

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2224 OF 2015**

Mahammad Amin Husainmiya Mulla & Ors.	..Petitioners
Vs.	
Mahammad Hanif Ismile Mulla & Ors	..Respondents

Mr. Sachin Punde for the Petitioners

**CORAM : R. M. SAVANT, J.
DATE : 10th MARCH, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-1-2015 passed by the Learned Civil Judge Senior Division, Panvel, by which order, the application for amendment of the plaint so as to incorporate a prayer seeking share in the compensation awarded for the acquisition of lands, came to be allowed.

2 The Suit as originally filed was for declaration that the Plaintiffs have ½ share in the land bearing Survey No.83 Hissa No.5A+6A and Survey No.83 Hissa No.5B. The second relief vide prayer clause (b) was a declaration that the Plaintiffs have ½ share in the amount of Rs.43,954/- which has been granted as compensation to the Defendant Nos.1 to 6 and 8. The Plaintiffs have also sought injunction that the Defendants be restrained from creating third party interest in respect of the plot allotted under the 12.5% scheme which allotment is in lieu of the acquisition of the lands.

3 Hence a reading of the prayers makes it clear that in the Suit as originally filed the Plaintiffs have claimed $\frac{1}{2}$ share in the lands as also in the compensation awarded in respect of the acquisition of lands which compensation has been received by the Defendant Nos.1 to 6 and 8. The instant application Exhibit 107 has been filed seeking amendment in the plaint in view of the award of the Reference Court in LAR No.2 of 2007. The application is founded on the fact that the Plaintiffs were not aware of the said Reference proceedings. The Trial Court considered the said application Exhibit 17 and has allowed the same by the impugned order dated 29-1-2015. The Trial Court whilst allowing the said application has observed that the Suit as originally filed is for claiming a share in the compensation and since the compensation was increased by the Reference Court, the amendment was required to be allowed for a complete and effectual adjudication of the dispute between the parties.

4 The Learned Counsel for the Petitioners while assailing the impugned order would contend that the Plaintiffs cannot seek a share in the compensation awarded and were required to file an application under Section 30 of the Land Acquisition Act. The Learned Counsel would place reliance on the judgment of this court in the matter of **Sahakar Maharshi Dagaji Ajba Patil Charitable Trust & Ors. Vs. Shetkari Sahakari Sangh Ltd. & Ors.**¹

¹ 2011(2)ALL MR 880

wherein a Learned Single Judge of this Court has held that the dispute regarding ownership of land and compensation for acquisition of suit property appropriate remedy is to make an application under Section 30 of the Act and no injunction would be granted for this purpose. The Learned Counsel would contend that the due diligence test has also not been satisfied by the Plaintiffs.

5 In my view, it is not possible to accept the contentions urged on behalf of the Petitioners by the Learned Counsel Mr. Punde. As indicated above, in the Suit as originally filed, the Plaintiffs have claimed $\frac{1}{2}$ share in the lands as well as the compensation awarded to the Defendant Nos.1 to 6 and 8. By way of the amendment what is sought is only an amendment to bring on record the adjudication that has taken place in the Land Reference proceedings pursuant to which the compensation seems to have been enhanced, whether the Plaintiffs would be entitled to the said relief is for the Trial Court to consider in the Suit. However on the said ground the amendment cannot be refused as the amendment sought has a direct co-relation with the relief sought in the Suit as originally filed. In so far as the due diligence test is concerned, it is required to be noted that it is the case of the Plaintiffs that they were not aware of the filing of the Reference proceedings for enhancement and it is only after acquiring the knowledge that they have filed the instant application. Hence in so far as the said aspect is concerned, the Plaintiffs can be said to have filed the application after having acquiring knowledge of the factum of

the compensation being enhanced and therefore cannot be said to have not satisfied the due diligence test. It is well settled by catena of Judgments of this Court as well as the Apex Court that an amendment which would result in a complete and effectual adjudication of the dispute between the parties is required to be allowed as also the amendment which results in avoidance of multiplicity of proceedings. If the said yardstick is applied to the facts of the instant case, the impugned order does not require any interference at the hands of this Court. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]