Chairman, Nagpur Improvement Trust, Nagpur Vs State Of Maharashtra, Through The District Collector, Nagpur And Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 5, 2025

Acts Referred: Constitution of India, 1950 â€" Article 226
Code of Civil Procedure, 1908 â€" Section 9, Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(a)
Nagpur Improvement Trust Act, 1936 â€" Section 45(1), 115
Land Acquisition Act, 1894 â€" Section 4, 6, 30
Maharashtra Land Revenue Code, 1966 â€" Section 247

Hon'ble Judges: Urmila Joshi Phalke, J

Bench: Single Bench

Advocate: Girish A.Kunte, Pratik D.Khedikar, Ritu Sharma, A.M.Quazi, T.Mirza, Rajkarne, P.R.Suchak

Final Decision: Disposed Of

Judgement

Urmila Joshi Phalke, J.

1. Heard learned counsel Shri Girish Kunte for the applicant; learned Additional Public Prosecutor Mrs.Ritu Sharma for non-applicant Nos.1, 3, and 5;

learned counsel Shri A.M.Quazi for non-applicant No.2, Advocate Shri Rajkarne h/f learned counsel Shri P.R.Suchak for non-applicant Nos.6a, 6b

and 7.

2. Rule.

3. By this civil revision application, the applicant has challenged the order dated 13.7.2022 passed below Exh.34 in RCS No.1129/2019 by learned 13th

Joint Civil Judge Senior Division, Nagpur rejecting the application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint.

4. The relevant necessary facts for disposal of the revision application are as under:

5. The non-applicant Nos.6 to 8 are original plaintiffs who filed RCS No.1129/2019 for declaration and permanent injunction by disputing the

acquisition proceedings. As per the plaintiffs, they are legal heirs of late Ganesh Padhye who was owner of field property at mouza Wathoda,

admeasuring 22.69 acres bearing khasra Nos.167, 168/1, 168/2, 169/1, and 169/2. In the year 1955, the Madhya Pradesh Government published

Notification No.5671-7379Ã¢â‚¬"MÃ¢â‚¬"MIII- clause (a) sub-section (1) of Section 45 of the Nagpur Improvement Trust Act, 1936 (the NIT Act) for

implementing various schemes of improvement. By award dated 15.2.1962, vide Revenue Case No.27/A-65 of 19549-60 the land was acquired of

said Ganesh Padhye for Drainage and Sewage Disposal Scheme. As per the contention of the plaintiffs, said Ganesh Padhye and the plaintiffs were in

possession and occupation of the said lands. They had not received any compensation amount and the entire acquisition procedure is totally illegal and

without following due process of law. Therefore, the plaintiffs have filed a petition before this court bearing Writ Petition No.6023/2016 and by order

dated 20.6.2019, liberty was granted to them to file suit. It is further contended that by award dated 15.2.1962 compensation amount was fixed at

Rs.2850/- which was allegedly given to said late Ganesh Padhye. In fact, dispute was raised by one Govinda Laxman as to compensation and the

dispute was referred to the court under Section 30 of the Land Acquisition Act. It is contended that defendant Nos.1 to 3 (the applicant and non-

applicant Nos.1 and 3) had never taken possession of the suit property till 2016-2017 and the plaintiffs were in occupation and possession of the suit

property along with said Ganesh Padhye.Ã, The scheme for which the property was acquired was never implemented for five years and, therefore,

they are bound to retain the lands. As per the guidelines issued by the State of Maharashtra, vide Resolution dated 10.10.1973, they areÃ, entitledÃ,

toÃ, retainÃ, theÃ, landsÃ, and,Ã, therefore,Ã, by preferringÃ, theÃ, saidÃ, civilÃ, suit,Ã, theÃ, plaintiffsÃ, claimed following reliefs:

Ã¢â‚¬Å“a) To declare that the plaintiffs are the owners of the suit property bearing Khasra Nos.167, 168/1, 168/2, 169/1, and 169/2 at mouza Wathoda, admeasuring 22.69

acres, tahsil and district Nagpur.

b) To declare that the plaintiffs are entitled for the suit property being the owner of the suit property.

c) To declare that the procedure adopted by defendant Nos.1 to 4 regarding acquiring of suit property is illegally, unjust and improper one and the same is being

done without following due process of law.

d) To declare that the plaintiffs or Late Ganesh Padhye had never received the compensation amount as alleged by the defendants.

e) To grant permanent injunction, restraining the defendants, their agents and servants from transferring the said land or dealing with the said land without following

due process of law.

f) Any other relief to which this court deems fit and expedient may also kindly be granted in favour of the plaintiffs and against the defendants.Ã¢â‚¬â€‹

6. The said reliefs are strongly opposed by the present applicant who was original defendant No.2 on the ground that the the plaintiffsÃ¢â‚¬â„¢ suit for

declaration and injunction by disputing the acquisition proceeding which have already attained finality on 15.2.1962 vide Revenue Case No.27-

A/65/1959-60 and, therefore, the suit is time barred in terms of Articles 58, 59, and 113 of the Limitation Act. Moreover, this court has not granted any

liberty to the plaintiffs in WP No.6023/2016 by order dt. 20.6.2019. There was no prior notice to the present applicant in view of Section 115 of the

NIT Act. The plaintiffs challenged the acquisition proceedings in Writ Petition No.2104/1994 dated 30.8.2010 which is already dismissed. In the said

writ petition, the plaintiffs already admitted that the lands are already vested in the Government. Now, the contrary plea, that the plaintiffs were in

possession of the suit property till 2016-2017, is not sustainable. The lands in question were already handed over to the NIT vide Government

Resolution No.AGC/1768/4336/I-T by the Agricultural and Cooperational Department, Mantralaya, Mumbai dated 11.4.1969 and accordingly, the

name of the defendant No.3 NMC mutated in the revenue record. The said resolution was never challenged. Now, plaintiffs have no locus to

challenge the acquisition vide Notification issued by the Urban Development Department, Mantralaya, Mumbai. The Government modified the

proposal regarding changing the allocation of the said lands from sewage farm area to Skill Development and Management Centre and accordingly,

modification appended to the earlier Notification dated 7.1.2000 by which development plan was already sanctioned. The land is already vested with

the Government and the Government passed notification on 27.1.2016 and the sewage farm area designated as Skilled Development, University and

Management Centre cannot be objected. Thus, no cause of action arose to file the suit. The suit is barred by limitation and the civil court has no

jurisdiction to try and entertain the suit.

7. On the similar grounds, the applicant herein who is original defendant No.2 filed an application under Order VII Rule 11 of the Code of Civil

Procedure for rejection of the plaint. In the said application, it is contended by the applicant that as per the order passed in Writ Petition No.6023/2016,

no liberty is granted to the plaintiffs to file the suit. Moreover, there is no prior notice in view of Section 115 of the NIT Act which states that no suit

can be filed against answering defendant(s) unless prior notice of two months is given by the plaintiffs. It is further contended in the application that

the earlier Writ Petition No.2104/1994 is dismissed. The review application against the said order is also rejected and thus the order has attained the

finality. Therefore, no cause of action arose to file the suit and the suit is not within the limitation as well as civil court has no jurisdiction to entertain

the suit.

8. The said application is opposed by the plaintiffs. After hearing both the sides, learned 13th Joint Civil Judge Senior Division, Nagpur held that the

delay and laches, jurisdiction of the civil court in acquisition matters, maintainability of suit on the point of res judicata are points of law which should

be seen at the final hearing of the suit and these aspects are not covered under the provisions of Order VII Rule 11 of the Code of Civil Procedure (a

to f) and rejected the application. Hence, the present revision.

9. Undisputedly, non-applicant Nos.2 to 8 (original plaintiffs) are legal heirs of late Ganesh Padhye who was owner of field property mauza Wathoda

admeasuring 22.69 acres bearing khasra No.167, 168/1, 168/2, 169/1 and 169/2. Vide Land Acquisition Case No.27/A-65 of 1959-60, the NIT

acquired the above said property for Drainage and Sewage Disposal Scheme. Accordingly, the award was passed. It is also part of the record that the

lands in question were already handed over to the NIT vide Government Resolution No.AGC/1768/4336/I-T by the Agricultural and Co-operational

Department, Mantralaya dated 11.4.1969 and accordingly the name of the NMC mutated in revenue record. The 7/12 extracts on record show the

lands in question are owned by the Nagpur Municipal Corporation. Subsequent to the possession handed over to the NIT, the Government of

Maharashtra, Urban Development Department, vide its resolution dated 27.1.2016 modified the proposal regarding changing allocation from the said

lands from sewage farm area to Skill Development and Management Centre and accordingly, modification appended to the earlier notification dated

7.1.2000 by which the development plan was already sanctioned.

10. TheÃ, Ã, saidÃ, Ã, acquisitionÃ, Ã, proceedingsÃ, Ã, were challengedÃ, byÃ, theÃ, plaintiffs byÃ, filingÃ, WritÃ, Petition No.2104/1994. While

disposing of the said petition on 30.8.2010, this court observed as follows:

Ã¢â‚¬Å“It is not in dispute that the award in respect of Survey Nos.167, 168/1, 168/2 and 169/2 admeasuring 22.49 acres of Mouza Bhandewadi was passed on 15th

February 1962 and in terms of the averments made in para 2 of the writ petition, its possession was also taken from the land owners including the present petitioners

after paying compensation to them. The Prayer made in the petition for restoration of land to the original owner as the land has not been yet put to the purpose for

which it was taken, cannot be considered in view of the fact that the petitioners lost the ownership after award was passed, possession was taken and compensation

was paid. The law is well settled in view of the judgment of the Supreme Court in Administrator, Municipal Committee Charkhi Dadri and another vs. Ramjilal Bagla

And Others (1995)5 Supreme Court Cases 272 and followed by this Court in Ramakant Vithobaji Gaikwad Vs. Government of Maharashtra and Others 2000(4)

Maharashtra Law Journal 597 and fairly conceded by Mr. Parchure that such lands vested in the Government after acquisition cannot be restored to the owner or who

so ever. In that view of the matter, it is not possible for us to interfere in the matter. Insofar as Civil Application No. 1793 of 2010 is concerned we do not propose to

say anything except that the contents of the said civil application and the prayer do not and cannot form subject matter of present writ petition. Civil Application

disposed of. Writ petition disposed of.Ã¢â‚¬â€‹

11. The plaintiffs filed Misc. Civil Application St.No.8068/2016 for review of the order passed in Writ Petition No.2104/1994 along with Civil

Application (CAO) No.509/2017. While deciding the said review application, it is observed by this court in paragraph Nos.4 and 5, as follows

Ã¢â‚¬Å“4. The pleadings in Writ Petition 2104/1994 reveal that even according to the petitioners, the possession of the land was taken pursuant to the land acquisition

award on 15.2.1962 and compensation was duly received. The petitioners do contend that 10 years prior to the filing of the petition, which would be in 1984, the

petitioners resumed physical possession of the land. Needless to say, if the petitioners did resume possession in the year 1984 unilaterally and without taking

recourse to law, from the rightful owner which is the State Government with which the land stood vested, the possession is of no significance or relevance in the

context of the controversy involved in Writ Petition No.2104/1994 and the prayer for restoration of land.

5. The justification pleaded in support of the prayer for condonation of delay of 2016 days in preferring the review petition may now be noted. The substratum of the

justification is that after the judgment and order dated 3082010 in Writ Petition No.2104/1994, the applicants petitioners submitted a representation dated 08.12.2011 to

the State Government seeking change in the record of mutation as regards the land which was the subject matter of the writ petition. The applicants state that since

the said representation dated 08.12.2010 did not evoke any response, another representation dated 17.5.2014 was preferred. The representation was not decided and

the applicants approached this Court in Writ Petition 175/2015 seeking a direction that the representation be decided within a stipulated time frame. By order dated

22/1/2015 this Court allowed the petition and directed the competent authority to decide the representation within a period of three months. The applicants then aver

that the representation was rejected on 13/8/2015, the rejection was assailed in appeal under Section 247 of the Maharashtra Land Revenue Code which is pending

before the Collector since 2015. The applicants preferred Writ Petition 590/2016 seeking a direction that the said appeal be decided by the Collector within a stipulated

time frame and this Court by order dated 04.3.2016 directed the competent authority to decide the representation/appeal within three months. It is further contended

by the applicants that the relevant information as regards the land was obtained under the Right to Information Act in the year 2015 and the delay in preferring the

review application is, therefore, adequately explained.Ã¢â‚¬â€‹

After hearing both the sides, it is specifically observed by the Division Bench of this court that, Ã¢â‚¬Å“we have no hesitation in observing that the

proceedings initiated are frivolous and an abuse of the process of law. We have already observed that we were not inclined to condone the delay and

were of the prima facie view that the applicants should be directed to deposit an amount of Rs.10,00,000/ (Rupees Ten Lakhs) with the registry to

demonstrate their bona fides. However, since the learned Counsel for the applicants, on instructions, made a statement on 26.2.2019 that instead of

depositing the amount, the applicants shall pay the costs which may be directed to be paid if the application seeking condonation of delay is rejected,

we proceeded to continue with the hearing. We are of the considered view that the tendency to initiate frivolous and vexatious proceedings must be

curbed with an iron hand. This Court is already heavily burdened and when judicial time is spent on proceedings which are ex facie unmerited and

tainted with falsehood, the ultimate casualty is the thousands of genuine causes which await adjudication. We, therefore, direct the applicants to

deposit costs of Rs.1,00,000/ (Rupees One Lakh) with the registry of this Court within two weeks, failing which the said amount shall be recovered as

arrears of land revenue. We, therefore, dismiss Civil Application (CAO) 509/2017 in Miscellaneous Civil Application (Stamp) 8068/2017 and

Miscellaneous Civil Application (Stamp) No.8068/2016 which seeks review of the judgment and order dated 3082010 in Writ Petition No.2104/1994

with costs of Rs.1,00,000/ (Rupees One Lakh).Ã¢â‚¬â€‹

12. Despite the above observations of the Division Bench of this court, the plaintiffs preferred another Writ Petition No.6023/2016 and the same was

withdrawn as the petition became infructuous. However, learned counsel submitted for the petitioners before the Division Bench that to agitate the

issue of non-payment of compensation, the petitioners would like to avail the remedy of filing the civil suit. Therefore, the Division Bench of this court

passed an order on 20.6.2019 and the same is reproduced as under:

Ã¢â‚¬Å“After hearing the learned counsels appearing for the parties, we permit the petitioners to withdraw this petition with liberty to file a Civil Suit, if it is permissible in

law. All the defenses, which are raised to oppose the maintainability of the suit, are kept open to be agitated.Ã¢â‚¬â€‹

13. Learned counsel for the applicant submitted that despite of the observations of the Division Bench of this court, that the plaintiffs have no right to

agitate the issue, as to the acquisition of lands and now the lands acquired cannot be restored to the owner, the present plaintiffs have filed the suit. In

fact, in view of the judgment of the HonÃ¢â‚¬â„¢ble Apex Court in the case of Administrator, Municipal Committee Charkhi Dadri And Another Vs.

Ramjilal Bagla And Others, reported in (1995)5 Supreme Court Cases 272 and Ramakant Vithobaji Gaikwad Vs. Government of Maharashtra and

Others, reported in 2000(4) Maharashtra Law Journal 597, referred by the Division Bench of this court, while disposing of Writ Petition

No.2104/1994. No cause of action arose to the plaintiffs to file the suit. Moreover, the suit is hit by Articles 58 and 59 of the Limitation Act. The suit is

also barred in view of Section 115 of the NIT Act as no previous notice is issued to the applicant. In support of his contentions, he placed reliance on

following decisions:

1. Civil Appeal No.11912/2018 decided by the HonÃ¢â‚¬â„¢ble Apex Court on 7.12.2018 (Rajasthan Housing Board and anr vs. Chandi Bai and ors);

2. Shri Mukund Bhavan Trust and ors vs. Shrimant Chhatrapati Udayan Raje Pratapsingh Maharaj Bhonsle and anr, reported in 2024 SCC OnLine SC

3844;

3. Special Leave Petition (Civil) Diary No.56230/2024 decided by the HonÃ¢â‚¬â„¢ble Apex Court) on 20.12.2024 (Pandurang Vithal Kevne vs. Bharat

Sanchar Nigam Limited and anr;

4. Ramshetty Venkatanna and anr vs. Nasyam Jamal Saheb and ors, reported in 2023 SCC OnLine SC 521;

5. Colonel Shrawan Kumar Jaipuriyar alias Sarwan Kumar Jaipuriyar vs. Krishna Nandan Singh and anr, reported in (2020)16 SCC 594;

6. Rajendra Bajoria and ors vs. Hemant Kumar Jalan and ors, reported in (2022)12 SCC 641;

7. Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead thr. Legal representatives and ors, reported in (2020)7 SCC 366;

8. Dadu Dayalu Mahasabha, Jaipur (Trust) vs. Mahant Ram Niwas and anr, reported in (2008)11 SCC 753, and

9. Charu Kishor Mehta vs. Prakash Patel ors, reported in 2022 SCC OnLine SC 1962.

14. Per contra, learned counsel for the non-applicant Nos.6 to 8 submitted that liberty was granted by this court to prefer the suit accordingly. The

plaintiffs filed suit for the compensation amount. The ground that the suit is barred by limitation is a mixed question of law and fact and parties have to

litigate the dispute in trial. It would not forfeit any rights of the defendants in suit and, therefore, the application is rightly rejected by 13th Joint Civil

Judge Senior Division, Nagpur. He further submitted that neither the plaintiffs nor their ancestors have received any compensation amount till 2016-

2017 and possession was with them. As the lands were not utilized after its acquisition, they are entitled for restoring the lands. In support of his

contentions, he placed reliance on following decisions:

1. Vaish Aggarwal Panchayat vs. Inder Kumar & ors, reported in AIR 2015 SC 3357, and

2. K.Manavalan vs. M.Vedambal (dead) by Lrs, reported in AIR 2023 (NOC) 718 (Mad).

15. After hearing both the sides and perusing the entire record, it is not disputed that the property in question was acquired by the Government by its

award dated 15.2.1962 vide Revenue Case No.27/A-65 of 1959-60. The observations of this court in Writ Petition No.2104/1994 itself show that the

plaintiffs who were petitioners in the said petition averred in paragraph No.2 that the possession was also taken from the land owners including the

present petitioners after paying the compensation to them. The prayer made in the petition for restoration of the lands to the original owner as the

lands have not been yet put to the purpose for which it was taken, cannot be considered in view of the fact that the petitioners lost the ownership after

award was passed and the possession was taken and compensation was paid. Contrary to this pleading, the plaintiffs have come with a case that the

Land Acquisition Officer had passed an award on 15.2.1962 . However, they have not taken the possession of the suit property till 2016-17 and

plaintiffs and late Ganesh Padhye who were in occupation and possession of the suit property had continuously taken the crops from the suit property

by cultivating the same till the year 2017. This pleading was made by the plaintiffs despite of the observations of the Division Bench of this court while

disposing of Civil Application (CAO) No.509/2017 in Misc. Civil Application St.No.8068/2016 in Writ Petition No.2104/1994 wherein it is specifically

held that proceedings initiated are frivolous and abuse of process of law. As far as the contention of the plaintiffs that they have not received any

compensation amount is also falsified by the defendants by producing on record the chart of payment which was made to Shri Ganesh Padhye on

15.2.1962 which shows that he has received the amount by way of cheque No.560122 dated 3.2.1967. Thus, the contentions of the plaintiffs that they

have not received any compensation and possession was with them till 2016-2017, are contrary to the documents.

16. Now, the question is, whether after 58 years, the proceedings can be challenged by the plaintiffs by raising contrary pleading. The question is

raised by learned counsel for the applicant as to the non maintainability of the suit and submitted that the observation of the Division Bench of this

court while disposing of Writ Petition No.2104/1994 itself is sufficient to show that in view of the decision in the case of Administrator, Municipal

Committee Charkhi Dadri and another supra wherein the HonÃ¢â‚¬â„¢ble Apex Court concluded that since ownership is vested with the State

Government, prayer for restoration of the lands to the petitioners is untenable.

17. The HonÃ¢â‚¬â„¢ble Apex Court in Rajasthan Housing Board and anr vs. Chandi Bai and ors supra by referring the earlier judgments in the cases of

State of Bihar vs. Dhirendra Kumar, reported in (1995)4 SCC 229, Laxmi Chand vs. Gram Panchayat, Kararia, reported in (1996)7 SCC 218, and

Commissioner, Bangalore Development Authority vs. K.S.Narayan, (2006) 8 SCC 336 observed that a civil suit to invalidate the land acquisition is not

maintainable. The trial court has committed an error of law while decreeing the suit.

18. It is necessary to refer the observations of the HonÃ¢â‚¬â„¢ble Apex Court in State of Bihar vs. Dhirendra Kumar supra wherein it is observed that

civil suit is not maintainable to question the land acquisition. The court observed that, the question is whether a civil suit is maintainable and whether ad

interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under Section 9 of the

Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain

to serve the public purpose. The state is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper

publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the

Act as amended by Act 68 of 1984. In publication of the notifications and declaration under Section 6, the public purpose gets crystalised and becomes

conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the

award. Section 11A now prescribes limitation to make the award within 2 years from the last date of publication envisaged under Section 6 of the Act.

In an appropriate case, where the Govt. needs possession of the land urgently, it would exercise the power under Section 17(4) of the Act and

dispense with the enquiry under Section 5-A. Thereon, the State is entitled to issue notice to the parties under Section .9 and on expiry of 15 days, the

State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under

Section 12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as

presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9 of CPC stands excluded,

and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6,

except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation,

the finding of the trial court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to

Housing Board. So, the order of injunction was without jurisdiction.

19. In Laxmi Chand vs. Gram Panchayat, Kararia supra also the HonÃ¢â‚¬â„¢ble Apex Court observed that the civil court has no power to pronounce on

invalidity of procedure adopted under Section 4 and 6 of the Land Acquisition Act 1894 and further observed that, Ã¢â‚¬Å“it would thus be clear that the

scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the case arising under the Act, by necessary

implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the

Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary

power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no

power to the civil court.

20. In Commissioner, Bangalore Development Authority vs. K.S.Narayan supra the HonÃ¢â‚¬â„¢ble Apex Court held that the provisions of the Act are

akin to the Land Acquisition Act and only the High Court could examine its legality under Article 226 not the civil court.

21. In view of the settled legal position laid down by the HonÃ¢â‚¬â„¢ble Apex Court in catena of decisions, the civil court has no jurisdiction to go into the

question of the validity or legality of the Notification under Section 4 and declaration under Section 6 of the Land Acquisition Act even the civil suit for

permanent injunction is not maintainable in view of the provisions of the Land Acquisition Act.

22. In The Commissioner, Bangalore Development Authority and anr vs. Brijesh Reddy and anr, reported in (2013)3 SCC 66, the HonÃ¢â‚¬â„¢ble Apex

Court held that, Ã¢â‚¬Å“it is clear that the Land Acquisition Act is a complete Code in itself and is meant to serve public purpose. By necessary

implication, the power of civil Court to take cognizance of the case under Section 9 of CPC stands excluded and a Civil Court has no jurisdiction to go

into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the

High court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil Court is devoid of jurisdiction to give declaration or even

bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to

approach the High Court under Article 226 and this Court under Article 136 with self imposed restrictions on their exercise of extraordinary power.Ã¢â‚¬â€‹

23. Thus, the property in question was subject matter of the acquisition for the purpose of defendant No.4 by defendant No.2 that is the NIT. Though

defendant No.1 is the State of Maharashtra, the NIT wanted to acquire 5601.89 acres of land for underground Drainage and Sewage Disposal

Scheme from 11 villages consisting of Wathoda, Bhandewadi, Dighori, Godhani, Kharabi, Tarodi (Bk), Bahadurka, Tarodi (Kd), Pandhurna, Khedi,

and Bidgaon. The lands of the plaintiffs were acquired for the said purpose. The award was passed and the possession of the lands was handed over

w.e.f.15.2.1962. It is an admitted position that the lands were acquired and possession was taken. The prayer made in the suit is to restore the

possession of the lands which is acquired. Thus, the plaintiffs have challenged the procedure of acquisition that when such lands were vested in the

Government, cannot be restored to the owners or whosoever. As the subject matter of the suit is in connection with land acquisition and procedure

followed while acquiring the lands, civil court is devoid of jurisdiction to give declaration or to restore the lands to the plaintiffs. On the basis of

invalidity of the procedure, the suit is not maintainable in view of the catena of decisions of the HonÃ¢â‚¬â„¢ble Apex Court.

24. By filing the application under Order VII Rule 11 of the Code of Civil Procedure, another ground raised by the NIT is that the suit is filed without

any notice under Section 115 of the NIT Act. As far as the issue regarding the notice is concerned, the same is already dealt by the Division Bench of

this court to whom reference was made that Ã¢â‚¬Å“whether the suit shall lie against the NIT without issuing notice under Section 115 of the NIT Act if

the action of the trust is outside the purview of the expression in respect of anything Ã¢â‚¬Å“purporting to be doneÃ¢â‚¬ under the Act used in the said

provision.

25. While answering reference in Second Appeal No.568/2017 dated 10.10.2024, by considering various decisions and pari materia provisions in other

enactments, it is held that the expression Ã¢â‚¬Å“purporting to be done under the ActÃ¢â‚¬ will not include an Act which is wholly outside the provisions of

the Act. The acts like levying of the tax, which are prohibited or levying excess tax or dispossessing a person without following a due process of law,

are held to be acts outside the purview of the Act. While answering the said reference, this court answered that The word Ã¢â‚¬Å“purportÃ¢â‚¬ has many

shades of meaning. The expression Ã¢â‚¬Å“purporting to be done under the ActÃ¢â‚¬â€‹ will not include an act which is wholly outside the provisions of the Act.

It cannot be gainsaid that the actions, like demolition of structure, eviction of tenants, retaining the possession or forcible eviction by granting him lesser

period and depriving the other party from challenging the action, are not in pursuance or execution of the Act. The expression Ã¢â‚¬Å“purporting to be

done under the ActÃ¢â‚¬ will not include an act which is wholly outside the provisions of the Act and, therefore, the Notice of two months is not

mandatory in such a situation.

26. In view of the judgment of the HonÃ¢â‚¬â„¢ble Apex Court in the case of Pune Municipal Corporation and another vs. Mohan Shrikrishna Asava,

reported in 1992 Mh.L.J. 1468, wherein the HonÃ¢â‚¬â„¢ble Apex Court, in the light of Section 487 of the Bombay Provincial Municipal Corporation Act

which is pari materia to provision as Section 115 of the NIT Act, while interpreting phrase Ã¢â‚¬Å“purported to be done in pursuance or execution or

intended execution of the ActÃ¢â‚¬, interpreted that what is plainly prohibited by the Act cannot be claimed Ã¢â‚¬Å“to be purported to be done in pursuance

or intended execution of the ActÃ¢â‚¬. It was therefore held that the suit was outside the purview of the section 127(4) of the Act and was not barred by

limitation.

27. Thus, when the Act complains of is not Ã¢â‚¬Å“in purport to be doneÃ¢â‚¬ in pursuance of or execution or intended execution of the Act, the notice is not

required.

28. The application under Order VII Rule 11 of the Code of Civil Procedure also raised the ground that there was no cause of action and suit is barred

by limitation and, therefore, it is to be rejected.

29. As far as the issue of limitation is concerned, it is generally a mixed question of law and facts, but when upon meaningful reading of the plaint, the

court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action,

the suit is hopelessly barred and the plaint can be rejected under Order VII Rule 11 of the Code of Civil Procedure.

30. As far as the present suit is concerned, the facts show that the award in respect of Survey Nos.167, 168/1, 168/2 and 169/2 admeasuring 22.49

acres of Mouza Bhandewadi was passed on 15.2.1962 and its possession was also taken from the land owners including the present plaintiffs after

paying compensation to them. The suit is filed approximately after 58 years for restoration of the acquired lands. The suit is filed when this court in

Writ Petition No.2104/1994 observed by order dated 30.8.2010 that the lands were acquired by award dated 15.2.1962 and the possession was

already handed over. The prayer made in the petition for restoration of lands to the original owners, as the lands have not been put for the purpose for

which it was taken, cannot be considered in view of the fact that the petitioners lost ownership after the award was passed, possession was taken and

compensation was paid. By referring the judgment of the HonÃ¢â‚¬â„¢ble Apex Court in the case of Administrator, Municipal Committee Charkhi Dadri

and another vs. Ramjilal Bagla And OthersÃ, supraÃ, and followed by this court in Ramakant Vithobaji Gaikwad Vs. Government of Maharashtra

and Others supra, it is held that such lands vested in the Government cannot be restored to the owners or whosoever. After passing of the order and

despite of the observations that the lands cannot be restored to the owners, in view of the decision of the HonÃ¢â‚¬â„¢ble Apex Court, the suit is filed on

1.7.2019. Prior to filing of the suit and after dismissal of the writ petition, an attempt was made by the petitioners to seek recalling of the order by filing

Civil Application (CAO) No.509/2017 in Misc. Civil Application St.No.8068/2016 wherein also the factual position was noted that award was passed

on 15.2.1962 and the possession of the lands was also taken from the land owners including the plaintiffs after payment of compensation.

31. In Writ Petition No.2104/1994, the contentions of the plaintiffs, who were petitioners therein, were that the possession of the lands was taken

pursuant to the Land Acquisition Award on 15.2.1962 and the compensation was duly received. The petitioners also contended that ten years prior to

filing of the writ petition, approximately in 1984 the petitioners resumed physical possession of the lands and it is observed that if the petitioners resume

possession in the year 1984, unilaterally and without taking recourse of law from the rightful owner which is the State Government with which lands

stood vested, the possession is of no significance or relevance in the context of controversy involved in Writ Petition No.2104/1994 and they prayed

for restoration of the lands.

32. Thus, it is apparent that in Writ Petition No.2104/1994 the plaintiffs who were petitioners therein contended that the possession was handed over

on 15.2.1962. They further contended in the said petition that the lands are not used for the purpose for which it was taken and, therefore, it be

restored back. In review application, the petitioners (plaintiffs) contended that ten years prior to the filing of the petition, they resumed physical

possession. If they resumed the physical possession, there was no reason to file the petition for restoration of the lands and now in suit the plaintiffs

came with a case that neither the lands were used for the purpose for which it was acquired nor the possession was taken and they have not received

compensation and prayed for declaration that they are owners of the suit property referred aforesaid and also sought declaration that procedure

adopted by the acquiring body along with the State Government and NIT is illegal, unjust and improper one and also to declare that the plaintiffs or

deceased Ganesh Padhye had never received compensation amount as alleged by the defendants.

33. Thus, in all proceedings, the pleadings raised by the plaintiffs are contrary to each other.

34. While considering the application under Order VII Rule 11 of the Code of Civil Procedure, which is an independent and special remedy, the court

is empowered to summarily dismiss the suit at the threshold, without proceeding to record evidence and conducting trial on the basis of the evidence

adduced if it is satisfied that the action should be terminated on any of the grounds contained in the provisions. The object of Order VII Rule 11(a) of

the Civil Procedure Code is that if in a suit no cause of action is disclosed or the suit is barred by limitation under Rule 11(d), the plaintiff to

unnecessarily protract the proceedings in the nature of the suit. In such a case, it would be just and proper to end the litigation so that further judicial

time is not wasted.

35. Whether a plaint discloses a cause of action or not is essentially a question of fact, but whether it does or does not must be found out from reading

the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the

averments made in the plaint are taken to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their

entirety, a decree would be passed.

36. The principle is laid down by the HonÃ¢â‚¬â„¢ble Apex Court as to the maintainability of the application under Order VII Rule 11 of the Code of Civil

Procedure and the interpretation of the said provision in catena of decisions including in Shri Mukund Bhavan Trust and ors supra; Ramshetty

Venkatanna and anr supra; Colonel Shrawan Kumar Jaipuriyar alias Sarwan Kumar Jaipuriyar supra; Rajendra Bajoria and ors supra; Dahiben supra,

and Dadu Dayalu Mahasabha, Jaipur (Trust) is that a cause of action means every fact, which if traversed, it would be necessary for the plaintiff to

prove in order to support his right to a judgment of the court. In other words, it is bundle of fact which taken with the law applicable to them gives the

plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action

can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

37. In the case of Shrihari Hanumandas Totala vs. Hemant Vithal Kamat and ors, reported in (2021)9 SCC 99, the HonÃ¢â‚¬â„¢ble Apex Court laid down

guiding principles of deciding an application under Order VII Rule 11(d) of the Code. Whereas, in the rest of the decisions, the principles to be

considered while deciding an application under Order VII Rule11 are laid down. It is laid down that while deciding an application under Order VII

Rule 11 of the Code, few lines or passage from the plaint should not be read in isolation and pleadings ought to be read as a whole to ascertain its true

import.

38. Thus, relative scope and applicability, as laid down by the Honourable Apex Court, is that where a plaint as a whole did not disclose cause of

action, Order VII Rule 11(a) of the Code is applicable and it stops continuation of suit. If the conditions mentioned under Order VII Rule 11 are

fulfilled, the entire plaint has to be rejected.

39. The HonÃ¢â‚¬â„¢ble Apex Court in the case of Dahiben supra, in paragraph No.23.6, observed that, Ã¢â‚¬Å“under Order VII Rule 11, a duty is cast on

the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the

documents relied upon, or whether the suit is barred by any law.

40. In the case of Liverpool and London S.P. & I AssociationÃ, LimitedÃ, vs.Ã, M.V.SeaÃ, SuccessÃ, andÃ, anr, reported in (2004)9 SCC 512, the

HonÃ¢â‚¬â„¢ble Apex Court by referring Order VII Rule 4 of the Code observed in paragraph No.142, thus:

Ã¢â‚¬Å“In the instant case the 'Club' not only annexed certain documents with the plaint but also filed a large number of documents therewith. Those documents having

regard to Order 7 Rule 14 of the Code of Civil Procedure are required to be taken into consideration for the purpose of disposal of application under Order 7 Rule 11(a)

of the Code of Civil Procedure.Ã¢â‚¬â€‹

41. Thus, in view of the observations of this court in Writ Petition No.2104/1994 decided on 30.8.2010, in the light of the referred judgments of the

HonÃ¢â‚¬â„¢ble Apex Court in the said order and in the light of the decision of Rajasthan Housing Board and anr supra wherein catena of earlier

decisions are referred and it is specifically held that the Land Acquisition Act is a complete Code in itself and civil suit to invalidate the land acquisition

is not maintainable. It is specifically held that the civil court has no jurisdiction to go into the question of validity or legality of the procedure adopted

while acquiring the lands only the High Court under Article 226 and the HonÃ¢â‚¬â„¢ble Apex Court under Article 136 can entertain such plea. It is

specifically held that civil court has no jurisdiction to go into the question of the notice under Section 4 and declaration under Section 9. The civil suit

itself is not maintainable. In view of that, no cause of action arose to file the suit and, therefore, the trial court ought to have considered this aspect that

suit is not maintainable. Despite of the observations of this court in Writ Petition No.2104/1994 that the lands are already acquired and possession is

already handed over, such lands vested in the Government after acquisition cannot be restored to the owners or whosoever and rejecting the

application under Order VII Rule 11 of the Civil Procedure Code is erroneous. The suit is also barred by limitation as it is filed after 58 years

approximately after the acquisition proceedings.

42. It is settled law that when an application to reject the plaint is filed, averments in the plaint and documents annexed therewith are to be looked into.

The averments in the application filed under Order VII Rule 11 of the Code of Civil Procedure can be taken into account whether the case falls within

any of sub-rules of Order VII Rule 11 of the Code of Civil Procedure by considering averments in the plaint.

43. The application is filed in the present case under Order VII Rule 11(a) and (d) of the Code of Civil Procedure. There is no dispute that acquisition

proceeding was started in 1959-60 and award was passed in 1962 i.e. on 15.2.1962 and the possession was handed over and suit is filed on 1.7.2019.

Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a

conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly

barred and the plaint can be rejected under Order VII Rule 11 of the Code of Civil Procedure.

44. In the present case, admittedly, the suit is hopelessly barred being filed after 58 years of the acquisition proceeding.

45. The frivolous proceeding is filed by the plaintiffs before the trial court by filing the suit. As far as nature of the proceeding, which is frivolous in

nature, is already observed by division of this court in Civil Application (CAO) 509/2017 in Miscellaneous Civil Application (Stamp) No.8068/2016 in

Writ Petition No.2104/1994 wherein it is observed that proceedings initiated are frivolous and an abuse of the process of law. It is further observed

that holistic reading of the petition and particularly the averments in paragraphs 25 and 26 of the petition would reveal that it was always the case of

the applicants that they were in possession of the land. Even if the averments in paragraphs 25 and 26 are taken at face value, the only inference is

that the applicants have taken illegal possession from the rightful owner-State Government in the year 1983-84. The averments, therefore, do not take

the case of the applicants any further. The judgment and order under review is predicated on the settled position of law that once the land acquired

vests with the State Government, same cannot be restored to the original owners. Even if it is assumed

46. It is pertinent to note that in Writ Petition No.2104/2014 it was conceded by counsel for the petitioners (plaintiffs) before the Division Bench that

lands vested in the Government after acquisition cannot be restored to the owners or whosoever. The pleading in the said petition shows that the lands

were acquired on 15. 2.1962 and possession was also taken after paying compensation to them. In review application, pleading was that the plaintiffs

received possession of the lands in the year 1983-84. The pleading in the said petition shows that compensation is received, whereas in a suit it is

claimed that no compensation was received. Such contrary pleadings sufficiently show that with frivolous allegations, the suit is filed and various

proceedings were initiated which is absolutely an abuse of process of law. In the review application, the Division Bench of this court observed that

they are inclined to impose costs of Rs.10.00 lacs, but considering the applicants are not in a position to deposit the said amount, costs of Rs.1.00 lac

was imposed and directed to deposit the same with the Registry. Despite of the stern action of this court, again, the suit is filed by misinterpreting the

order passed by this court in Writ Petition No.6023/2016 wherein it is specifically held that liberty to file civil suit, if it is permissible in law. In view of

the judgments of the HonÃ¢â‚¬â„¢ble Apex Court supra, the suit against the acquisition proceeding is not maintainable which is clarified by the Division

Bench of this court while passing order in Writ Petition No.2104/1994 dated 30.8.2010. The aspect of frivolous litigation is considered by the

HonÃ¢â‚¬â„¢ble Apex Court in Special Leave Petition (Civil) Diary No.56230/2024 (Pandurang Vithal Kevne vs. Bharat Sanchar Nigam Limited and anr)

supra wherein the HonÃ¢â‚¬â„¢ble Apex Court, by referring the judgment in the case of Subrata Roy Sahara vs. Union of India,Ã, reportedÃ, inÃ,

AIRÃ, 2014Ã, SCÃ, 3241,Ã, observedÃ, as follows:

Ã¢â‚¬Å“150. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive

obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of

every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on

his part.Ã¢â‚¬â€‹

47. In Dalip Singh vs. State of U.P. and ors, reported in (2010)2 SCC 114, the HonÃ¢â‚¬â„¢ble Apex Court condemned litigants who used the justice

delivery system for their benefits and thereby attempt to pollute the stream of justice and observed that, Ã¢â‚¬Å“in last 40 years, a new creed of litigants

has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for

achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is

now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not

entitled to any relief, interim or final.Ã¢â‚¬â€‹

48. In the case of K.C.Thakaran vs. State Bank of India and ors, (Writ Petition (Civil) Diary No.27458/2022 decided on 1.5.2023, the HonÃ¢â‚¬â„¢ble

Apex Court observed that, Ã¢â‚¬Å“no legal system can have a scenario where a person keeps on raking up the issue again and again once it is resolved at

highest level. This is complete wastage of judicial time. We, thus, dismiss this petition with costs, though we limit the amount of costs considering the

petitioner is a dismissed person. The writ petition is dismissed with costs of Rs.10,000/-to be deposited with the Supreme Court Advocates-on-Record

Welfare Fund to be utilized for the SCBA library.Ã¢â‚¬â€‹

49. Considering the above observations of the HonÃ¢â‚¬â„¢ble Apex Court and considering the fact that once the Division Bench of this court has

clarified the issue that once lands vested in the Government after acquisition cannot be restored to the owners or whosoever, in the light of the

decisions of the HonÃ¢â‚¬â„¢ble Apex Court in the cases of Administrator, Municipal Committee Charkhi Dadri and another supra and and followed by

this court in Ramakant Vithobaji Gaikwad supra, it was held that the prayers do not and cannot form subject matter of present writ petition. The

petitioners therein (plaintiffs) filed review application wherein while rejecting the condonation of delay application which is caused in filing the review

application imposed the costs of Rs.1.00 lacs by observing that that it is frivolous litigation. The petitioners (plaintiffs) filed another writ petition bearing

Writ Petition No.6023/2016 which was subsequently withdrawn. The present suit is filed by misinterpreting the order of the Division Bench of this

court wherein it was specifically mentioned that liberty to file civil suit if it is permissible in law.

50. Thus, precious time of this court as well as the trial court is wasted by the plaintiffs and, therefore, in my opinion, the plaintiffs to be burdened with

heavy costs to give clear message to unscrupulous litigants like the petitioners for not filing any frivolous litigation and not wasting the time of the

courts. Such type of litigants to be treated with stern hands. The precious time wasted could very well be used for other judicial work. I, therefore,

feel it appropriate to impose the costs of Rs.1.00 lac upon the plaintiffs.

51. In the light of the above discussion, this court passes following order:

ORDER

(1) The Civil Revision Application is allowed.

(2) The order dated 13.7.2022 passed below Exh.34 in RCS No.1129/2019 by learned 13th Joint Civil Judge Senior Division, Nagpur rejecting the

application under Order VII Rule 11 of the Code of Civil Procedure for dismissal of the plaint is quashed and set aside and consequently the plaint is

rejected.

(3) The non-applicant Nos.6(a), 6(b), 7, and 8 shall deposit the costs of Rs.1.00 lac (Rupees one lac only) with the Registry of this court within a

period of two weeks from today, failing which the said amount shall be recovered as arrears of land revenue.

The Civil Revision Application stands disposed of.

Rule is made absolute in the aforesaid terms.