



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 20th OF NOVEMBER, 2024

MISC. PETITION No. 5904 of 2024

BRIJENDRA BAHADUR SINGH

Versus

COLLECTOR AND OTHERS

Appearance:

Shri G.P.S. Parihar – Advocate for the petitioner.

ORDER

Heard on admission and also on interim relief.

2. By the instant petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order passed by the Courts below rejecting his application under Order 39 Rule 1 and 2 of CPC.
3. A suit for permanent injunction was filed by the petitioner / plaintiff restraining the respondents / defendants from interfering in his peaceful possession of the land which is being encroached, according to the petitioner, by the respondents / defendants for construction of road. Trial Court rejected the application of injunction saying that there was already 80 Ft. PCC road existing and removing that road, a new road is being constructed. The Trial Court has also taken note of some Panchnamas in which it is mentioned that the petitioner has already given up his right over the said road, on which, road is being constructed. It is also observed



that it is not only the petitioner, there was other persons also whose land claimed to have been encroached and therefore, in the existing circumstances, the Court has observed that so far as irreparable injury is concerned, it would be more than the injuries suffered by the petitioner and as such, injunction was not granted. The appeal preferred that has also been rejected. Appellate Court has also given a finding with regard to Panchnama holding that the petitioner has given up his right over the land. He submits that particular finding of the Appellate Court and the Trial Court will adversely affect his right during the trial and it would finally affect the order of the Trial Court.

4. I have heard submissions made by counsel for the petitioner and also perused the record.

5. It is made clear that any observation of the Trial Court and also of the Appellate Court while dealing with the application under Order 39 Rule 1 and 2 of CPC would not affect final decision of the Trial Court and that observation cannot be considered to be finding and also not binding so far as the Court is concerned and the Court will not influence with the said finding at the time of taking final decision in the suit. It is further made clear that the petitioner's grievance is only in respect of not paying compensation using his land by the respondents. If the petitioner has not given up his right and is claiming compensation, then it is his right that the land, if any, is occupied and encroached by the respondents / defendants for the purpose of constructing road, petitioner should be paid suitable compensation in accordance with law and that right cannot be curtailed by the Court in a suit for permanent injunction and the



Authorities cannot ignore the said right of the petitioner. If and when it is raised, the same shall be decided and the petitioner shall be paid compensation.

6. So far as construction of road and observations made by the Courts below while rejecting the application under Order 39 Rule 1 and 2 of CPC is concerned, I do not find any illegality in the same and accordingly, the orders do not call for any interference.

7. Trial Court is directed to decide the suit expeditiously preferably within a period of 6 months.

8. With aforesaid observation, this petition is **disposed of**.

(SANJAY DWIVEDI)
JUDGE

JP