

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7479/2018

Harikishan Chhaganlal Jhaver and others.

Vs.

M/s. Umiya Shankar Narayanji and others.

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

Court's or Judge's Orders.

Shri M.R.Johrapurkar, Advocate for petitioners.

Shri Nooral Hasan, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATED : June 21, 2019

Heard learned counsel for the parties.

The challenge in the present writ petition is to the order dated 14.08.2012 passed by the appellate Court below Exhibit 12 rejecting the application for amendment as moved by the plaintiffs.

It is submitted on behalf of the petitioners-plaintiffs that the appellate Court while rejecting the application has observed that as the property in question is situated in slum area, there is a bar to the jurisdiction of the Civil Court as per Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'the said Act'). Further, in the light of the provisions of section 41(h) of the Specific Relief Act, 1963 the relief as sought in the amendment is also barred. The learned counsel has relied upon the decisions in *Raj Kumar Bhatia Vs. Subhash Chander Bhatia, (2018) 2 SCC 87* and *Chakreshwari Construction Private Limited Vs.*

Manohar Lal, (2017) 5 SCC 212, to urge that the amendment ought to have been allowed.

The order under challenge is supported by learned counsel for the respondents by submitting that since the construction was carried out in the year 2012, the amendment as sought in the year 2018 was belated.

On perusing the material on record, it is found that the appellate Court was justified in observing that since the construction was completed in the year 2012, the amendment should have been sought diligently thereafter. It noted that the application for amendment was moved when the appeal was fixed for hearing. On that count, the appellate Court was justified in refusing to permit the amendment. At the same time, the observations made as regards location of the suit property in the slum area and the bar under Section 42 of the said Act were not necessary as the same was not the subject matter of such amendment.

By clarifying that the observations made in the context of Section 42 of the said Act and consequent bar under Section 41 (h) of Special Relief Act, 1963 would not come in the way of the plaintiffs when the appeal is finally decided, the appeal shall be decided on its own merits without being influenced by the said observations.

The writ petition thus stands dismissed. No costs.

JUDGE