

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6298 OF 2022

ANAND
SUDHAKAR
SUDAME

Shevanti Dattatraya Patil & ors.

.Petitioners

Vs.

Babu Mahadu Patil & ors.

.Respondents

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SUDHAKAR
SUDAME

Date: 2023.08.03
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Mr. Anilkumar K. Patil, Advocate, for the Petitioners
Mr. Raju Suryawanshi, Advocate, for Respondent Nos. 1 & 2

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 26.07.2023

P. C.

. Registry has not placed the papers of the present Petition before this Court. However, considering the limited controversy arising in the present Petition, with the consent of both the parties, a copy of the Petition tendered across was taken by this Court and the matter was heard.

2. The challenge in the Petition is to the order dated 21.09.2021 passed by the learned C. J. J. D., Wada, rejecting the Petitioners' application seeking amendment of the plaint for the purpose of bringing the subsequent developments on record. The Petitioners are the original Plaintiffs, who had preferred a suit, being R. C. S. No. 81 of 2018. The case of the Plaintiffs in the plaint is that by reason of oral partition, certain property came

to the share of the Plaintiffs and taking advantage of the mutation entry in favour of Defendant No. 1, the compensation in respect of land, if acquired would be taken by the Defendant No.

1. The relief which was sought in the suit was for a declaration of the oral partition and the relief was also sought that in the event, compensation if received for acquisition of the land by Defendant No. 1 during pendency of the suit, the same to be deposited before the trial Court. The application for amendment came to be filed on 04.11.2019 seeking to place on record the subsequent developments of 29.05.2019 that the Land Acquisition Officer has paid compensation of about 3,50,00,000/- to the Defendant No. 1. The application for amendment came to be rejected by the trial Court on the ground that the provisions of Section 3 of the National Highways Act, 1996 vests the competent authority to determine the apportionment and entitlement in respect of the compensation for acquisition of land.

3. Learned counsel for the Petitioners points out the averments in the plaint and would contend that a specific relief was sought in respect of the compensation to be received for acquisition of the land. He would further contend that amendment in question seeks to bring on record the subsequent

developments and being, pre-trial amendment, the same ought to be liberally allowed.

4. Per contra, learned counsel appearing for the Respondents points out that the trial Court has held that the jurisdiction vests with the competent authority under the provisions of the National Highways Act, 1996 and as such, the amendment which in fact would in respect of compensation granted for the acquisition cannot be adjudicated by the trial Court.

5. Considered the submissions.

6. Perusal of the averments of the plaint would indicate that foundation as regards the compensation to be released for the acquisition of land has already led in the pleadings. In addition, there is a specific relief which has been claimed that in event, a compensation is received by the Defendant No. 1, the same to be deposited in the trial Court pending the hearing and disposal of the suit. The amendment seeks to bring on record the subsequent development which has taken place on 29.05.2019 and being, pre-trial amendment as the subsequent development

ought to have been liberally allowed. The trial Court has rejected the application on the ground that it is the competent authority under Section 3 of the National Highways Act, which will be empowered to deal with the question of entitlement of the compensation. In my view, that amounts to going into the merits of amendment which is not permissible at the stage of deciding as to whether the application under Order VI, Rule 7 of the Code of Civil Procedure, 1908 can be allowed. It is well settled by catena of decisions that pre-trial amendment ought to be liberally allowed and in the present case, same is also a subsequent development.

7. In the light of the above, the impugned order dated 21.09.2021 is clearly unsustainable and is hereby quashed & set aside. The application below Exh. 41 stands allowed. Needless to clarify that Respondent No. 1 will be permitted to file an additional written statement raising an objection to the proposed amendment that the Civil Court does not have jurisdiction to decide the question of entitlement. All rights and contentions of the parties are expressly kept open.

(SHARMILA U. DESHMUKH, J.)