SHRIDEVI AND ANR. A

v.

MURALIDHAR AND ANR.

OCTOBER 12, 2007 B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Land Acquisition: C

Acquisition of portion of land in Survey No.15/1 by Government—Filing of suit by owner of Site No.434 & 435 in the Survey against appellant No.1 and others, owners of Site Nos. 432 and 433 alleging that lands in question not acquired by Government—Filing of application for injunction in the Suit for not allowing appellant No.1 to raise construction and not to use bore well in the site for any purpose—Rejected by trial Court—Appeal allowed by High Court holding that a triable case has been made out—On appeal, Held: Prima facie, it appears that the land in question not acquired by the Government—While considering an application for injunction, requirement of existence of prima facie case, balance of convenience of parties, irreparable injuries to other party have to be considered by the Court—However, grant of relief and extent thereof will depend upon facts and circumstances of each case—On facts and in the circumstances of the case, High Court rightly held that arguable case has been made out—Trial Court failed to consider the relevant question as to whether the authority had acquired the site in question or not—Thereby, it misdirected itself—Omission on the part of trial Court to consider respective cases of parties, therefore, deserve interference by the appellate Court—Conduct of appellant No.1 to complete the construction to make situation irretrievable must be deprecated—In such circumstances, interest of justice would be subserved if the order dated 21.6.2007 of Division Bench of this Court, recalling the interim D E F G

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A *order permitting construction of the site, is made absolute—Directed accordingly.*

Engaging common advocates by the Appellant and Respondent—Implication of—Discussed—Practice and Procedure.

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Respondent No. 1 is said to be in possession of site Nos. 434 and 435 appurtenant to Survey No.15/1 situate in a Village in the Bangalore district. Appellant No. 1 purchased Site Nos. 433 and 432 in the same Survey by registered sale deeds. Allegedly, her name was also mutated in the record of rights. A building plan was submitted by her, which was C **sanctioned by the authority concerned for construction of a residential house on the said plots. Respondent No.1 having apprehended that Appellant No. 1 would raise constructions on Site No. 433, he filed a suit against Appellant Nos. 1 and 2, Respondent No. 2 and the Authority in the Civil Court *inter alia* praying for directions to the respondents** D **not to use the Borewell put up in site No. 433 for any purpose for all time to come; and also not to put up any compound wall construction in site No. 433 and also not to change the nature of site in any manner. The Authority sought to acquire 2 Acres 20 Gunthas of land of Survey No.15/1by a notification dated 28.10.1971. The land in question was said** E **to be belonging to two persons, namely, V' and 'B', and accordingly an award was made in their favour. In the said award again, the northern boundary was shown as part of Survey No. 15/1. Later, respondent No.1 filed an application for grant of temporary injunction in the said suit. The Trial Court rejected the application for grant of temporary injunction** F **in the said suit. Aggrieved, Respondent No. 1 filed an appeal before the High Court. The High Court, however, opining that a triable case has been made out by respondent No.1, directed maintenance of *status quo*. Hence the Special Leave Petition. While admitting SLP, this Court vide its order dated 8.3.2007, stayed the impugned order that any** G **construction raised on the site in question will be subject to the result of the appeal and at the risk and cost of the petitioners. Later, a Vacation Bench of this Court by an order dated 21.06.2007 directed maintenance of *status quo* and the order dated 8.03.2007 permitting construction was recalled.**

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Appellants contended that the High Court committed a serious error in reversing a well-considered judgment of the Trial Court; that the respondents, even as far back in 1992, having not claimed any ownership in respect of Site No. 433, were not entitled to an order of injunction; that the Trial Court had found as of fact that the plaintiff-respondent had failed to show his right, title and interest in respect of Site No. 433; and that as about 80% of the construction is already over, this Court should allow the appellant to complete the same as otherwise she will suffer irreparable injury. A B

Respondent No. 1 submitted that it is incorrect to contend that the entire Survey No. 15/1 has been acquired, which would be evident from the fact that the name of the plaintiff's father was shown as owner of the land appertaining to the said Survey No. 15/1. C

Dismissing the appeal, the Court D

HELD: 1.1. *Prima facie*, it does not appear that the plot in question was acquired by the Government. Had entire Survey No. 15/1 been the subject matter of Land Acquisition proceeding, the portion of the land belonging to the respondent would have also been acquired. Their names also would have found place in the notification. Possession would have been taken from them and an award would have been made in their favour. The very fact that the northern boundary of the land sought to be acquired has been shown as Survey No. 15/1, *prima facie*, it appears that the entire Survey No. 15/1 had not been the subject matter of acquisition. In that view of the matter the High Court was right in opining that an arguable case has been made out. While considering an application for injunction, existence of a *prima facie* case, balance of convenience of parties, irreparable injury were required to be considered by the Civil Court. Grant of a relief in regard to the nature and extent thereof will depend upon the facts and circumstances of each case. [Para 21 and 22] [384-F, G, H; 385-A, B] E F G

M. Gurudas & Ors. v. *Rasaranjan & Ors.*, (2006) AIR SCW 4773, relied on.

1.2. This Court, however, is not oblivious of the fact that ordinarily H

A a court of appeal does not interfere with the discretionary jurisdiction exercised by the Trial Judge. However, in this case the Trial Court while passing the order dated 16.08.2006 failed to consider the relevant question, viz., as to whether the Authority had acquired the Site in question or not. That was the principal question on the basis whereof
B the Trial Court ought to have proceeded with the matter. It did not do so; as a result whereof it misdirected itself. Title claimed by the appellants is said to have been derived from the Authority. If the Site in question was not the subject matter of acquisition, the question of execution of any deed of sale in favour of Respondent No. 2 by the Authority did
C not or could not arise. Consequently, Respondent No. 2 could not have transferred her right, title and interest in favour of the appellant.

[Para 23] [385-C, D, E]

1.3. Omission on the part of the Trial Court to consider the
D respective cases of the parties, in this behalf deserved interference by the First Appellate Court. If that be the legal position, whether the plaintiff – Respondent No. 1 had prayed for raising any construction on Site No. 433 or not may not strictly arise for consideration.

[Para 24] [385-F]

E 1.4. Ordinarily this Court having regard to the fact that the appellant has raised substantial constructions would have allowed her to complete the same but the fact remains that she did not question the said order before this Court for a long time. The application for grant of special leave was barred by limitation. In a situation of this nature,
F ordinarily, the aggrieved party is expected to approach this Court without any loss of time. [Para 27] [386-A, B]

2.1. The conduct of the appellant must be deprecated. Upon obtaining an interim order from this court, she with a view to complete
G the construction so as to make the situation irretrievable, not only did not file processes; even without any rhyme or reason a set of complete paper books had not been served on the Advocate for the plaintiff – respondent. Although ad-interim order passed by this Court had nothing to do with the hearing of the suit, which in terms of the direction issued

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by the High Court deserved expeditious disposal; an application was filed through Respondent No. 2 for deferring the hearing of the suit on the premise that the matter is pending before this Court. Evidently, such an application was filed at the behest of the appellant.

[Para 28] [386-C, D, E]

2.2. The very fact that the appellant and respondent No.2 have a common Advocate also goes a long way to show that the application must have been filed at the instance of the appellants themselves particularly having regard to the fact that Respondent No. 2 had transferred her right title and interest in favour of the appellant.

[Para 30] [386-G]

2.3. Furthermore, no construction could be raised in view of the order of a Division bench of this Court dated 21.06.2007. In that view of the matter, interest of justice would be subserved if the said order is made absolute. However, Respondent No. 1 is directed to furnish security for a sum of Rs. 2,00,000/- (Rupees two lakhs only) within four weeks from date so that in the event, the suit is dismissed and in the proceedings the appellants prove that she has suffered any damages by reason of not being able to raise any construction from the date till disposal of the suit, they may be suitably compensated therefor.

[Para 31] [386-H; 387-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4886 of 2007.

From the final Judgment and Order dated 6.11.2006 of the High Court of Karnataka at Bangalore in M.F.A. No. 8773/2006 (CPC) and C/W M.F.A. No. 8939 of 2006 (CPC).

Indu Malhotra, Kashi Vishweshwara, Sunieta and Dr. Kailash Chand for the Appellants.

Ravindra Keshavrao Adsure and A. Sumathi for the Respondents.

The Judgment of the court was delivered by

S.B. SINHA, J. 1. Leave granted.

A 2. This appeal is directed against a judgment and order dated 6.11.2006 passed by a learned Single Judge of the Karnataka High Court in MFA Nos. 8773 of 2006 and 8939 of 2006.

3. Contesting defendant in the suit is Appellant No. 1 before us. Principally, the dispute relates to site No. 433 measuring 30 ft. x 50 ft. appurtenant to Survey No. 15/1 situate in Kattriguppa Village, Hobli Uttarahallai in the District of Bangalore. By a notification dated 28.10.1971, Bangalore Development Authority (The Authority) in exercise of its power under Section 18 of the Bangalore Development Authority Act purported to have acquired Survey No. 15/1.

4. The Authority allegedly allotted the said site to Respondent No. 2 Leela Prabhakar Rao on 1.11.1979. Plaintiff- Respondent No. 1 is said to be in possession of site Nos. 434 and 435. He has raised constructions thereupon. A notice was issued by the Authority directing demolition of some alleged unauthorized construction made by him. He filed a writ petition thereagainst which was marked as W.P. No. 32227 of 1992. The said writ petition, however, in absence of the counsel of Respondent No. 1, was dismissed.

5. Respondent No. 1 later on sought permission to raise constructions in Site Nos. 434 and 435 wherefor he expressed his readiness and willingness to pay the requisite charges.

A deed of sale was executed in favour of Respondent No. 2 on 23.08.1996 and a possession certificate was issued in her favour in respect of the said site No. 433 on 5.03.1997. A deed of sale was registered in the name of Smt. Vishala Raj for Site No. 432 on 15.09.1997 and possession certificate was issued on 22.10.1997. Appellant No. 1 herein purchased Site Nos. 433 and 432 from Respondent No. 2 and Smt. Vishala Raj by registered deeds of sale dated 11.06.2004 and 8.06.2006 respectively. Allegedly, her name was also mutated in the record of rights. A building plan was submitted by her which was sanctioned for construction of a residential house on the said plots.

6. Allegedly, Respondent No. 1 again on 7.07.2006 sought for reconveyance of Site Nos. 434 and 435. As he apprehended that

Appellant No. 1 herein would raise constructions on Site No. 433, he filed a suit against Appellant Nos. 1 and 2, Respondent No. 2 and the Authority in the Court of the City Civil Judge at Bangalore *inter alia* praying for the following reliefs:

(i) directing them not to use the Borewell put up in site No. 433 for any purpose for all time to come.

(ii) Directing them not to put up any compound wall or construction in site No. 433 and also not change the nature of site in any manner.

7. Plaintiff- Respondent No. 1 *inter alia* averred that one Kapinaya was the original owner of the property. He transferred the said property in favour of one Laxmi Devamma. Laxmi Devamma transferred her right, title and interest in favour of A.R. Upadhyay, father of plaintiff – Respondent No. 1 by a registered deed of sale dated 12.06.1960. The said purchased land consisted of three sites admeasuring 90 ft. x 50 ft. pertaining to Survey No. 15/1. A 'No Encumberance Certificate' was also issued in respect of the three sites, viz., Site Nos. 433, 434 and 435 for the period 01.04.1960 and 28.03.1999. Survey No. 15/1 in the revenue records was shown to be belonging to the following persons:

(i)	Nagamma w/o Javarayappa	- 2 Acre 9 Are
(ii)	Venkata Reddy and B.S. Subba Rao	- 1 Acre 16 Are
(iii)	Kapinayya s/o Nanjundaiah	- 1 Acre 4 Are
(iv)	A.R. Upadhyaya	- 90 ft. x 50 ft.

8. After the death of the father of Respondent No. 1, his name was entered into the record of rights as owner thereof by an order dated 25.06.1974.

9. The Authority sought to acquire 2 Acres 20 Gunthas of land by a notification dated 28.10.1971 which was said to be belonging to Venkata Reddy and B.S. Subba Rao. In the said notification itself, the northern boundary was shown as part of Survey No. 15/1. An award was made therein only in respect of 2 Acres 20 Gunthas of land wherein

A the names of the awardees were shown as Venkata Reddy and B.S. Subba Rao. In the said award again, the northern boundary was shown as part of Survey No. 15/1.

10. Contention of the plaintiff is that the aforementioned Site Nos. B 433, 434 and 435 were not the subject matter of the acquisition proceedings.

11. An application for grant of interim injunction was filed by the plaintiff- Respondent No. 1 in the said suit. Allegedly at the time of filing of suit, Site No. 433 was vacant. An order of *status quo* was granted C by the Trial Court by an order dated 13.07.2006 which was extended on 17.07.2006. By an order dated 16.08.2006, the Trial Court rejected the application for grant of temporary injunction in the said suit. Aggrieved thereby, plaintiff – Respondent No. 1 filed MFA Nos. 8777 and 8939 of 2006 before the Karnataka High Court.

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12. The High Court, however, opining that a triable case has been made out by the plaintiff directed maintenance of *status quo*. A Special Leave Petition was filed on 23.02.2007 before this Court. By an order dated 8.03.2007, a Bench of this Court while issuing notice on the E application for condonation of delay as also the special leave petition directed:

> "Issue notice on the application for condonation of delay as well as on the Special Leave Petition returnable within four weeks.
>
> F It is stated by Counsel for the petitioners that substantial construction has been raised on the site in question after obtaining necessary permission of the Bangalore Development Authority (B.D.A.). The impugned order of the High Court is stayed but any construction raised on the site in question will be subject to the G result of the appeal and at the risk and cost of the petitioners."

13. Before embarking upon the rival contentions of the parties, we may notice certain disturbing features.

Although this Court, on the basis of the representation made by H Appellant No. 1 herein, permitted them to carry on the constructions on

Site No. 433 at their own risk, no process fee was deposited. Appellant herein obtained certified copy of the said order from the Supreme Court Registry and commenced construction thereupon in a post haste manner. Even a copy of the paperbook was not handed over to the learned Advocate for the respondents. The learned counsel for Respondent No. 1 asked the Advocate – On – Record of the appellant to supply a copy of the paperbook which was refused. A letter of request thereafter was served on the Advocate-On-Record on 4.04.2007. The matter was then mentioned before this Court whereupon by an order dated 05.04.2007, this Court directed the learned Advocate on Record for the appellant to supply the copies of the paperbook to the learned Advocate appearing for the respondents. Despite the same, allegedly only first volume of the paperbook was served upon the learned Advocate for Respondent No. 1 and the second volume, which had already been filed, was not served.

14. Processes were filed only on 13.04.2007. An application for condonation of delay therefor was filed. The matter came up before this Court on 23.04.2007 and by an order dated 27.04.2007 this Court vacated the interim order dated 08.03.2007, whereupon the Advocate-On-Record was changed. A personal affidavit was filed by one Advocate Kashi Vishweshwar. An application was also filed for recalling the order dated 27.04.2007 and for restoration of the order dated 08.03.2007. This Court on 17.05.2007 recalled the said order dated 27.04.2007 and the interim order dated 8.03.2007 was restored. Liberty, however, was granted to the respondents for moving before the Vacation Bench in view of the extreme urgency.

15. Although the High court directed expeditious disposal of the suit by the Trial Court, the defendant – respondent (vendor of the appellant) filed an application for deferring the hearing of the suit *inter alia* on the premise that the matter is pending before this Court. A Vacation Bench of this Court upon hearing the counsel for the parties by an order dated 21.06.2007 directed maintenance of *status quo* and the order dated 8.03.2007 permitting construction was recalled. It was thereafter only a memo was filed before the Trial Court for withdrawal of their application dated 12.06.2007.

16. Ms. Indu Malhotra, learned senior counsel appearing on behalf of the appellants, would submit that the High Court committed a serious error in reversing a well-considered judgment of the Trial Judge. It was contended that the respondents, even as far back in 1992, having not claimed any ownership in respect of Site No. 433, were not entitled to an order of injunction. It was pointed out that the learned Trial Judge had found as of fact that the plaintiff-respondent had failed to show his right, title and interest in respect of Site No. 433.

17. According to the learned counsel, as about 80% of the construction is already over, this Court should allow the appellant to complete the same as otherwise she will suffer irreparable injury.

18. Mr. Ravindra Keshavrao Adsure, learned counsel appearing on behalf of the respondent No. 1, on the other hand, would submit that it is incorrect to contend that the entire Survey No. 15/1 has been acquired, which would be evident from the fact that the name of the plaintiff's father was shown as owner of 90 ft. x 50 ft. of land appurtening to the said Survey No. 15/1. It would also appear from the records that the land of Venkata Reddy and B.S. Subba Rao had only been acquired.

19. The Authority appears to have been impleaded as a party to the suit.

20. It is stated that the plaintiff had filed an interlocutory application calling upon the Authority to produce the documents in original and the same had been allowed by an order dated 23.02.2007.

21. The principal question which is necessary to be determined in the suit would be as to whether Site No. 432 was the subject matter of any Land Acquisition proceeding or not. *Prima facie*, it does not appear that the said plot was acquired. Had entire Survey No. 15/1 been the subject matter of Land Acquisition proceeding, the portion of the land belonging to the plaintiff- respondent would have also been acquired. Their names also would have found place in the notification. Possession would have been taken from them and an award would have been made in their favour. The very fact that the northern boundary of the land sought to be acquired has been shown as Survey No. 15/1, *prima facie*, it appears

that the entire Survey No. 15/1 had not been the subject matter of acquisition. A

22. In that view of the matter the High Court was right in opining that an arguable case has been made out. While considering an application for injunction, existence of a *prima facie* case, balance of convenience of parties, irreparable injury were required to be considered by the Civil Court. Grant of a relief in regard to the nature and extent thereof will depend upon the facts and circumstances of each case. [See *M. Gurudas & Ors.* v. *Rasaranjan & Ors.*, reported in 2006 AIR SCW 4773] B

23. This Court, however, is not oblivious of the fact that ordinarily a court of appeal does not interfere with the discretionary jurisdiction exercised by the learned Trial Judge. However, in this case the learned Trial Judge while passing the order dated 16.08.2006 failed to consider the relevant question, viz., as to whether the Authority had acquired Site No. 432 or not. That was the principal question on the basis whereof the learned Trial Judge ought to have proceeded with the matter. It did not do so; as a result whereof it misdirected itself. Title claimed by the appellants herein is said to have been derived from the Authority. If Site No. 433 was not the subject matter of acquisition, the question of execution of any deed of sale in favour of Respondent No. 2 herein by the Authority did not or could not arise. Consequently, Respondent No. 2 could not have transferred her right, title and interest in favour of the appellant herein. C D E

24. Omission on the part of the learned Trial Judge to consider the respective cases of the parties, in this behalf, in our opinion, deserved interference by the First Appellate Court. If that be the legal position, whether the plaintiff – Respondent No. 1 herein had prayed for raising any construction on Site No. 433 or not may not strictly arise for consideration. F G

25. We may furthermore notice that although in the application for permission to raise construction, such a prayer had not been made, which according to Mr. Adsure, was an inadvertent error.

26. The fact remains that the ownership of Site No. 433 whether H

A vested in the plaintiff – Respondent No. 1 or Venkata Reddy and B.S. Subba Rao is the core question which would fall for determination of the learned Trial Judge.

27. Ordinarily this Court having regard to the fact that the appellant B has raised substantial constructions would have allowed her to complete the same but the fact remains that she did not question the said order before this Court for a long time. The application for grant of special leave was barred by limitation. In a situation of this nature, ordinarily, the aggrieved party is expected to approach this Court without any loss of C time. We have noticed hereinbefore that in the meanwhile the plaintiff – Respondent No. 1 had sought for production of certain original documents from the Authority which has been allowed.

28. The conduct of the appellant must be deprecated. Upon obtaining an interim order from this court, she with a view to complete D the construction so as to make the situation irretrievable, not only did not file processes; even without any rhyme or reason a set of complete paperbooks had not been served on the Advocate for the plaintiff – respondent. Although ad interim order passed by this Court had nothing to do with the hearing of the suit, which in terms of the direction issued E by the High Court deserved expeditious disposal; an application was filed through Respondent No. 2 herein for deferring the hearing of the suit on the premise that the matter is pending before this Court. Evidently, such an application was filed at the behest of the appellant.

F 29. It is stated at the Bar that Mr. Nandkishore J., Advocate appeared before this Court on 8.03.2007 on behalf of the appellant but the same learned Advocate had appeared for Respondent No. 2 before the court below.

G 30. The very fact that the appellant and the said respondent have a common Advocate also goes a long way to show that the said application must have been filed at the instance of the appellants themselves particularly having regard to the fact that Respondent No. 2 had transferred her right title and interest in favour of the appellant herein.

H 31. Furthermore, no construction could be raised in view of the order

of a Division bench of this Court dated 21.06.2007. In that view of the matter, in our opinion, interest of justice would be subserved if the said order is made absolute. We would, however, direct the plaintiff – Respondent No. 1 to furnish security for a sum of Rs. 2,00,000/- (Rupees two lakhs only) within four weeks from date so that in the event, the suit is dismissed and in the proceedings the appellants prove that she has suffered any damages by reason of not being able to raise any construction from the date till disposal of the suit, they may be suitably compensated therefor.

32. The appeal is dismissed subject to the aforementioned directions with costs. Counsel's fee assessed at Rs. 25,000/- (Rupees twenty five only).

S.K.S. Appeal dismissed.