

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

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**M.F.A. NO.5320/2022 (CPC)**

**BETWEEN:**

1 . THE COMMISSIONER  
BENGALURU DEVELOPMENT AUTHORITY  
KUMARA PARK WEST  
BENGALURU-560 020. ... APPELLANT

(BY SRI MURUGESH V. CHARATI, ADVOCATE)

**AND:**

1 . SMT. B.L.RAMADEVI  
W/O LATE S.M.VENKATPATHI  
AGED ABOUT 55 YEARS  
RESIDING AT NO.9, 80 FEET ROAD,  
HRBR LAYOUT, KALYAN NAGAR  
BANGALORE 560043. ... RESPONDENT

(BY SRI THIMMEGOUDA N., ADVOCATE)

THIS M.F.A. IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 24.05.2022 PASSED ON I.A.NO.2 AND IA NO.3 IN OS.NO. 4415/2020 ON THE FILE OF THE X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-26, ALLOWING THE I.A.NO.II FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC, AND REJECTING IA NO.3 FILED U/O.39 RULE 4 OF CPC.

THIS M.F.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.02.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**J U D G M E N T**

Heard the learned counsel for the appellant and learned counsel for the respondent.

2. This miscellaneous first appeal is filed challenging allowing of the application-I.A.No.II filed under Order XXXIX Rule 1 and 2 of CPC on the file of the X Additional City Civil and Sessions Judge, Bangalore (CCH-26) dated 24.05.2022 and praying this Court to set aside the impugned order.

3. The factual matrix of the case of the plaintiff before the Trial Court while seeking the relief of permanent injunction is that the plaintiff is the owner of the schedule property bearing No.7, formed in old Sy.No.263/1, re-survey No.286/2 measuring 21,780 square feet situated at P.N.S. Layout, Banaswadi, Bengaluru with RCC building. It is contended that her deceased husband Venkatapathi had acquired the said property in a partition decree in O.S.No.4577/97 and constructed buildings in the said property by investing huge amount and developed the same by paying betterment charges and not transferred khatha into his name and he died on 06.12.2017 and thereafter, the

khatha of the schedule property said to have been transferred in the name of the plaintiff and she is said to be paying tax to the BBMP. It is further urged that the entire area in and around the schedule property came to be developed about decades back during the lifetime of her father-in-law. It is contended that on 18.09.2020, the officials of the defendant came near the schedule property and attempted to demolish the structures in the said property highhandedly and though at that time, the said illegal acts were resisted and stopped by the plaintiff and the neighbours, the defendant has been threatening her of demolishing the existing structures on the schedule property. Hence, she has filed an application under Order XXXIX Rule 1 and 2 of CPC to restrain the defendant from demolishing the existing structure put up on the schedule property, till the disposal of the suit.

4. In pursuance of the suit summons, the defendant-BDA appeared and filed the statement of objections to I.A.No.II and also filed an application in I.A.No.III under Order XXXIX Rule 4 of CPC seeking to vacate the interim order of status-quo

granted by the Trial Court. It is the contention that defendant is not the owner of the property and property was acquired long back and the entire Sy.No.286/2 has been acquired by the defendant for formation of layout and now the defendant is the owner and plaintiff is attempting to seek adjudication of the acquisition proceedings which is not maintainable and the suit is not maintainable against the acquired property and contend that preliminary notification was issued in 1977 and final notification was also duly notified publicly on 12.06.1980. In pursuance of the said paper publication, the khatedar A. Muniswamy filed his claim petition on 02.07.1981 and subsequently, the award was passed by the LAO on 29.11.1982.

5. It is also contended that already layout has been formed and possession is also taken and property in suit survey number has been vested in the defendant. The defendant also denied the alleged acquisition of the schedule property by the husband of the plaintiff in a partition proceeding in O.S.No.4577/1997 as claimed by her and also denied that her husband constructed school and residential building on the

schedule property. It is contended that in view of the acquisition proceedings, it has the authority to collect betterment charges. The BBMP has no jurisdiction to issue khatha to third parties by collecting such charges and transfer the property in favour of the plaintiff and the question of collecting the tax also does not arise and the same will not create any right.

6. The Trial Court, having considered the pleadings of the parties, formulated the points whether the plaintiff has made out a prima facie case, balance of convenience and to whom the irreparable loss or hardship would be caused, in case of grant or refusal of temporary injunction. The Trial Court, having considered the material on record, comes to the conclusion that the material prima facie reveals that there has been acquisition proceedings in respect of acquired suit land as per the records. But, the defendant has not placed any material before the Court whether the said scheme of acquisition has been implemented by it and all these disputed aspects certainly require enquiry and trial. Hence, the plaintiff has made out a prima facie case to conduct a trial and mere making out prima facie triable case is

not sufficient, since the plaintiff is further required to make out prima facie grounds to seek the temporary injunctive relief.

7. Having considered the material on record, the Trial Court comes to the conclusion that the plaintiff and her sons have challenged the acquisition proceedings in W.P.No.10632/2020 and status-quo order has been passed in the said writ petition and writ proceedings is still pending. The Trial Court also comes to the conclusion that the other documents which are produced by the plaintiff is clear that electricity is provided to the building and also permission is given to run the college in the schedule premises in the year 1998 and comes to the conclusion that there is a prima facie case and balance of convenience in favour of the plaintiff and allowed the application restraining the defendant not to demolish the existing structure put up on the suit schedule property, till the disposal of the suit. It is also mentioned that the said order is subject to cancellation, variation or modification, if necessary during the course of the proceedings. Being aggrieved by the said order, the present appeal is filed before this Court

8. It is the contention of the learned counsel for the appellant that the very suit is barred under Section 9 of CPC. It is also contended that plaintiff herself has mentioned that schedule property is situated at Sy.No.286/2 and entire said survey number was acquired and acquisition has also attained its finality. It is also contended that the Trial Court committed an error in coming to the conclusion that adjudication of a title could be looked into during the course of trial and the same is contrary. Learned counsel also would contend that the Trial Court committed an error in ignoring the decision rendered by this Court and also the Apex Court. When the suit itself is not maintainable, the question of granting the interim order does not arise, that too in a suit for permanent injunction. Hence, it requires interference of this Court and the very approach of the Trial Court is erroneous.

9. Learned counsel for the appellant during the course of argument produced some photographs and contend that recently, the plaintiff has made construction taking advantage of the status-quo order and contend that the very construction

made in the suit schedule property is illegal. In support of his argument, he also relied upon the order passed in **W.P.No.10632/2020** dated **13.02.2023** which was disposed of with a direction to vacate the premises within a period of two years three months, subject to filing an affidavit within four weeks undertaking to quit the property accordingly. But, the respondent did not comply with the said order and instead, filed an appeal in **W.A.No.301/2023** dated **27.09.2023** and in the writ appeal also, this Court elaborately discussed the same and also an observation is made that already acquisition proceedings was completed and observed that the appellants who claimed to have put up the construction of building to accommodate the school and have contended that they have not received any compensation and that they would forego their claim for compensation, if the respondent-BDA considers the matter. Without expressing any view on this aspect of the matter, it is made clear that notwithstanding dismissal of this writ appeal, the appellant/petitioner is at liberty to approach respondent-BDA to seek redressal of their grievance and respondent-BDA may consider the same, if permissible in accordance with law. It is

also observed that in view of the contention that they invested huge money and they are running school, attempt to make construction cannot be encouraged or accepted. Learned counsel also would vehemently contend that the very suit itself is not maintainable.

10. The learned counsel for the appellant, in support of his argument, he relied upon the judgment in **SHIV KUMAR AND ANOTHER VS. UNION OF INDIA AND OTHERS** reported in **(2019) 10 SCC 229**, wherein the Apex Court has held that right of subsequent purchasers of property to invoke provision under Section 24(2) of 2013 Act, held that such sale after issuance of notification under Section 4 of Land Acquisition Act, 1984 is void. Hence, it does not give any right to subsequent purchasers to invoke provisions of Section 24(2) of 2013 Act, even proviso to Section 24(2) does not recognise such purchasers and the same is "void ab initio".

11. The counsel also relied upon the judgment in **COMMISSIONER, BANGALORE DEVELOPMENT AUTHORITY AND ANOTHER VS. BRIJESH REDDY AND ANOTHER**

reported in **(2013) 3 SCC 66** and referring this judgment, the counsel would vehemently contend that the Civil Court is devoid of jurisdiction to give declaration or even bare injunction on invalidity of procedure contemplated under Land Acquisition Act, only right available to aggrieved person is to approach High Court under Article 226 and Supreme Court under Article 136 of Constitution with self-imposed restrictions on their exercise of extraordinary power, it is held that Civil suit filed by plaintiffs for permanent injunction restraining Defendants 1 and 2 i.e., BDA, from interfering with peaceful possession and enjoyment of schedule property was not maintainable.

12. Learned counsel also relied upon the judgment reported in **H.N. JAGANNATH AND OTHERS VS. STATE OF KARNATAKA AND OTHERS** reported in **(2018) 11 SCC 104**, wherein in the head note, it is observed that despite that landowner repeatedly challenging acquisition proceedings in different suits or writs on one or other ground, relegating parties to approach civil Court to question acquisition proceedings by granting liberty to raise all contentions of three decades and the

same is unsustainable and such approach would unsettle already settled issues and challenging the same before the Civil Court is impermissible.

13. Learned counsel also relied upon the order in ***STATE OF BIHAR VS. DHIRENDRA KUMAR AND OTHERS*** reported in ***(1995) 4 SCC 229***, wherein the Apex Court has held that exclusion of civil Court's jurisdiction, held that civil Court has no jurisdiction to go into the question of validity or legality of notification under Section 4(1) or of declaration under Section 6 and only High Court can do so under Article 226.

14. Per contra, learned counsel for the respondent in his argument would vehemently contend that the property was purchased by grand-father of plaintiff's husband and earlier it was Sy.No.263/1 and it was re-numbered as Sy.No.286/2. The counsel also would contend that the acquisition is not in dispute and the very acquisition has been challenged in the writ petition and writ appeal is also filed against the order passed in the writ petition. Against the judgment passed in writ appeal, SLP is pending before the Apex Court. It is contended that plaintiff is in

settled possession of suit property and BDA cannot demolish the same. It is also contended that building was constructed in 1982 itself and permission was taken to run the college in 1998. It is contended that BBMP collected betterment charges and not taken any possession and not formed any layout in the suit schedule property and they are in settled possession of 20 guntas of land which is morefully described in the suit. It is contended that plan and permission is obtained for construction.

15. In reply to the arguments of the learned counsel for the respondent, learned counsel for the appellant would vehemently contend that when there is a bar to approach the Civil Court, whether it is a declaratory suit or bare injunction and when the same itself is not maintainable, the question of granting the interim order does not arise and the Trial Court committed an error in granting the said relief.

16. The learned counsel for the respondent in support of his argument, relied upon the judgment in **BANGALORE DEVELOPMENT AUTHORITY, BANGALORE AND OTHERS VS. SMT. ARIFA KAUSER AND OTHERS** reported in **2015 (3)**

**KCCR 2706** and brought to notice of this Court the principles laid down in the judgment that plaintiffs found to have put up structures and in possession and they have to be evicted in accordance with law and till such time, they have to be protected against unlawful dispossession only, parties to maintain same state of things till disposal of suit.

17. Learned counsel also relied upon the order of this Court in **JOHN B. JAMES & OTHERS VS. BANGALORE DEVELOPMENT AUTHORITY & ANOTHER** reported in **ILR 2000 KAR 4134** and brought to notice of this Court the point formulated with regard to settled possession and relied upon Para Nos.58 with regard to point No.3 framed therein i.e., forcible dispossession is concerned and Para No.61. The counsel also relied upon Para No.66 of the order, wherein it is held that BDA has not been able to point out any other provision which empowers or authorises it to forcibly dispossess any persons in unauthorised occupation of its land. We therefore, hold that as the law stands now, BDA as owner of any land, has no authority to forcibly dispossess any one of settled possession of any

partition of its land. The counsel also brought to notice of this Court Para No.74, wherein this Court has observed that having regard to the power of BDA to initiate action against such persons under the provisions of the Karnataka Premises (Eviction of Unauthorized Occupants) Act, 1974 or initiate prosecution under Section 33A of the BDA Act, in regard to unauthorized occupant, filing of civil suits by the unauthorized occupant may only buy him some breathing time and nothing more, unless he has perfected their title by adverse possession.

18. Learned counsel also relied upon the judgment in ***D. NARAYANAPPA VS. THE STATE OF KARNATAKA, BY ITS SECRETARY, HOUSING AND URBAN DEVELOPMENT DEPARTMENT, BANGALORE AND OTHERS*** reported in ***ILR 2005 KAR 295***, wherein it is held that assuming that BDA took the land on 28.12.1976, from whom it took possession, how it took possession and how and when the structures upon the land came-up, are not known to it and the same is not stated in the counter. If BDA had taken actual possession of the land, it could not have allowed the structures to come up on the land. Nothing

prevent it to from forming sites and allotting the same to public simultaneously when the sites in the surrounding areas were formed as per Master Layout Plan produced by it and allotted under the relevant Rules applicable for allotment. Also, there was no impediment for the erstwhile CITB to take possession of the land from the petitioners as there was no interim order against the BDA in any proceedings. The BDA could not have taken actual possession of the land since the petitioner was in possession of the land in question and structures were in existence on the same. Therefore, the petitioner has been in possession, either as true owner or in the alternative in settled possession of the land, and has acquired statutory right over it.

19. Having heard the learned counsel for the appellant and learned counsel for the respondent, it is not in dispute that the property was acquired in 1977, final notification was issued in 1980 and award is also passed in the year 1981. It has to be noted that the respondent has challenged the said notification by filing a writ petition before this Court and the writ petition came to be dismissed by giving an opportunity to vacate the premises

within a period of two years, three months, subject to filing an undertaking to that effect within four weeks. While passing the impugned order by the Trial Court, the said writ petition was not disposed of and the same was pending and came to be dismissed on 13.02.2023. Thereafter, review petition was filed in R.P.No.106/2023 and the same was dismissed on 17.04.2023 and thereafter, writ appeal was filed in W.A.No.301/2023 and in the writ appeal, the Co-ordinate Bench of this Court upheld the judgment of single bench of this Court passed in the writ petition and however, an observation was made that the parties can give representation and the same can be considered by the BDA, if permissible in accordance with law. No doubt, the respondent contend that they have filed SLP before the Apex Court, till date, no order has been passed in the said SLP.

20. Having considered the material on record, it is seen that acquisition proceedings has attained finality and SLP is not yet considered before the Apex Court. It is also important to note that the main contention of the learned counsel for the respondent is that the respondent is in settled possession. It has

to be noted that preliminary notification was issued in 1977 itself and final notification was issued in 1980 and writ petition was filed in 2020 and the very contention that building was constructed in the year 1982 itself is not in dispute. The material also discloses that permission was taken in 1998 i.e., almost after 20 years of preliminary notification. Knowing fully well that the property is acquired by the BDA, the plaintiff has put up construction and any construction made by investing huge money is at the peril of the respondent. The subsequent construction after the acquisition of the property by the BDA is the risk of the respondent and the same cannot be protected.

21. It is also important to note that, now the respondent cannot contend that they are in settled possession and construction has been done subsequent to the acquisition and acquisition is also not disputed. No doubt, the principles laid down in the judgments referred by the learned counsel for the respondent in **BANGALORE DEVELOPMENT AUTHORITY, BANGALORE's** case, it is held that the unauthorised occupants have to be evicted in accordance with law and in the judgment in

**JOHN B. JAMES's** case, this Court has discussed with regard to forcible dispossession and also in the other judgment in **D. NARAYANAPPA's** case, this Court held that there cannot be any forcible dispossession, the same not comes to the aid of the respondent.

22. I have already pointed out that in the case on hand, acquisition proceedings has been initiated in the year 1977 and final notification was issued in 1980. It is not the case of the respondent that by that time itself, building was in existence and documents which have been produced before the Court clearly disclose that even after acquisition also, they invested huge money and constructed the building, that too in the year 1982, but no building plan is obtained in 1982 for putting up any construction. However, the documents reveal that BBMP had collected tax and permission was taken from school authorities in 1998.

23. It is also important to note that in the judgments relied upon by the learned counsel for the appellant, the Apex Court in the judgment in **SHIV KUMAR's** case has held with

regard to maintainability of the suit and the Apex Court also in **COMMISSIONER, BANGALORE DEVELOPMENT AUTHORITY's** case held that Civil Court is devoid of jurisdiction to give declaration or even bare injunction on invalidity of procedure contemplated under Land Acquisition Act, only right available to aggrieved person is to approach High Court under Article 226 and Supreme Court under Article 136 of Constitution with self-imposed restrictions on their exercise of extraordinary power, it is held that Civil suit filed by plaintiffs for permanent injunction restraining Defendants 1 and 2 i.e., BDA, from interfering with peaceful possession and enjoyment of schedule property was not maintainable. The principles laid down in the in the said judgments is aptly applicable to the case on hand and the respondent cannot maintain a suit for bare injunction when the property was acquired and the respondent cannot take shelter by filing a suit for permanent injunction.

24. The Apex Court also in **H.N. JAGANNATH's** case observed that, despite that landowner repeatedly challenging acquisition proceedings in different suits or writs on one or other

ground, relegating parties to approach civil Court to question acquisition proceedings by granting liberty to raise all contentions of three decades and the same is unsustainable and such approach would unsettle already settled issues and challenging the same before the Civil Court is impermissible and the Civil Court cannot decide the same and Civil Court has no jurisdiction to examine acquisition proceedings under Section 9 of CPC and when the Civil Court has lost its jurisdiction under Section 9, the question of even entertaining the suit for bare injunction also does not arise. The said judgment is aptly applicable to the case on hand.

25. In the other judgment of the Apex Court in **STATE OF BIHAR'S** case with regard to exclusion of civil Court's jurisdiction, it is held that civil Court has no jurisdiction to go into the question of validity or legality of notification under Section 4(1) or of declaration under Section 6 and only High Court can do so under Article 226. The principles laid in the judgments referred supra by the learned counsel for the respondent no doubt is with regard to the eviction under due

process of law, admitted fact of respondent is that the very construction is subsequent to acquisition and possession was also taken by the BDA and after the possession was taken, subsequently the respondent has constructed the building by investing huge money and the said act cannot be protected and encouraged as observed in writ appeal by this Court.

26. It is also important to note that the Trial Court while exercising its discretionary power has made an observation that the actual physical possession of the schedule property is apparently shown with the plaintiff and judgments which have been relied upon is not applicable to the facts of the case and also comes to the conclusion that the Civil Court jurisdiction is excluded to go into the validity and illegality of such acquisition proceedings. Further, the acquisition proceedings has not been challenged in O.S.No.4415/2020. When the Apex Court has categorically held that suit for bare injunction cannot be maintained, the Trial Court committed an error in exercising its discretion in favour of the plaintiff, even though the suit itself is not maintainable. The observation made by the Trial Court is

erroneous and the Trial Court ought not to have exercised the discretion in favour of the respondent, when the property was acquired and no dispute with regard to the acquisition is concerned.

27. I have already pointed out that even construction put up by the respondent is subsequent to the acquisition and the act of the respondent/plaintiff cannot be protected and the photographs which have been produced clearly disclose that though school building was constructed long back, but recently shopping complex is also constructed and the photographs which have been produced before the Court depicts that the same is an unauthorized construction and taking advantage of pendency of the writ petition, the construction is completed. Hence, such construction cannot be protected by exercising the discretion granting an order of temporary injunction. Therefore, it requires interference.

28. In view of the discussion made above, I pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order passed on I.A.No.II granting an order of temporary injunction in favour of the respondent/plaintiff is set aside and consequently, I.A.No.II is dismissed.

**Sd/-  
JUDGE**

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