

MHST200002952020

**R C. S No.37/2023**

Pushapshil vs State of Maharashtra

ORDER BELOW EXH.78

Defendant No.17 filed the application for rejection of the plaint under Order VII Rule 11 (d) of the Code of the Civil Procedure, 1908.

02. The contentions of defendant No.17 are that, as per pleadings in the plaint, the area of 43R out of the suit property described in paragraph No.1A of the plaint has been the subject matter of Land Acquisition Proceedings. An award dated 15/12/2001 has been passed by the competent authority i.e. defendant No.2 in respect of the said area. It is alleged that the acquisition award dated 15/12/2001 is void and illegal. Moreover, the procedure and order of handing over possession of the suit property described in paragraph No. 1A-2 in favour of defendant No.17 is alleged to be illegal. There is also the claim by the plaintiffs to have continuing ownership and title over the whole suit property. The suit properties include the property which is subject matter of the award.

03. Defendant No.17 further contended that, considering pleadings in the plaint and reliefs claimed, the plaintiffs have essentially challenged the land acquisition proceedings and award, and consequently claimed the relief. Defendant No.17 has further contended that, the land gat no.279/2/2 mouje Lonand has been delivered to him under the Maharashtra Project Affected Persons

Rehabilitation Act, 1986 by the District Rehabilitation Officer after taking all the hearings under the provisions of the said Act. However, plaintiffs in the present suit, are seeking the relief of declaration and injunction with respect to the land gat No.279/2/2. Possession of the said property has also been delivered to him and entry of his name as occupant is also taken in the 7/12 extract. Under the provisions of the said Act the present suit is not maintainable.

04. The suit is barred by the provisions of the Land Acquisition Act, 1894 and the Maharashtra Project Affected Persons Rehabilitation Act, 1986. The civil court has no jurisdiction to entertain and decide upon the grievances put forward by the plaintiffs.

05. The plaintiffs opposed the application with contentions that, the suit is for the relief of declaration, and alternatively for the relief of partition. For deciding these reliefs, the jurisdiction is vested only with the civil court. They have brought the suit in respect of their civil right which this court has jurisdiction to try and entertain.

06. Heard learned advocates for both the parties.

07. The learned advocate for defendant No.17 submitted that, the pleadings and reliefs mentioned in the plaint clearly show that the plaintiffs are challenging the acquisition proceedings and the award. Therefore, this court has no jurisdiction to try and entertain the suit.

08. Learned advocate for plaintiffs urged that they have filed the suit to protect their civil right. This court being the civil court has jurisdiction to try and entertain the suit.

09. While deciding the application under Order VII Rule 11 of the Code of Civil Procedure, the court has to see what are the pleadings mentioned in the plaint. According to the pleadings of the plaintiff, Tarabai was wife of their ancestor Marutrao, and defendant Nos.6 to 13 as well as plaintiffs are the other heirs. After the death of Marutrao, Tarabai, defendant Nos.6 to 13 and plaintiffs had been cultivating their respective shares in the property (suit property) left by Marutrao as per the partition among them. Under the award dated 15/12/2001 in Land Acquisition proceedings, 43R land / property of Tarabai is shown to have been acquired and accordingly, panchnama and possession receipt (कब्जेपत्रक) are also shown to have been issued. However, at the time of the said acquisition proceedings, Tarabai was having only 27.5R land. Neither the award nor the panchnama or कब्जेपत्रक discloses four boundaries of the land acquired. Therefore, in these circumstances, even though possession of the 42R land of Tarabai is shown to have handed over to defendant No.17, in fact, no such possession is handed over.

10. The plaint discloses that plaintiffs are not seeking the relief of declaration that the award is illegal. However, the plaintiffs are seeking merely declaration that they are owners of the property described in paragraph No.1B and 1C of the plaint which is contentedly left to their share by the partition, and that the award is not binding on the share of the plaintiffs in the property. The plaintiffs are also not seeking the relief of declaration that the award is not binding on the property of Tarabai, whose property is shown to have been acquired under the award. As per the pleadings in the plaint, in fact survey number / pot-hissa 279/2/2 of the survey No.279 never

came in existence. However, defendant Nos.1 to 4 with intention to hide their mistakes, prepared a 7/12 extract of the said survey No./ Pot-hissa No.279/2/2 which was in fact never in existence. In short, the plaintiffs are contending that, the sale deed of the said property Survey No.279/2/2 executed by defendant No.17 in favour of defendant No.18 on the basis of the said 7/12 extract of the said survey number / Pot-hissa no.279/2/2 which was never in existence, is not binding on their share.

11. In view of the pleadings of the plaintiffs and reliefs claimed by them, it can be seen that they are neither challenging the acquisition proceedings nor challenging the legality of the award. Undoubtedly, land of the plaintiffs has not been acquired, and the plaintiffs are seeking only the relief that the award is not binding on the property belonging to their share by virtue of the partition, or alternatively to effect the partition. The plaintiffs are not claiming any relief regarding the land belonging to Tarabai, which is shown to be acquired under the Award. Resultantly, it cannot be held that the suit is barred by the provisions of the Land Acquisition Act or Maharashtra Project Affected Persons Rehabilitation Act, 1986. In view of the aforesaid reasons the following order is passed :

ORDER

1. Application (Exh.78) is rejected.
2. Parties to take note.

Wai
Date: 22.07.2025

(A.G.Deshmukh)
Civil Judge Senior Division, Wai
Dist-Satara.
