

**REPORTABLE****IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.11912 OF 2018**

[@ SPECIAL LEAVE PETITION (CIVIL) NO.15455 OF 2015]

**RAJASTHAN HOUSING BOARD & ANR.****..APPELLANT(S)****VERSUS****CHANDI BAI & ORS.****..RESPONDENT(S)****ORDER**

1. Leave granted.
2. For the purpose of acquisition of land notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 (in short, "the Act") was issued on 10.07.1981, followed by declaration under Section 6 on 16.04.1982. Possession of the land was taken over by the Rajasthan Housing Board on 27.01.1984. Notice was issued under Section 9(3) to Doonga s/o. Nolla on 28.03.1984. He claimed compensation and participated in the compensation proceedings and award was passed in his favour. The provisions of the Rajasthan Land Acquisition Act and the Land Acquisition Act of 1894 are *pari materia*.
3. The award was passed on 28.12.1988, determining compensation of Rs.1,78,863.03/- in favour of Doonga s/o. Nolla for land measuring 1.15 Bigha in Khasra No.238 and 1 Bhiga, 19 Biswa and 10 Biswansi in Khasra No.239 situated in Village Senti, District Chittorgarh.
4. The plaintiffs filed a suit for declaration and permanent injunction in the Court of Munsif, Chittorgarh on 04.02.1989. It was averred in the

plaint by the plaintiffs that they purchased the land from Doonga s/o Nolla. Nolla expired before the Notification was issued under Sections 4. Thus, the proceedings against the dead person were illegal. The Land Acquisition proceedings be declared to be null and void and the defendants be restrained by a decree of permanent injunction from dispossessing the plaintiffs from the disputed land.

5. In the written statement, it was contended by the Rajasthan Housing Board that acquisition had been completed and possession has been taken over and award passed. The land has absolutely vested in the State. The civil suit is not maintainable.

6. The trial court decreed the suit and the successive appeals have been dismissed, thus, the Rajasthan Housing Board has filed the appeal before this Court.

7. The only question raised by the learned counsel appearing on behalf of the Rajasthan Housing Board is as to non-maintainability of the suit. The learned counsel has relied upon a decision of this Court in *Commissioner, Bangalore Development Authority v. Brijesh Reddy*, reported in (2013) 3 SCC 66, to contend that the civil suit was not maintainable so as to question the land acquisition.

8. On the other hand, it was contended by the learned counsel on behalf of the respondents that the land has been acquired as against the dead person Nolla and there was a sale deed executed by his son. Doonga has transferred the property to the plaintiffs, as such the participation of

Doonga in the compensation proceedings would not make any difference. Thus, the proceedings stood vitiated and the suit has rightly been decreed. The counsel has relied upon decision in *Union of India v. Tarachand Gupta and Bros.*, (1971) 1 SCC 486.

9. Upon hearing the learned counsel appearing on both sides, it is apparent that civil court has no jurisdiction to entertain such a suit. This Court has laid down in catena of judgments that the civil suit to question notification issued under section 4 and declaration under section 6 of Land Acquisition Act, 1894 is not maintainable. The only remedy left to the aggrieved party is to file a writ petition before the High Court under Article 226 of the Constitution of India or to approach this Court.

10. In *State of Bihar v. Dharendra Kumar*, (1995) 4 SCC 229, this Court has observed that civil suit is not maintainable to question the land acquisition. The Court observed:

“3. 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 crystallised 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 Government 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 the Housing Board. So, the order of injunction was without jurisdiction.** (emphasis supplied)

11. In *Laxmi Chand v. Gram Panchayat, Kararia* (1996) 7 SCC 218, this Court observed that the civil court has no power to pronounce on invalidity of procedure adopted under Sections 4 and 6 of the Land Acquisition Act, 1894, thus:

“3. 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 cases 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.”

12. In *S.P. Subramanya Shetty v. Karnataka State Road Transport Corporation*, (1997) 11 SCC 250, this Court held:

“4. In view of the settled legal position that the notification had become final and the proceedings had attained finality, the civil suit was not maintainable. This Court has repeatedly held that a civil suit relating to acquisition proceedings is not maintainable and by implication, cognizance under Section 9 CPC is barred. The Court cannot issue mandatory injunction against the State to denotify the acquisition under Section 48. Therefore, the question of granting an injunction against the authority from proceedings in accordance with the law does not arise. The High Court, therefore, was right in refusing to grant injunction. The Court cannot compel the Government to withdraw the notification under Section 4(1) of the Act. It is for the Government to consider the same on merits keeping in mind subservience of public interest. In view of the fact that notification was upheld by this Court and has become final, the Government cannot retract from the steps taken.”

13. In *Commissioner, Bangalore Development Authority v. K.S. Narayan*, (2006) 8 SCC 336, the suit was filed on the ground that notice under Section 17(5) of Bangalore Development Authority Act, 1976 was not given. The Court held that provisions of Act are akin to Land Acquisition Act and only High Court could examine its legality under Article 226, not the civil court. The Court observed:

“14. In our opinion the view taken by the High Court is wholly erroneous. It is not the case of the plaintiffs that the plaint scheduled property is not covered by the notification issued under Section 17 of the Act. As a matter of fact, there is no dispute that the land regarding which the suits have been filed is covered by the notification. The main ground on which the suits have been filed is that the notice as required by sub-section (5) of Section 17 of the Act was not served upon the plaintiffs. The plaintiffs are claiming title to the property and are seeking the relief of possession on the ground that the notification has been rendered invalid on account of non-service of notice upon them under sub-section (5) of Section 17 of the Act. The plaintiffs are clearly assailing the validity of the acquisition proceedings. It is not their case that the plaint scheduled property is outside the purview of the land regarding which the notification under Section 17 had been issued. The ground for assailing the notification, namely, that notice under sub-section (5) of Section 17 of the Act was not served upon the plaintiffs and its effect could only be examined in a writ petition filed under Article 226 of the Constitution before the High Court and not by the

civil court. The judgments and decrees passed by the High Court are, therefore, clearly illegal and have to be set aside.”

14. In *Ganpatibai v. State of M.P.*, (2006) 7 SCC 508 and *Narayan Prasad Agrawal v. State of M.P.*, (2003) 11 SCC 456, the Court held that civil suit is not maintainable to question land acquisition even belated writ petition cannot be entertained.

15. In *State of Punjab v. Amarjit Singh*, (2011) 14 SCC 713, the Court followed earlier decisions in *Commissioner, Bangalore Development Authority v. K.S. Narayan (supra)*, *Laxmi Chand v. Gram Panchayat (supra)* and *State of Bihar v. Dharendra Kumar (supra)* to hold that civil suit for declaration and possession was barred.

16. In *Manohar Joshi v. State of Maharashtra*, (2012) 3 SCC 619, the Court observed:

“134. That apart, **there is also the question as to whether the civil court had the jurisdiction to entertain a suit to challenge the acquisition after the award was rendered.** This is because when it comes to acquisition, the LA Act provides for the entire mechanism as to how acquisition is to be effected, and the remedies to the aggrieved parties.

135. In *State of Bihar v. Dharendra Kumar* this Court in terms held that since the Act is a complete code, by necessary implication the power of the civil court to take cognizance of a case under Section 9 CPC stands excluded, and **the civil court had no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6**, which could be done only by the High Court in a proceeding under Article 226 of the Constitution. In view of this dictum the civil suit itself was not maintainable in the present case.” (emphasis supplied)

17. In *Commissioner, Bangalore Development Authority v. Brijesh Reddy*, (2013) 3 SCC 66, the Court held that even a civil suit for permanent

injunction is not maintainable in view of the provisions of the Land Acquisition Act. The Court observed:

“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 supplied)

18. In *Mutha Associates v. State of Maharashtra*, (2013) 14 SCC 304, the Court has observed:

“21. The position is no different in the instant case. The appellant owners or Mutha Associates, the builders did not file any objections or move their little finger till the making of the award by the Collector. Instead of filing of the objections, opposing the proposed acquisition before the Collector and seeking redress at the appropriate stage they remained content with making representations to the Minister which was not a remedy recognised by the statute. It was only after the Collector had made his award and after notice for taking over possession was issued by the appellants that they rushed to the civil court with a suit in which too they did not assail the validity of the declaration under Section 26(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. **The remedy by way of a suit was clearly misconceived as indeed this Court declared it to be so in State of Bihar v. Dharendra Kumar**, (1995) 4 SCC 229. The appellants could and ought to have challenged the acquisition proceedings without any loss of time. Having failed to do so, they were not entitled to claim any relief in the extraordinary jurisdiction exercised by the High Court under Article 226 of the Constitution.” (emphasis supplied)



19. In *H.N. Jagannath v. State of Karnataka*, (2018) 11 SCC 104, the Court observed:

**“17. 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.”

18. A similar view is taken by this Court in other cases. The judgments of this Court in *Laxmi Chand v. Gram Panchayat, Kararia*, (1996) 7 SCC 218; *Girish Vyas v. State of Maharashtra*, (2012) 3 SCC 619; *State of Bihar v. Dharendra Kumar*, (1995) 4 SCC 229; *BDA v. K.S. Narayan*, (2006) 8 SCC 336; and *Mutha Associates v. State of Maharashtra* (2013) 14 SCC 304, considered the acquisition proceedings relating to the lands which were acquired either under the provisions of the BDA Act or under the Land Acquisition Act. In all these judgments, similar question arose i.e. as to whether the civil court had jurisdiction to decide the validity of the acquisition notifications or not.” (emphasis supplied)



20. In *Union of India v. Tarachand Gupta and Bros.*, (1971) 1 SCC 486, the respondent imported certain goods. The Custom Authorities opined that they were prohibited articles under Entry 294. The High Court held Collector exceeded jurisdiction which was limited to ascertain as to whether goods imported were spare parts and accessories under Entry 295. The Court held that Collector's act was beyond jurisdiction. He was inserting restriction in Entry 295 which did not exist. It was an act which beyond invested jurisdiction. It was a case of violation of Section 3 and Entries 294 and 295 of Imports and Exports (Control) Act, 1947. The case is totally distinguishable. No such jurisdictional issue is involved in the case.

21. The remedy of the respondents, if any, was to claim a compensation from Doonga by seeking reference under Section 18 or Section 30 of the Land Acquisition Act or to file a civil suit against him to recover compensation on the basis of title. A civil suit to invalidate the land acquisition is not maintainable. The trial court has committed grave error of law while decreeing the suit. At least we expected the High Court to be careful in following the aforesaid catena of judgments passed by this Court in which law has been laid down succinctly.

22. We have no hesitation to set aside the impugned judgment and decree passed by the trial court, First Appellate Court and the High Court. The suit stands dismissed. The appeal is allowed. The parties to bear their own costs as incurred.

.....**J.**  
**(ARUN MISHRA)**

.....**J.**  
**(VINEET SARAN)**

**NEW DELHI,**  
**DECEMBER 07, 2018.**

ITEM NO.5

COURT NO.6

SECTION XV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 15455 of 2015

RAJASTHAN HOUSING BOARD & ANR.

Petitioner (s)

VERSUS

CHANDI BAI & ORS.

Respondent(s)

Date : 07-12-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA  
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s) Ms. Madhurima Tatia, AOR

For Respondent(s) Mr. Kapil Joshi, Adv.  
Ms. Manju Jetley, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed  
of.

(JAYANT KUMAR ARORA)  
COURT MASTER

(JAGDISH CHANDER)  
BRANCH OFFICER

(Signed order is placed on the file)