

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 2122 OF 2016  
IN WRIT PETITION NO.5297 OF 2015

(Ramesh Jemla Rathod vs. Additional Commissioner and others)

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders    Court's or Judge's orders  
or directions and Registrar's orders.

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Shri P.S.Patil, Advocate for petitioner.

Ms. H. Jaipurkar, Assistant Government Pleader for  
respondent nos.1 and 2.

Shri S.S. Dhengale, Advocate for respondent no.3.

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CORAM : P.N. DESHMUKH, J.

DATED : JULY 31, 2017

This application is filed by petitioner to effect  
amendment in the petition.

Heard learned Counsel for both sides.

Shri Patil, learned Counsel for petitioner,  
submits that issue involved in this petition is whether  
Sub-Divisional Officer is competent to decide if Sale  
Deed executed between petitioner and respondent no.3  
is in violation of provisions of Bombay Prevention of  
Fragmentation and Consolidation of Holdings Act or  
otherwise. It is contended that according to Government  
Resolution and aforesaid Act, Superintendent of Land  
Records is competent Authority to decide if sale deed is  
barred under the provisions of aforesaid Act. It is  
submitted that this being the material ground, which  
could not be incorporated in the petition, application be  
allowed by giving opportunity to petitioner to include

this as one of the grounds as even otherwise ground as aforesaid is by way of legal submissions and no new case is put forth in any manner.

Shri Dhengale, learned Counsel for respondent no.3, has opposed the application contending that by bringing such fact on record, petitioner has made an attempt to bring new facts, which were not agitated before trial Court. In support of his submissions, learned Counsel has placed reliance on the judgment of Hon'ble Supreme Court in **Panchugopal Barua and others vs. Umesh Chandra Goswami and others** (AIR 1997 SC 1041),

Judgment relied upon having distinguishing facts than the one involved in the petition, law laid down therein cannot be applied in the present case as in the case relied, defendant had raised a plea to bring prospective purchaser in a suit decided by trial Court and first appellate Court and it was held that since no question of law or mixed question of law was raised for bringing amendment to proceedings, entertaining second appeal on new plea of protection under Section 60(b) of the Easements Act was not proper.

In the petition in hand, from the nature of amendment sought to be effected, it cannot be said that new facts, which were not forming part of the earlier proceedings, are in any manner attempted to be brought on record. In fact, amendment sought to be incorporated is by way of legal submissions and would be necessary for deciding controversy involved in the petition. The civil application is, therefore, allowed.

Amendment to be carried out within two weeks.

Petitioner to serve respondents with copy of amended petition.

CIVIL APPLICATION NO.1400 OF 2016

This application is filed by respondent no.3 to place on record some documents.

For the grounds mentioned in the application and as application is not opposed by learned Counsel for petitioner, same is allowed. Respondent no.3 to take necessary steps by next date.

Stand over to 14/8/2017.

JUDGE

khj