

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1661 OF 2021

Mohammad Iqbal Yakubji,
Age 51 years, Occu: Agriculturist,
R/oA A/P. Khalwadi Mohalla
Sendhwa, Tal. Sendhawa, Dist. Badwani
(Madhya Pradesh).

..Petitioner
(Orig. Plaintiff)

Versus

Hari Shankar Mokale,
Age 59 years, Occu: Agriculturist,
R/o: Sanghvi, Tal. Shirpur,
Dist. Dhule.

..Respondent
(Orig. Defendant)

...

Mr. Shailesh P. Brahme, Advocate for the Petitioner.
Mr. A. S. Sawant, Advocate for Respondent.

...

**CORAM : SANDEEP V. MARNE, J.
DATED : 29th NOVEMBER, 2022.**

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By this petition petitioner challenges the order dated 09.12.2020 passed by the Civil Judge, Junior Division, Shirpur, Dist. Dhule rejecting petitioner's/plaintiff's application for amendment of plaint.

3. The suit is filed by petitioner/plaintiff for specific performance of agreement to sale dated 07.04.2007 by which defendant has agreed to sale land admeasuring 1H 98R in favour of petitioner/plaintiff. During the pendency of the suit, an area admeasuring 4800 sq. meter out of the suit land came to be acquired by National Highway Authority and compensation of Rs.10,56,000/- came to be determined. This led to filing of application by plaintiff for amendment at Exhibit-12. That application for amendment came to be rejected by the Trial Court by order dated 05.08.2011. The order remained unchallenged and attained finality.

4. In the meantime, the Additional Divisional Commissioner cum Arbitrator, Indian National Highway Authority, Nasik enhanced the amount of compensation of acquired portion of land from Rs.10,56,000/- to Rs.72,24,356/- as per order dated 06.12.2018. This triggered filing of another application for amendment at Exhibit-103 by plaintiff. The application was resisted by defendant *inter alia* on the ground that similar amendment application based on same set of facts had already been rejected by the Trial Court on 05.08.2011. The Trial Court has proceeded to reject the application for amendment at Exhibit-103 by order dated 09.12.2020 on the ground that petitioner/plaintiff sought to introduce the very same amendment which was earlier rejected on 05.08.2011, except that the amount of compensation has been enhanced from Rs.10,56,000/- to Rs.72,24,356/-.

5. Appearing for petitioner Mr. Brahme, learned counsel would invite my attention to paragraph no.7 of the impugned

order in which it is held that the amendment would not change the nature of the suit. Mr. Brahme would contend that since part of the land which is agreed to be sold by defendant to petitioner/plaintiff has been acquired, petitioner/plaintiff would step into the shoes of defendant in so far as the amount of compensation is concerned. He would therefore submit that petitioner/plaintiff has rightly filed application for amendment of plaint to claim compensation. Mr. Brahme relies upon the judgment of the Supreme Court in **Sukhbir Vs. Ajit Singh, 2021 DGLS (SC) 258**. Relying on the provisions of sub-Section 5 of Section 21 of the Specific Relief Act, 1963, Mr. Brahme would contend that petitioner/plaintiff was entitled to claim compensation at any stage of proceedings.

6. Per contra Mr. Sawant, the learned counsel appearing for respondent would oppose the petition and support the order passed by the Trial Court. He would submit that on account of rejection of similar amendment application on 05.08.2011, petitioner/plaintiff was estopped from filing one more application merely on account of enhancement of the amount of compensation. He would submit that the earlier order dated 05.08.2011 has attained finality and the same was binding on the Trial Court and that therefore, the Trial Court has rightly rejected the application for amendment. Mr. Sawant would further contend that petitioner/plaintiff has already made prayer for payment of compensation and that therefore the proposed amendment sought to be introduced was otherwise unwarranted. Relying on the judgment of the Allahabad High Court in case of **Hanuman Prasad Mishra Vs. Addl. District Judge, Court No.4, Lucknow and Ors. MANU/UP/1771/2019** Mr. Sawant

would contend that once the amendment application is rejected, on the same set of facts, second application cannot be entertained.

7. Rival contentions of the parties now fall for my consideration.

8. There is no dispute to the fact that both the amendments, the one sought in the year 2011 and the one now sought, are necessitated on account of occurrence of subsequent events. The Trial Court itself has recorded in the impugned order that the proposed amendment would not change the nature of the suit. The only difficulty that the Trial Court faced while considering the application for amendment filed by petitioner/plaintiff was its earlier order dated 05.08.2011.

9. Immediately upon acquisition of part of suit property and initiation of compensation amount of Rs.10,56,000/- petitioner/plaintiff moved an application for amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 as well as for impleadment of National Highway Authority of India under the provisions of Order I Rule 10 of Code of Civil Procedure, 1908. The said application came to be rejected by the Trial Court by its order dated 05.08.2011 holding that petitioner/plaintiff has already prayed for alternate relief of compensation. It was also held that the Land Acquisition Officer of National Highway Authority of India was not a necessary party to be impleaded in the suit. On this ground the Trial Court proceeded to reject the application for amendment by its order dated 05.08.2011. It is an admitted position that the said order was not challenged by petitioner/plaintiff and the same attained finality.

10. Later, the amount of compensation in respect of acquired portion of the land came to be enhanced to Rs.72,24,356/- by order dated 06.12.2018. The petitioner/plaintiff therefore sought to file one more application for amendment with a view to incorporate facts as well as prayer relating the subsequent events occurred in the year 2018. In addition to the averments relating to enhancement of compensation, petitioner/plaintiff also proposed amendment for payment of entire amount of compensation of Rs.72,24,356/- to himself.

11. There is no dispute to the position that the acquired portion of the land admeasuring 4800 sq. meter forms part and parcel of the land which the defendant agreed to sell in favour of petitioner/plaintiff. If that portion of the land was not acquired, the entire suit property admeasuring 1H 98R would have been directed to be transferred by the Trial Court in favour of petitioner/plaintiff in the event of the suit of petitioner/plaintiff being decreed. On account of acquisition of part of the land now even if petitioner/plaintiff succeeds in the suit and the Court orders specific performance of the agreement, that portion of acquired land of admeasuring 4800 sq. meter would still not be vested in favour of petitioner/plaintiff. Thus by subsequent fortuitous act of acquisition of land during the pendency of the suit, petitioner/plaintiff would be deprived of getting entire suit property transferred in his name, even if he succeeds in the suit. In my view in such situation the only way to provide a solace to a successful plaintiff is to award the entire amount of compensation of the acquired portion of land while decreeing the suit. I am supported in my view by the judgment of the Apex Court in **Sukhbir Vs. Ajit Sing** (supra) in which similar issue has been

dealt with. The Apex Court has relied upon its earlier judgment in **Jagdish Singh Vs. Natthu Sing, JT 1991 (5) SC 400** in which it is held in paragraph no.30 as under:

“30. We accordingly confirm the finding of the High Court that respondent was willing and ready to perform the contract and that if was the appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest, less a sum of Rs.1,50,000 (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount to be paid to the appellant in respect of his service, time and money expended in pursuing the legal claims for compensation.”

12. After considering its judgment in **Jagdish Singh Vs. Natthu Sing** (supra), the Apex Court in **Sukhbir Vs. Ajit Sing** (supra) has held in paragraph nos.9, 10 and 11 as under:

“9. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case in hand, it cannot be said that the High Court has committed any error in modifying the decree for specific performance. As rightly held by the High Court, as such, the plaintiff will be deemed to be in the shoes of the defendant and therefore shall be entitled to the amount of compensation, determined and awarded under the provisions of the Land Acquisition Act.

10. Now so far as the submission on behalf of the appellant that as compensation has not been specifically prayed by the plaintiff in the suit, the plaintiff shall not be entitled to any amount of compensation even considering Section 21 of the Specific Relief Act. The aforesaid has no substance. The decree for compensation is passed as an alternate decree and in lieu of the decree for specific performance.

11. Now so far as the amount of compensation is concerned, as observed by this Court in the case of Jagdish Singh (supra), the compensation determined and awarded under the Land Acquisition Act may safely be taken into consideration.

Therefore, the High Court has rightly observed and held that the plaintiff shall be entitled to the entire amount of compensation awarded under the Land Acquisition Act together with interest and solatium. However, at the same time, the defendant – original land owner shall also be entitled to the deduction therefrom of money value of the services, time and energy expended in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award. As such, nothing is on record to suggest that any expenses have been incurred by the appellant. However, in the facts and circumstances of the case and considering the decisions of this Court in the cases of Jagdish Singh (supra) and Urmila Devi (supra), ends of justice will be served if the plaintiff is awarded the entire amount of compensation determined under the Land Acquisition Act together with interest and solatium less Rs. 2,50,000/- + Rs.50,000/- (towards the balance sale consideration).”

13. Since petitioner/plaintiff would be stepping into the shoes of defendant upon his suit being decreed for specific performance, it is necessary to incorporate the prayer for payment of entire amount of compensation awarded by the National Highway Authority of India in favour of petitioner/plaintiff. The amendment in my opinion, therefore, is necessary for the purpose of determining real question of controversies between the parties.

14. I must note that the principles relating to amendment of pleadings have been summarized by the Apex Court in its recent decision in **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt Ltd.** 2022 SCC OnLine SC 1128 as under:

70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi*, 2022 SCC OnLine Del 1897).

15. Considering the above principles, in my view, the Petitioner's application seeking amendment of plaint was clearly grantable in ordinary circumstances.

16. What is left now is to decide about the objections of Mr. Sawant about the dismissal or rejection of the similar application previously filed by petitioner/plaintiff on 05.08.2011. True it is that the nature of amendment earlier sought and rejected on 05.08.2011 is almost identical to the amendment now sought to be introduced, albeit the two differences being the quantum of amount of compensation and non impleadment of the Land Acquisition Officer of National Highway Authority of India. The Trial Court may be right in not entertaining subsequent application for amendment filed by petitioner/plaintiff as it is bound by its own order earlier passed on 05.08.2011. However, since I have already arrived at a conclusion that the amendment sought to be introduced is necessary for the purpose of determining the real question of controversy between the parties, the technical reason of earlier rejection of similar amendment on 05.08.2011 is required to be ignored. If this course of action is not adopted, the same would lead to an absurd situation where upon succeeding in the suit and earning a decree for specific performance of agreement to sale, petitioner/plaintiff would neither get conveyance of land admeasuring 4800 sq. meter nor the price/compensation thereof. On the other hand, if technicality of earlier rejection of similar amendment application on 05.08.2011 is ignored, the same would subserve the ends of justice and would enable petitioner/plaintiff to claim complete relief in his suit.

17. The objection of Mr. Sawant that there is already a prayer for compensation in the Plaint is clearly misconceived. That prayer is for awarding compensation against the defendants if the specific performance fails. But relevant issue here is the adverse consequences arising out of acquisition of part of land if the pl succeeds in prayer for specific performance. The amendment would take care of the latter eventuality.

18. The petition therefore, succeeds. The order passed by the Civil Judge, Junior Division, Shirpur dated 09.12.2020 on application at Exhibit-103 is set aside. The petitioner's/plaintiff's application at Exhibit-103 for amendment stands allowed in terms of prayers made therein. The amendment to be carried out within four weeks from today. The defendant shall be at liberty to file additional written statement, if he desires so.

19. Rule is made absolute in above terms.

(SANDEEP V. MARNE)
JUDGE