



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.105 OF 2003

1. Narendra Janardan Mhatre

2. Nitin Janardan Mhatre

since deceased through his
legal heirs:

2.1 Lina Nitin Mhatre

2.2 Shreyas Nitin Mhatre

2.3 Nilesh Nitin Mhatre

.... Appellants

V/S

1. State of Maharashtra

through Collector, Thane

2. Special Land Acquisition Officer,

Metro Centre No.2, Thane

3. The City & Industrial

Development Corporation,

Nariman Point, Bombay.

.... Respondents

Mr. Rajesh S. Datar *for the Appellants.*

Mr. G. S. Hegde, Senior Advocate with Ms. P.M. Bhansali *for Respondent No.2 – CIDCO.*

Mr. D.J. Haldankar, AGP *for Respondent Nos.1 and 2/State.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 18 AUGUST 2026

PRONOUNCED ON : 09 SEPTEMBER 2026

J U D G M E N T :

1. This is a Second Appeal filed challenging the judgment and decree dated 10 January 2001 passed by the District Judge, Thane, dismissing Civil Appeal No.172 of 1997 and confirming the judgment and order dated 18 August 1997 passed by 2nd Joint Civil Judge, Senior Division, Thane, in Regular Civil Suit No.415 of 1994. The Trial Court had dismissed the suit filed by the Appellants/Plaintiffs seeking a declaration that Award in respect of the suit land is not declared and that the suit property does not vest in the Government and that Respondent No.3 - City & Industrial Development Corporation (**CIDCO**) is not entitled to treat the suit property as lawfully acquired.

2. Lands bearing Gat No.127 admeasuring 21.8 Are and Gat No.108 admeasuring 33.12 Are, village Talavali, Taluka and District Thane are the '**suit properties**'. According to Plaintiffs, the suit properties belonged to Late Bamaji Janu Mhatre, who passed away in 1947. That thereafter, there was a family partition, and the land came to the share

of Janardan Mhatre, father of the Plaintiffs. That there was once again family partition and Plaintiff No.1 got Gat No.127 and Plaintiff No.2 got Gat No.108. Government of Maharashtra, through Commissioner of Bombay, issued Notification dated 3 February 1970 under Section 4 of the Land Acquisition Act, 1894 (**the Act**) under which it was proposed to acquire the lands for handing it over to CIDCO (Defendant No.3) for planned development for use as industrial, commercial and residential purposes. Plaintiffs submitted written objections challenging the proposed acquisition. Thereafter, Defendant No.2 made a declaration under Section 6 of the Act on 25 February 1972. According to the Plaintiffs, the Government remained silent over the acquisition for over 20 years. The New Bombay Development Plan was sanctioned under Government Notification dated 18 August 1979. That no steps were taken to complete the acquisition proceedings. Section 11A was inserted in the Land Acquisition Act with effect from 24 September 1984, which specified the period of two years for making of Award from the date of publication of declaration and for lapsing of acquisition proceedings in the event of failure to make Award within two years.

3. According to Plaintiffs, no Award was made *qua* the suit properties even though lands of the same village were acquired by Defendant No.1 in the month of September 1986, which was within the limitation period ending on 24 September 1986. When Plaintiffs approached Defendant No.2 and enquired about the Award, they were orally informed that the Award was already declared. Plaintiffs sought certified copy of the Award but the same was not supplied. Plaintiffs

applied for a certificate certifying that the land has been acquired, but even such certificate was not issued. Plaintiffs finally issued notice to all the Defendants under Section 80 of the Code of Civil Procedure, 1908 (**the Code**). Accordingly, Plaintiffs filed Regular Civil Suit No.415 of 1994 stating that there is no Award under Section 11 of the Act awarding any compensation to the Plaintiffs and that Defendant No.2 did not have any power to take possession of the land. It was contended that Defendant No.3 (CIDCO) unlawfully obtained possession of the suit property and was illegally developing the same. Plaintiffs accordingly sought a declaration that there is no Award declared *qua* the suit properties under Section 11 of the Act, that the suit property does not vest in the Government, that Defendant No.3 is not entitled to treat the suit property as lawfully acquired, that mutation alienating the suit property in the name of Defendant No.3 was illegal, and that Defendant No.3-CIDCO cannot exercise any right of possession or development of the suit land. Plaintiffs also sought injunction against Defendant No.3-CIDCO from exercising any rights *qua* the suit property.

4. Only Defendant No.3-CIDCO appeared in the suit and filed Written Statement *inter alia* raising the issue of absence of jurisdiction. It appears that Defendant Nos.1 and 2/State Government failed to appear in the suit and the suit proceeded *ex-parte* against them. Based on the pleadings, Trial Court framed issues including the issue as to whether Civil Court had jurisdiction to entertain the suit. The Trial Court thereafter proceeded to dismiss the suit by judgment and decree dated 18 August 1997 *inter alia* holding that it lacked jurisdiction to

decide, try and entertain the suit. Plaintiffs preferred Civil Appeal No.172 of 1997 before District Judge, Thane. The Appeal was resisted by Defendant Nos.1 to 3. By judgment and decree dated 10 January 2001, the learned District Judge proceeded to dismiss the Appeal. Aggrieved by the decree passed by the Appellate Court, Plaintiffs have filed the present Appeal.

5. By order dated 31 March 2003, this Court framed following question of law:

“What is the legal efficacy of an award passed under the Land Acquisition Act, 1894, which is not signed by the author who meanwhile expires without signing the same?”

6. The Appeal was accordingly admitted. The Appeal was taken up for final hearing and by judgment and order dated 15 March 2019, this Court proceeded to answer the question, holding that the Award which is not signed by the author who had expired without signing the same is not an Award made under Section 11 of the Act. The Appeal was accordingly allowed by setting aside the orders passed by the Trial and the Appellate Courts and by declaring that Defendant No.2 has not made an Award in respect of the suit properties and that the suit property has not vested in the Government.

7. Two Review Petitions came to be filed by Defendant Nos.1 and 2/State Government and by CIDCO (Defendant No.3) seeking review of the judgment and order dated 15 March 2019. Review of the order was

sought essentially on the ground that this Court had failed to frame an issue relating to jurisdiction of the Civil Court to try and entertain the suit even though the suit was essentially dismissed by holding that Civil Court does not have jurisdiction to decide the suit. Both the Review Petitions were allowed by order dated 11 August 2026, holding that the issue of jurisdiction goes to the root of the matter and in the event it is held that Civil Court did not have jurisdiction to try and entertain the suit, it is not even necessary to go into the issue of legal efficacy of the Award which is not signed by the author. Accordingly, the judgment and order dated 15 March 2019 was reviewed and recalled and Second Appeal came to be restored by order dated 11 August 2026.

8. Since the judgment and order dated 15 March 2019 was reviewed and recalled for the purpose of deciding the issue of jurisdiction, following additional substantial question of law is framed with the consent of the learned counsel appearing for the parties:

“Whether Civil Court has jurisdiction to try and entertain the suit involving seeking a declaration that the Award is not declared under Section 11 of the Land Acquisition Act on account of death of the author before signing the Award?”

9. The learned counsel appearing for parties are heard after formulating the above additional question of law. It would be apt to briefly note the submissions canvassed by the learned counsel appearing for parties.

10. Mr. Datar, the learned counsel appearing for the Appellants submits that both the Courts have grossly erred in holding that Civil Court does not have jurisdiction to try and entertain the suit ignoring the position that Plaintiffs did not pray for setting aside the Award. That in the present case, no Award has been made and that the suit was filed for a simple declaration that the land does not vest in the Government or CIDCO and that CIDCO has no right to develop or possess the same. That since there is no challenge to the Award or the manner of acquisition, the suit was perfectly within jurisdiction of the Civil Court. Mr. Datar further submits that jurisdiction of a Civil Court cannot be readily ousted unless a specific bar to exercise jurisdiction exists. In support, he relies on judgment of Constitution Bench in **Dhulabhai vs. State of Madhya Pradesh and Anr.**¹ He submits that the issue of jurisdiction needs to be decided by taking into consideration the frame of the suit and the reliefs sought in the suit. He submits that the suit was required to be filed on account of CIDCO illegally and unauthorizedly taking over possession in absence of any acquisition. That mere taking over unauthorized possession would not vest the land in the Government. That under Section 16 of the Act, possession can be taken only after making of the Award. That possession without Award is illegal and therefore vesting does not occur. He submits that both the Courts ought to have appreciated the manner in which the suit is framed and the purpose for which the same is filed. That averments and the prayers in the Plaint clearly indicate that the suit is maintainable before the Civil Court. That in the present case, there is neither existence of an

¹ 1965 SCC OnLine SC 40

Award on record nor compensation is paid nor lawful possession is taken. That therefore Plaintiffs are entitled to declaration that the land has not vested in the Government or CIDCO. He draws attention of the Court to order dated 9 July 2004 by which Respondents were directed to pay whole amount of compensation to the Appellants under the alleged Award without prejudice to the rights and contentions of both the sides. That the said amount of compensation is not yet paid.

11. While Mr. Datar has emphasized the fact that the suit as framed is perfectly within the jurisdiction of the Civil Court, in his usual fairness, he has brought to the notice of the Court the recent judgment of Single Judge of this Court in **Chairman, Nagpur Improvement Trust vs. State of Maharashtra and others**² dealing with the issue of jurisdiction of Civil Courts in land acquisition matters.

12. So far as the first question of law formulated by order dated 31 March 2003 is concerned, Mr. Datar would submit that the judgment has not been reviewed or recalled noticing any error in answering that issue. He would therefore submit that the said question cannot be reagitated by the Respondents and that answer to the said issue vide judgment and order dated 15 March 2019 needs to be adopted while deciding the Second Appeal afresh. He therefore prays for allowing the Second Appeal and for making the suit absolute in terms of the prayers made therein.

13. Mr. Haldankar, the learned AGP appearing for Respondent Nos.1 and 2/State opposes the Second Appeal. He submits that Civil Court

² 2025 SCC OnLine Bom 443

lacks inherent jurisdiction to decide the suit. That the suit is filed essentially to challenge the acquisition proceedings. That the averments in the Plaint clearly indicate knowledge on the part of the Plaintiffs about issuance of Notifications under Sections 4 and 6 of the Act. That there is participation in the proceedings by the Plaintiffs. That therefore what is challenged essentially in the suit is the validity of the acquisition proceedings. That Civil Court has no jurisdiction to decide the legality of the acquisition proceedings. In support, he relies on judgments of the Apex Court in **Ganpatibai and Anr. vs. State of MP and Ors.**³ and in **H. N. Jagannath and Ors. vs. State of Karnataka and Ors.**⁴ Mr. Haldankar further submits that the Land Acquisition Act is a complete code in itself and whether the Award is passed or not ultimately touches upon the issue of validity of the Award, which a Civil Court cannot determine. That Plaintiffs have deliberately omitted to seek prayer for possession. That Suit for declaration without possession is not maintainable. That averment in paragraph 11 of the Plaint clearly indicates knowledge of taking over possession of the suit properties by CIDCO. That the suit was thus faulty and has correctly been dismissed by the Trial and the Appellant Courts. He accordingly prays for dismissal of the Second Appeal.

14. Mr. Hegde, the learned Senior Advocate appearing for CIDCO also opposes the appeal. He submits that both the courts have rightly and concurrently held that Civil Court does not have jurisdiction to decide the suit of the Plaintiffs. That Appellants have not raised any ground

³ 2006 (6) Supreme 487 : (2006) 7 SCC 508

⁴ AIR 2017 SC 5805

relating to jurisdiction in the present Appeal. He further submits that the Award has been validly made. That there is a Notice under Section 12(2) of the Land Acquisition Act, which is a step after making of the Award. That if there was no Award, Notice under Section 12(2) would not have been issued. That once the Award is in the handwriting of the author, it need not be separately signed. That signature on the Award merely signifies authentication and therefore signature thereon is not a precondition for determining existence of the Award. That the land has been taken over by CIDCO, developed and allotted, and that it is now too late in a day to entertain a baseless contention on behalf of the Appellants that there is no acquisition. That both the courts have taken concurrent and reasonable view, which need not be disturbed in Second Appeal. He prays for dismissal of the Appeal.

15. I have considered the submissions canvassed by the learned counsel appearing for rival parties.

16. I first take up for decision the second question relating to jurisdiction of the Civil Court to try and entertain the suit as the same goes to the root of the matter.

17. Plaintiffs filed Regular Civil Suit No.415 of 1994 asserting that no Award is made within the meaning of Section 11 of the Act. The Suit was accordingly filed seeking following prayers:

(a) It may be declared that Defendant No. 2 has not declared Award of the suit land under Section 11 of the Land Acquisition Act (Amended) 1984 till this day.

(b) It may be declared that the Suit property does not vest in the Government as per Section 16 of the Land Acquisition Act for want of declaration of the Award for determining compensation.

(c) It may be declared that Defendant No.3 is not entitled to treat the suit property as lawfully acquired.

(d) It may be declared that Mutation alienating the suit property in the name of the Defendant No.3 is illegal and void.

(e) It may be declared that Defendant No. 3 cannot exercise any right of possession or development over the suit land.

(f) For the reasons stated in Clauses (b), (c), (d) and (e) above, Defendant No.3 who is developing the suit land, he, his agents, servants and legal representatives may be restrained by decree of permanent prohibitory injunction from treating the said property as duly acquired for them or for their purposes and from exercising any right of ownership or possession over the same and may further be restrained from dispossessing the Plaintiffs, their agents, servants and all persons claiming title to the suit property or to develop the land.

(g) Ad-interim injunction in terms of Clause (f) above may be granted pending the disposal of the present suit.

(h) Costs may be provided to the Plaintiffs.

(i) Any other reliefs which this Hon'ble Court deems just and reasonable, be awarded to the Plaintiffs.

18. Plaintiffs thus cleverly avoided seeking a declaration that the acquisition proceedings lapsed on account of non-making of Award within a period of two years. Otherwise, there are specific averments in the plaint referring to Section 11A of the Act about the legal concept of lapsing. In paragraph 6 of the Plaint, Plaintiffs averred as under:

6. After the Notification under Section 6 of the Land Acquisition Act, the Defendant No.1 did not take steps to complete the Acquisition proceedings, and long time of 14 years has lapsed. In the meantime, the Govt. of India

proposed an amendment Bill No. 63 of 1984 by which a new Section 11-A was sought to be inserted in the said Act. The said amendment was passed into the Land Acquisition (Amendment) Act, 1984, being Act No. 68 of 1984 which came into force from 24.9.1984. Section 9 of the Amending Act provided Section 11-A in the said Act an under:

"11-A-Period within which the Award shall be made - the Collector shall make an Award under Section 11 within a period of two years from the date of the Publication of the declaration and if no Award is made within that period, the entire proceedings for the acquisition of the land shall lapse."

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the Award shall be made within a period of two years from such commencement. Since no Award in respect of the above lands of Plaintiffs is made within this period, entire proceedings from the acquisition of the above lands have elapsed.

19. Thus, a specific averment is made in paragraph 6 of the Plaint that *"Since no Award in respect of the above lands of the Plaintiffs is made within this period, entire proceedings for acquisition of above lands have elapsed"*. While this assertion is made in paragraph 6 of the Award, a prayer to that effect is deliberately avoided in paragraph 17 of the Plaint. From the averments in the paragraph 6 of the Plaint, there can be no doubt that the real reason for filing the suit seeking a declaration that there is no Award and that the suit property did not vest in the Government was lapsing of the acquisition proceedings on account of non-declaration of the Award within a period of two years.

20. Also, Plaintiffs' knowledge of initiation of acquisition proceedings and their participation therein is writ large in view of averments made in paragraphs 2, 3 and 4 of the Plaint which reads thus:

2. These Plaintiffs state that the Government of Maharashtra through the Commissioner of Bombay, Bombay Division, issued Notification No. LAQ-C-3352 dated 3.2.1970 published in the Maharashtra Govt. Gazette dated 4.2.1970 under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the said Act). Under the said Notification the Defendant No.3 proposed to acquire the land situate at Talavali for planned development and utilisation thereof in Trans Harbour, Panvel and Trans Thane Creek area for industrial, commercial and residential purposes.

3. The Plaintiffs submitted their Written objections to the said proposed acquisition of their land, inter alia, on the grounds that the purpose of acquisition of their land along with the other lands in the said area, was not a public purpose and that the declared public purpose was a mere rust to peg down prices of land and to do business in land dealings by compulsorily acquiring the same under the very low price under the authority of law and thereafter selling, leasing and otherwise disposing of the same to the rich and moneyed people, industrialists, businessmen and others & making huge gains therefrom and at the cost of the poor, local helpless, agriculturists and small businessmen, including the Plaintiffs who were intended to be uprooted from their moorings, means of livelihood and mercilessly treating them as non-human beings.

4. Thereafter, Defendant No.2 made a declaration under Section 6 on 25.2.1972 and the Government remained silent for the project for over twenty years. The New Bombay Development Plan was sanctioned under the Government Notification U.E. and P.H.D. No. RPB - 1176/635 and UD-5 dated 18.8.1979. This means that for nine years, no plan was prepared and in the mean while prices of the lands have gone-up hundreds of times than those at the date of Notification on 3.2.1970.

21. Plaintiffs were thus fully aware of the position that land acquisition proceedings were initiated by issuance of Notification under Section 4 of the Act. Plaintiffs in fact participated in the proceedings by filing written objections to the acquisition. They were also aware of issuance of Section 6 Notification on 25 February 1972. After pleading knowledge of issuance of Sections 4 and 6 Notifications in paragraphs 2 and 4 of the Complaint, Plaintiffs thereafter disclosed the real cause of action for filing of the suit by pleading in paragraph 6 of the Complaint that

lapsing of acquisition proceedings occurred by virtue of operation of provisions of Section 11A of the Act.

22. So far as possession is concerned, there are specific admissions in the Plaint that possession of the suit property was taken over as a result of acquisition proceedings. This is clear from averments in paragraphs 11 and 12 of the Plaint, which read thus:

11. These Plaintiffs state that Defendant No.3 is now the developing the land and also selling by auction plots of land acquired. The Defendant No.3 without obtaining legal possession has prepared a plan and is selling plots. The Plaintiffs apprehend that the Defendant No.3 is likely to develop the land soon and sell by auction. It is, therefore, necessary that Defendant No.3 should be restrained from developing and disposing the suit plot.

12. Under the above circumstances the Plaintiffs apprehend that Plots of suit land will be disposed of by-the Defendants while the dispute of ownership is pending in the Court. It is, therefore, in the interest of justice that status quo should be maintained during the pendency of the Suit so as to avoid further complications and multiplicity of proceedings.

23. From holistic reading of the Plaint, there can be no doubt to the position that the suit is filed essentially for securing a declaration that the land acquisition proceedings had lapsed under Section 11A of the Act and for securing back possession of the suit property. However, noticing the bar for the Civil Court to try and entertain the suit, the Plaintiffs deliberately avoided to include a prayer for declaration about lapsing as well as for possession. Smartly and cleverly, they made a prayer that the Award has not been declared under Section 11 of the Act and that the suit property does not vest in the State Government under Section 16 of the Act. Instead of seeking prayer for recovery of

possession, deliberately a prayer for declaration against CIDCO for not exercising right of possession or development over suit property was sought. Similarly, an injunction was sought against CIDCO from exercising possessory rights under prayer clause (f). The Plaint in the Suit is thus cleverly drafted with a view to avoid the vice of absence of jurisdiction of Civil Court.

24. In the evidence, there is clear admission by Plaintiffs about receipt of Notice under Section 12(2) of the Land Acquisition Act. Plaintiffs' witness No. 1 Janardan Damaji Mhatre admitted receipt of notice by Plaintiff No. 1. The relevant portion of his deposition reads thus:

15. As per the market rate the price of each sq. meter may be Rs. 1000 or nearabout it. I do not remember as to whether I have received notice from S.L.O. to take the amount of compensation of the acquisition, it is on record below Exh.59. According to me, the Plaintiff No. 1 received the said notice.

16. It is not correct to say that the notices u/s. 12 of the Land Acquisition Act has been served on both the Plaintiffs.

25. Thus, there is an express admission about service of Section 12 notice on Plaintiff No. 1. Section 12 of the Act provides thus:

12. Award of Collector when to be final

(1) Such award shall be filed in the Collectors office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

(emphasis added)

26. The Notice under Section 12(2) of the Act is to be issued only after making of the Award. Thus, there is an express admission of acquisition of knowledge about making of the Award on the part of the Plaintiffs. Even though the witness may have stated that only the Plaintiff No. 1 received Section 12 notice, that is sufficient for holding that the Plaintiffs acquired knowledge about making of Award. This admission about receipt of Section 12 Notice needs to be read in conjunction with the averments in the plaint about CIDCO taking over possession of the land. Thus, there can be no iota of doubt that the Plaintiffs were fully aware that the Award was made and the land was acquired. The real dispute in the suit was therefore about validity of the acquisition proceedings.

27. To make the case of Plaintiffs worse on the point of jurisdiction, their witness Janardan Mhatre gave specific admission of filing a writ petition challenging the acquisition proceedings. He deposed thus:

20. It is correct to say that against the acquisition proceedings, I have filed writ petition before the Hon'ble High Court, Mumbai.

28. Though he later attempted to wriggle out of the admission by contending that his brother had filed the writ petition, Plaintiffs' father has given a clear admission about the correct remedy for challenging the acquisition proceedings.

29. The Trial Court framed issue No.8 about absence of jurisdiction of Civil Court and proceeded to answer the same by holding in paragraphs

50 to 53 of the judgment as under:

50. As to Issue No.8 :-

Now it is to be seen as to whether this Court has a jurisdiction to entertain with the suit of the plaintiff. It is the stand of the plaintiff that, since no award has been passed, therefore how they will make a reference or file a writ petition before competent authority.

51. So, as to deal with this submission I find that, it is necessary to go from Sec. 18 of Land Acquisition Act. It provides for a reference being asked by any persons interested. Whether he was present or representative before the Collector or not. Even a person not present or represented before Collector and not in receipt of the notice from the Collector under Sec.12(2) may ask for a reference. So, this makes clear that any interested person is authorised to make a reference under Land Acquisition Act.

52. In the instant case, it appears from the evidence of the plaintiff that, they came to know that, the defendant no.2 have declared a award. It is also clear from the record that, defendant no.3 have taken possession on the basis of award. So, there is every ground to state that, plaintiff were aware that, award has been declared by the Collector. So, in view of Sec. 18, it is for them to make a reference or to file a writ before competent Court. However, in the instant case, the plaintiff have not done it.

53. Now, it is settled law that, if there is some irregularity done by land Acquisition Officer, then, Civil Court should not entertain the suit in this regard. In the instant case, it was the plaintiff that, no notices were served, they were not heard and even then, the Land Acquisition proceeding were proceeded. So, from this it will very clear that, they had knowledge and hence, it is for them to knock the door of the competent Court for the redressal of their grievance. So, in the light of this I find that, this Court has no jurisdiction to entertain with the suit of the plaintiff.

30. The Appellate Court once again applied its mind to the issue of jurisdiction and answered the issue against the Plaintiffs by holding in paragraph 11 of the judgment as under:

11. I shall now take up the question of want of jurisdiction of the Civil Courts. In fact, want of jurisdiction, perhaps, was quite considered by the plaintiffs before approaching the Civil Court, since as admitted by Mr. Janardan Mhatre

himself, they had approached the Hon'ble High Court in its Writ jurisdiction challenging the land acquisition proceedings of the lands in that vicinity including the suit land and in the next breath he said that his sons did not prefer this Writ Petition, but his elder brother preferred the same. By virtue of this admission, it can be assumed, therefore, that legal position was quite known to Janardan Mhatre regarding this absence of jurisdiction to the Civil Court.

31. Thus, the Appellate Court has taken note of the fact that Mr. Janardan Mhatre had approached this Court in writ jurisdiction challenging the land acquisition proceedings. Thus the real remedy was known to the Plaintiffs, who cleverly drafted the suit with a view to avoid the vice of bar of jurisdiction.

32. True it is that Civil Court's ouster of jurisdiction cannot be readily inferred and reliance by Mr. Datar on judgment of Constitution Bench in ***Dhulabhai*** (supra) is apposite. However, by now, it is well settled that the Land Acquisition Act is a complete code in itself and that jurisdiction of Civil Court to take cognizance of land acquisition proceedings under Section 9 of the Code is clearly excluded. As observed above, Mr. Datar has fairly invited attention of this Court to recent judgment in ***Chairman, Nagpur Improvement Trust*** (supra) which discusses the entire law on the issue of jurisdiction of the Civil Court to entertain a suit involving land acquisition proceedings. Before Single Judge of this Court in ***Chairman, Nagpur Improvement Trust*** (supra), order passed by the Trial Court rejecting Plaint under Order VII Rule 11 of the Code was under challenge in the Plaint, which was also cleverly drafted (*as in the present case*) by raising following prayers:

- 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.

33. This Court takes note of the entire case law on the issue of jurisdiction of Civil Court, particularly in the judgment of Apex Court in **Rajasthan Housing Board and Anr. vs. Chandibai and Ors.**⁵, in which it is held that the Civil Suit to invalidate the land acquisition is not maintainable. This Court thereafter took note of judgment of the Apex Court in **State of Bihar v. Dhirendra Kumar**⁶, in which it is held that Civil Suit is not maintainable to question the land acquisition. This Court also noted the ratio of the judgment in **Laxmi Chand vs. Gram Panchayat, Kararia**⁷, in which the Apex Court has held that Civil Court has no power to pronounce on invalidity of procedure adopted under Sections 4 and 6 of the Act and that Civil Court is devoid of jurisdiction to give declaration on invalidity of procedure contemplated under the Act. The Apex Court has held that the only right an aggrieved person has is to approach the Constitutional Court under their plenary powers under Articles 226 of the Constitution of India. This Court also took note of ratio of the judgment in **Commissioner, Bangalore Development**

⁵Civil Appeal No. 11912 of 2018 decided on 7 December 2018

⁶(1995) 4 SCC 229

⁷(1996) 7 SCC 218

Authority vs. Brijesh Reddy⁸, in which it is held that the Land Acquisition Act is a complete code in itself and it is meant to serve public purpose and that by necessary implication, power of the Civil Court to take cognizance of case under Section 9 of the Code stands excluded. Since there is detailed discussion of the entire case law on the subject of jurisdiction of Civil Court in land acquisition matters in the judgment of coordinate Bench of this Court in ***Chairman, Nagpur Improvement Trust*** (supra), I take the liberty to extensively reproduce the observations in Paras 17 to 23 of the judgment:

17. The Hon'ble Apex Court in *Rajasthan Housing Board v. Chandi Bai* (supra) by referring the earlier judgments in the cases of *State of Bihar v. Dhirendra Kumar*, (1995) 4 SCC 229 : (1995) 2 Mah LJ (SC) 340, *Laxmi Chand v. Gram Panchayat, Kararia*, (1996) 7 SCC 218 and *Commissioner, Bangalore Development Authority v. K.S. Narayan*, (2006) 8 SCC 336 : 2006 Mh. L.J. Online (S.C.) 150 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 Hon'ble Apex Court in *State of Bihar v. 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 11-A 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

⁸(2013) 3 SCC 66

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 Civil Procedure Code 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 v. Gram Panchayat, Kararia* (supra) also the Hon'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, "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 v. K.S. Narayan* (supra) the Hon'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 Hon'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 v. Brijesh Reddy*, (2013) 3 SCC 66 : (2013) 3 Mah LJ (SC) 880, the Hon'ble Apex Court held that, "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.”

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 Hon'ble Apex Court.

34. Thus, in ***Chairman, Nagpur Improvement Trust*** (supra), a plaint containing similarly worded and cleverly drafted plaint that Plaintiffs are owners of suit property on account of defect in the acquisition proceedings was held to be not maintainable.

35. In ***H.N. Jagannath*** (supra), the Apex Court has held that power of Civil Court to take cognizance of case under Section 9 of the Code stands excluded and that Civil Suit is not maintainable. The Apex Court has held in paragraph 13 of the judgment as under:

13. The Division Bench has erroneously conferred jurisdiction upon the civil court to decide the validity of the acquisition. **This Court has repeatedly held in a number of judgments that, by implication, the power of a civil court to take cognizance of such cases under Section 9 CPC stands excluded and the civil court has no jurisdiction to go into the question of validity under Section 4 and declaration under Section 6 of the Land Acquisition Act. It is only the High Court which will consider such matter under Article 226 of the Constitution. So, the civil suit, per se is not maintainable for adjudicating the validity or otherwise of the acquisition notifications and proceedings arising therefrom.** This Court in ***BDA v. Brijesh Reddy*** while considering the acquisition notifications issued under the BDA Act observed thus: (SCC pp. 71-72, para 18)

“18. 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 the civil court to take cognizance of the case under Section 9 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.”

(emphasis added)

36. In the present case as well, Plaintiffs have sought to raise the defect of non-signing of the Award by the author for the purpose of seeking a declaration that the effect of lapsing under Section 11A of the Act has occurred. In my view, Civil Court would not have jurisdiction to decide the suit filed by the Plaintiffs.

37. In ***Ganpatibai*** (supra), the Apex Court has referred to its judgment in ***State of Bihar vs. Dhirendra Kumar*** (supra) by holding in paragraph 9 as under:

9. In ***State of Bihar v. Dhirendra Kumar*** [(1995) 4 SCC 229] this Court had observed that civil suit was not maintainable and the remedy to

question notification under Section 4 and the declaration under Section 6 of the Act was by filing a writ petition. Even thereafter the appellant, as noted above, pursued the suit in the civil court. The stand that five years after the filing of the suit, the decision was rendered does not in any way help the appellant. Even after the decision of this Court, the appellant continued to prosecute the suit till 2001, when the decision of this Court in 1995 had held that suit was not maintainable.

(emphasis added)

38. In view of the above discussion, I am of the view that Civil Court clearly lacked jurisdiction to try and entertain the suit filed by Plaintiffs in relation to the land acquisition proceedings. Plaintiffs essentially challenged the validity of the acquisition proceedings. The case does not involve an eventuality that the possession is taken over without conducting any acquisition proceedings. The acquisition proceedings are admittedly conducted and the Plaintiffs had full knowledge about the same. They questioned the validity of those acquisition proceedings in the suit, which was without jurisdiction. Plaintiffs' father-Janardan (*who was Plaintiffs' witness No. 1*) gave admission of either he himself or his brother filing a writ petition challenging the acquisition proceedings. I am in agreement with the findings concurrently recorded by the Trial and the first Appellate Court about absence of jurisdiction of the Civil Court to try and decide the suit. The Suit was without jurisdiction and has been rightly dismissed. The second question of law is answered accordingly.

39. Since it is held that Civil Court did not have jurisdiction to entertain the suit, the first question of law about legal efficacy of the Award which is not signed by the author is rendered academic. Since the suit is without jurisdiction, even this Court exercising the appellate

powers cannot answer the said issue. An appeal is nothing but continuation of the suit. Therefore, any decision on that issue by this Court while exercising the appellate powers would be without jurisdiction and therefore a nullity. Appellants need to exercise the correct remedy available in law for determination of that issue. It is therefore considered unnecessary to decide the first question of law.

40. In view of the above discussion, there is no reason to interfere in the impugned decree. Second Appeal is devoid of merits. It is accordingly **dismissed**. However considering the facts and circumstances of the present case, there shall be no order as to costs.

(SANDEEP V. MARNE, J.)