

HIGH COURT OF MADHYA PRADESH : JABALPUR
SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR

Civil Revision No.190/2018

M/s Dilip Buildcon Ltd.

Vs.

Ghyanshyam Das Dwivedi

Shri Abhijeet Awasthi with Shri Shreyas Dubey, learned
counsel for the applicant.

Shri Anoop Kumar Saxena, learned counsel for the
respondent.

ORDER
(28/09/2018)

The applicant has filed the present revision
challenging the order dated 14.02.2018 passed by Civil
Judge, Class-I, Bijawar, District Chhatarpur thereby
dismissing the application preferred by the applicant
company under Order 7 Rule 11 of the CPC.

2. The applicant company was awarded the
contract for construction of Hata, Fathepur, Rajpura,
Silapuri, Bajna, Daguwa (SH-48) Road on BOT basis by
M.P. Road Developement Corporation vide order dated
10.08.2015. Thereafter, the applicant company begun with
its construction activity of the road in terms of assigned

scope of work. The respondent approached to the Tehsildar of Tehsil Baxwah, District Chhatarpur stating that the construction of the bridge in Darguwa-Hata Road is being carried out by the applicant without acquiring its property having description as House no.337 built over Khasra No.549/4 in Village Bajna, Tehsil Baxwah, District Chhatarpur admeasuring 0.06 Are.

3. The applicant filed its reply and stated that the permission was granted to the applicant company to carry out the construction activity by the authorities vide order dated 10.01.2017. The M.P. Road Development Corporation also filed its reply to the complaints of the respondent and stating that the land acquisition proceedings with respect to suit property is in process and the same is to be concluded. The respondent thereafter filed a civil suit no.1-A/2017 before the Civil Court Bijawar, District Chhatarpur for declaration of title as well as permanent injunction.

4. The applicant/defendant filed a preliminary objection under Order 7 Rule 11 of the CPC stating that

the suit is not maintainable as the jurisdiction of Civil Courts are barred for the matter pertaining to land acquisition proceedings as provided in Section 63 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 (hereinafter referred as to the 'Act of 2013'). Vide order dated 23.02.2017, the trial Court has dismissed the application preferred by the applicant under Order 7 Rule 11 of the CPC observing that the applicant has not produced any material on record to show that the suit property has been acquired under the provisions of Act of 2013 and, therefore, the jurisdiction of the Civil Court is not barred. Thereafter, the applicant company filed written statement and reply to the application preferred under Order 39 Rule 1 and 2 of the CPC by the respondent, wherein the bar of jurisdiction under Section 63 of the Act of 2013 was reiterated. It was also contended that there is no irreparable loss caused to the respondent/plaintiff as the acquisition proceedings are under process and the loss can be quantified in terms of

money.

5. Learned Lower Court has allowed the application preferred by the respondent under Order 39 Rule 1 and 2 of the CPC and granted injunction in favour of the respondent vide order dated 11.03.2017. Thereafter vide order dated 12.12.2017, the Land Acquisition Officer, Bijawar completed the acquisition proceedings and passed a detailed award and the compensation for suit property was also quantified and published. After passing of the award of compensation by Land Acquisition Officer, the name of M.P Road Development Corporation was mutated over the suit property. Thereafter on 07.02.2018, the applicant company filed second application under Order 7 Rule 11 of the CPC bringing on record the award dated 12.12.2017 passed by the Land Acquisition Officer. It was specifically contended that since the suit property has been acquired by MPRDC under the Provisions of Act of 2013, therefore, the jurisdiction of Civil Court is barred under Section 63 of the Act of 2013.

6. The Lower Court vide order dated 14.02.2018 has dismissed the application filed under Order 7 Rule 11 of the CPC on the ground of “*res-judicata*” stating that the objection with respect to bar of jurisdiction under Section 63 of the Act of 2013 has been considered by the Court in its earlier order dated 23.02.2017, therefore, the second application is not maintainable. Being aggrieved by that order, the applicant has filed the present revision.

7. Learned counsel for the applicant argues that the lower Court has failed to appreciate the fact that the first application was dismissed on the ground of non-availability of the documents pertaining to the acquisition proceedings of the suit property. Whereas, in the subsequent application, the relevant documents and award dated 12.12.2017 was brought on record along with revenue entries demonstrating the name of MPRDC to show that the acquisition proceedings of the suit property has been completed and proceedings thereafter in Civil Court would result into nullity. therefore, appropriate remedy for the respondent/plaintiff is under the Act of

2013. It is also contended by learned counsel for the applicant that the road construction is for public interest and no irreparable loss is caused by the respondent. However, due to the injunction order passed by this Court, public at large will suffer in convenience. In such circumstances, learned counsel for the applicant submits that the order impugned be set aside and the revision be allowed. Learned counsel for the applicant relied on the judgment passed by this Court in the case of **Rehana Parveen Vs. Naimuddin** reported in **1999(2) MPLJ, 341** as well as the **order dated 14.12.2017** passed in **Civil Revision No162/2012 (Sardar Singh & Anr. Vs. Shaitan Singh & Ors.** and the judgment passed by the Apex Court in the case of **Dhanwanti Joshi Vs. Madhav Unde** reported in **(1998)1 SCC, 112** .

8. On the other hand, learned counsel for the respondent supports the order passed by the trial Court and submits that the trial Court has not committed any error in passing the said order by rejecting the application preferred by the applicant under Order 7 Rule 11 of the

CPC.

9. Heard learned counsel for the parties and perused the record as well as the order passed by the trial Court.

10. In the present case, work order was issued in favour of the applicant company for construction of Road on BOT Basis by M.P. Road Development Corporation. Thereafter, the respondent approached to the Tehsildar stating that the Road is being constructed on his land without acquiring his property. The applicant company carried out the construction of the Road after obtaining requisite permission from the authorities. The respondent thereafter filed a civil suit no.01-A/2017 before the Civil Court Bijawar, District Chhatarpur seeking declaration of title as well as permanent injunction. After receiving summons, the applicant company had filed a preliminary objection under Order 7 Rule 11 of the CPC stating that the suit is not maintainable as the jurisdiction of Civil Courts are barred for the matter pertaining to land under acquisition proceedings as per Section 63 of the Act. The

Section 63 of the Act read as under:-

63. Jurisdiction of civil courts barred –

No civil court (other than High Court under article 226 of the article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.

11. Thus as per the said Section, the civil suit in respect of land under acquisition is barred.

12. In the present case, the trial Court has dismissed the application preferred by the applicant vide order dated 23.02.2017 on the ground that the applicant has not produced any material on record to show that the suit property has been acquired under the provisions of Act of 2013. Thereafter, Land Acquisition Officer, completed the acquisition proceedings and passed a detailed award on 12.12.2017 and the compensation of

the suit property was also confide and quantified. After passing of the said award, the applicant company again filed a second application under Order 7 Rule 11 of the CPC on 07.02.2018 for bringing on record the award dated 12.12.2017 passed by Land Acquisition Officer and it has been contended that since the property has been acquired by the MPRDC under the provision of Act of 2013, therefore, the jurisdiction of the civil court is barred under Section 63 of the Act of 2013. Vide order dated 14.02.2018, learned Court dismissed the application preferred by the applicant under Order 7 Rule 11 of the CPC on the ground of “*res-judicata*” stating that objection with respect to bar of jurisdiction under Section 63 of the Act of 2013 has been considered by the Court in his earlier order dated 23.03.2017, therefore, second application is not maintainable. The first application was dismissed by the lower Court on the ground that the applicant has failed to produce any documents relating to the acquisition of the land in question. However, subsequently, an award has been passed by the Land

Acquisition Officer on 12.12.2017, the applicant, therefore, filed second application under Order 7 Rule 11 of the CPC., this application is filed on the basis of the subsequent event which was not available at the time when the first application was decided and, therefore, principle of “*res-judicata*” would not be applicable in the present case.

13. This court in the case of Rehana Parveen (supra) in para 6 and 7 has held as under:-

6. The technical principle of *res judicata* would not be operative more so, if substantial change in circumstances is averred and found *prima facie* justified. If such is the case, the subsequent application for custody of the minor cannot be thrown out at the threshold holding it to be not maintainable. The circumstances in the instant case as averred by the petitioner in her petition and as contended by her learned counsel *prima facie* justify reconsideration of her petition on merits.

7. Therefore, there cannot be any possible

objection regarding the maintainability of the application as above. The learned trial Court therefore grossly erred and failed to exercise jurisdiction vested in it, by dismissing the application holding the same to be not maintainable. Therefore, the impugned order is set aside and the case is remanded for consideration and hearing of the application for the custody of the child.

14. As per the said judgment the technical principle of *res judicata* would not be operative while deciding the subsequent application. As the circumstances, which is made in the subsequent application was not available at the time when the previous application was decided.

15. The Apex Court in the case of **Dhanwanti Joshi** (supra) has held that in absence of proof of such change in circumstances, the order would not bar any subsequent proceedings on the same subject matter between the parties by operation of *res judicata*.

16. Thus as per this judgment if there is a

subsequent change in the proceedings on the same subject matter then the principle of *res judicata* would not be applicable while deciding the subsequent application.

17. Thus, in view of the aforesaid observations, the said revision is allowed and the impugned order dated 14.02.2018 passed by the trial Court is hereby set aside and the matter is remanded back to the trial Court to decide the application preferred by the applicant under Order 7 Rule 11 of the CPC on merits.

18. No order as to costs.

(Ms. Vandana Kasrekar)
Judge

Tabish

