/2010, copy of article of agreement dated 09/12/2010, photographs showing agriculture activities by plaintiff over the suit plot, copy of complaint to Taloja police station, license of shop and establishment 2018 in the name of Jivdani Aai Parking.

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12] Ld. Advocate for defendant also filed certain documents such as copy of letter dated 15/12/1960 regarding acquisition of plot no.116, copy of mutation entry No.1086 regarding handing over acquired property including plot No.116 of village Tondare to MIDC, mutation entry No.1138 regarding plot No.116/1 and 116/2 for granting non- agriculture permission from Collector, work order given to K.D. Patil and construction dated 23/05/2022 by MIDC etc. in support of his reply and argument. Both parties argued the matter at length.

13] Plaintiff relied upon case laws *N. Srinivasa V/s. M/s. Kuttakaran Machine Tools Ltd., Civil Appeal No.1098 of 2009 and M/s. Swagath Townships v/s. Pilli Chennaiah on 24 March 2022, CMA No.421 of 2021.*

14] Defendant relied upon case law *Acqua Borewell Pvt. Ltd. V/s. Swayam Prabha and others, 2021 SCC Online SC 1065.*

15] As it is discussed above, the plaintiff has put his case with two folded argument. The first submission of plaintiff is that, he is resident of village Tondare and his ancestors are owner and possessors of entire plot No.116/1. It is further submission of plaintiff that, only portion of plot was acquired in acquisition scheme and plaintiff's family got compensation for the same. He also submitted that, he is still

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owning and possessing lands in village Tondare adjacent to suit plot. Plaintiff has made various statements and submissions regarding acquisition of plot No.116. On the one hand he has submitted that, portion of plot No.116 was acquired and his family got compensation of the same, but failed to clarify how much portion was acquired. On the other hand he has submitted that, the acquisition entry of plot No.116 was not reflected in the notification of acquisition dated 12/04/1973. Hence, according to him the said plot was not acquired by MIDC.

16] MIDC brought certain documents including acquisition of plot No.116 by Collector and handed over to MIDC. The acquisition letter regarding the said suit plot and explanation in mutation entry regarding entry of forest department on suit plot are also brought on record. Another statement made by plaintiff that he is owner of adjacent lands of the suit plot and hence, he has taken work order by entering into agreement with M/s. Bharat Udyog Limited. One more angle argued by plaintiff is that he is in long continuous possession of suit plot and hence, according to him he has proved his prima facie case.

17] Plaintiff also vehemently argued that in view of panchanama made by forest department and reply given accordingly by forest department on the letter dated 01/07/2022, mutation entry No.1586 dated 27/05/1991,

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(torned copy) is reflected that, suit plot No.116 as removed from acquisition and kept it as protected forest. Hence, according to plaintiff the plot is not belonging to MIDC. The MIDC filed certain documents including letter of Government of Maharashtra dated 11/06/2010 written to Director, Government of India intimidating about diversion of forest land for mutation entry and record from forest Department to MIDC. Also the principle Chief Conservator of the Forest Maharashtra State has written letter dated 14/04/2010 to Additional Chief Secretary, Revenue and Forest Department about diversion of land in MIDC's name and hence the suit plot was handed over to MIDC.

18] In order to prove prima facie case, plaintiff has not brought any document showing his ownership over the suit plot. On the contrary, MIDC has brought certain document showing they have acquired this plot through collector. As plaintiff has submitted that, he is working over the acquired plot and as he also submitted about compensation he has taken for acquire plot, now he is estopped from questioning about the acquisition. Hence, plaintiff failed to prove prima facie case at this stage.

19] Another angle of argument put by the plaintiff that, he is a sole proprietor of Jivdani Enterprises. He is doing work of providing soil building materials as well as man power for the projects in the village Tondare. He is submitted

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in the plaint as well as written argument that, after acquisition of suit plot by MIDC through Collector, MIDC handed over the same to M/s. Bharat Udyog Limited by entering into contract for construction of Truck Terminal. M/s. Bharat Udyog Limited approached to the plaintiff for man power and other material required for the construction of Truck terminal. On the oral submissions of M/s. Bharat Udyog Limited, plaintiff entered into the work regarding Truck Terminal on the suit plot. It means the chain that, the suit plot was handed over by MIDC to M/s. Bharat Udyog Limited and further to the plaintiff is admitted by plaintiff. Though there is no document showing the truck terminal is constructed over the suit plot of MIDC, considering previous submissions regarding dispute between M/s. Bharat Udyog Limited and MIDC as well as plaintiff was appointed by M/s. Bharat Udyog Limited are sufficient to support that contention. It means, there is no agreement between plaintiff and defendant regarding the work of Truck Terminal over the suit plot. It is only through M/s. Bharat Udyog Limited, plaintiff came into the work of MIDC project in the position of sub contractor. It is plaintiff, who on the bare words of M/s. Bharat Udyog Limited, has entered into possession of suit plot and carry his work of construction of Truck Terminal as well as collected money by allowing parking to the trucks into Truck Terminal. After part construction, there is dispute between MIDC and M/s. Bharat Udyog Limited and MIDC has terminated the allotment given to M/s. Bharat Udyog

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Limited. It is submissions of plaintiff that, he himself has incurred all expenses regarding construction of Truck Terminal and completed the same. His dues are not paid by M/s. Bharat Udyog Limited and hence he has filed suit also against them.

20] Heard both parties at length. At present to prove prima facie case in his favour plaintiff has to show that he is in lawful possession of the suit property. Moreover, he has to show that defendant MIDC, is disturbing possession of plaintiff over the suit plot. It is admitted position that, plaintiff's ancestors were owners of suit property before acquisition. Plaintiff is also not denying the acquisition. Even he has admitted that, the compensation was also received by him for acquired plot. In such circumstances, mere submission of ignorance of knowledge about acquisition of entire plot and accepting receipt of compensation cannot be acceptable at this stage. Even plaintiff is having opportunity to lead evidence at the time of trial.

21] The other part argued and discussed is about sole proprietor M/s. Jivdani Industries. According to plaintiff, whatever be the transaction between himself and M/s. Bharat Udyog Limited are necessary to be proved by leading evidence. MIDC has not shown it's ownership over the suit plot.

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22] Admittedly, there is work order given by MIDC to M/s. K.D. Patil Constructions is on record. Plaintiff is serving on the suit plot only through oral contract with M/s. Bharat Udyog Limited. MIDC is neither party to that agreement nor consented for appointment of plaintiff. Once contract with M/s. Bharat Udyog Limited came to an end, plaintiff has no concern with the suit plot as he already filed suit against M/s. Bharat Udyog Limited regarding his alleged dues.

23] It is also submitted that, MIDC is working on large subject of construction of Truck Terminal, which is time bound project. Who is having better title and ownership right over the suit plot is a matter of trial. At this juncture, it is duty of plaintiff to show that he is having prima facie case either as a owner of the suit plot or through legal contract for construction of truck terminal. Till then plaintiff cannot go beyond in the subject regarding ownership of defendant over suit plot. In both submissions, plaintiff failed to prove prima facie case in respect of suit plot. Admittedly, the defendant if acquired suit plot as per notifications through collector, he has to follow due process of law regarding any work over the suit plot. Injunction at this stage is not in favour of plaintiff as it will cause irreparable loss to the public only. Hence, plaintiff is not entitled for temporary injunction. As public interest is involved being this as a Government project, balance of convenience also lies in favour of defendant only. As no prima facie case is proved by plaintiff, he will not suffer

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irreparable loss. Hence, it will be proper to answer point
Nos.1 to 3 accordingly and I pass the following order -

ORDER

The application (Exh.5) is rejected.

Panvel.

(A.A. Godse)

Dated : 23/09/2022

2nd Jt.Civil Judge, Sr.Dn, Panvel