

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5819 OF 2008

[Arising out of SLP(C) No.20397/2005]

KANHAIYALAL MOTILAL TALERA

... APPELLANT(S)

:VERSUS:

**PIMPRI CHINCHWAD MUNICIPAL CORPORATION AND
ORS.**

... RESPONDENT(S)

ORDER

Delay condoned.

Leave granted.

Appellant herein filed a civil suit questioning the conduct of the Municipal Corporation and other authorities as regards a purported attempt made by them to take forcible possession of the land belonging to the appellant, without taking recourse to proceedings under the Land Acquisition Act, 1894. An interim order of injunction was passed in the said suit. Respondent No.1 filed an appeal thereagainst.

Appellant and Pimpri Chinchwad Municipal Corporation in Appeal From Order No. 89/2003, which arose out of an order dated 7.10.2002 passed by the 5th Joint Civil Judge, Senior Division, Pune, in Civil Suit No. 1111/2001, entered into a compromise, the terms whereof read as under:

“1. It is hereby agreed that the appellant corporation shall commence the acquisition proceedings with respect to land bearing serial No. 27B/1/B (part) and bearing CTS No. 1054 (part) situate at Village Chinchwad Tal. Haveli Dist. Pune which is required for road widening within a period of 15 days from today. The Special Land Acquisition Officer shall complete the same and declare the Award as expeditiously as possible.

2. The respondent is entitled to place in said Land Acquisition Proceedings all material available with him and all contentions necessary for the purpose of computing the compensation as per the provisions of law.

3. It is hereby agreed that as soon as the land acquisition proceedings are commenced by the Appellant is entitled to construct road on the property, which has been taken in possession by them for the said purpose.

4. In view of these consent terms the Order dated 7.10.2002 passed by the learned Fifth Joint Civil Judge, Senior Division, Pune, below exhibit in Special Civil Suit No. 1111 of 2001 stands vacated, and Special Civil Suit No. 1111 of 2001 stands disposed of in the above terms.

5. No order as to costs.”

It is not in dispute that pursuant to or in furtherance of the said consent terms, Pimpri Chinchwad Municipal Corporation sent a requisition for acquisition of Civil Survey No. 1054 which belonged to the appellant. It is also not in dispute that by a notification issued in the year 1988 under Section 4 of the Land Acquisition Act, 1894, inter alia, Civil Survey No. 1057 was sought to be acquired.

A contempt petition was filed by the appellant on the premise that despite an agreement between the parties without initiating a fresh proceeding for acquisition of C.S. No. 1054, the contemnors had taken recourse to obtaining forcible possession thereof.

Before the High Court, however, a plea was taken that C.S. No. 1057 had wrongly been mentioned in place of C.S. No. 1054 and possession thereof was taken upon correction of the mistake.

By reason of the impugned judgment the contempt petition filed by the appellant herein was dismissed by the High Court, opining:

“The learned Advocates for the respondents while referring to the order passed by the lower court on 7.10.2002 and drawing attention, particularly to para 5 thereof, sought to argue that similar contention was raised by the respondents before the trial Court and it was rejected. Obviously, it was rejected merely because the records did not disclose the survey No. 1054 and its disclosed survey No. 1057. As it has been clarified in the affidavit that the same was on account of mistake in recording of the number, the decision which was passed during the pendency of the suit, which is an interim order, cannot amount to final decision as regards the rights of the parties in relation to the said issue. Undoubtedly, the said issue is wide open for adjudication in appropriate proceedings. Nevertheless, as it has been clarified in these proceedings that there was a mistake in recording of the number and the land in question has already been acquired, the question of proceeding against the respondent for violation of the order dated 14.7.2003 does not arise at all. A mistake in recording of the number cannot change the factual situation if the land in question has really been acquired. Same cannot lead to the conclusion about violation of the order dated 14.7.2003 as there is no mandate to the respondents to acquire the land as such.”

Appellant is, thus, before us.

Ms. Bengani, learned counsel for the appellant submitted that the Municipal Corporation being the requisitioning authority was bound by the terms of the compromise. It was furthermore contended that the plea raised on behalf of the respondents that a mere clerical error has been corrected, is mala fide as would appear from Section 13A of the Land Acquisition Act, 1894.

Mr. Adkar, learned counsel appearing on behalf of respondent Nos.1, 2 & 4, on the other hand, would contend that no contempt has been committed by his client as within a period of 15 days from the date of entering into the consent terms steps have been taken to acquire C.S. No. 1054.

Ms. Asha G. Nair, learned counsel appearing on behalf of the State of Maharashtra, however, would support the impugned judgment.

Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the question as regards applicability of Section 13A of the Land Acquisition Act is a debatable one and the same should have been gone into by the High Court. The High Court dealt with the said question merely stating:

“Undoubtedly, in terms of Section 13A of the said Act, the collector is empowered to make necessary corrections as regards the clerical and arithmetical mistakes in the award. However, mere failure in that regard on the part of the collector cannot ensure to the benefit of the petitioner to contend that there was violation of the order of 14.7.2003, when in fact the said order did not direct acquisition of land as such.”

We may, however, note that such a contention has not been raised by the appellant in the contempt application.

Be that as it may, keeping in view the peculiar facts and circumstances of this case, we are of the opinion that interest of justice will be subserved if the contempt petition filed by the appellant herein is treated to be a writ petition and the questions raised therein are gone into by the High Court. It is directed accordingly.

The State of Maharashtra shall be impleaded in the said writ petition. The parties shall be at liberty to amend their pleadings and all the contentions, including the contentions raised herein shall be allowed to be raised before the High Court.

The appeal is allowed accordingly.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,
SEPTEMBER 23, 2008.

