

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

WRIT PETITION NO. 2141 OF 2023

Sachin Vinayak Dalvi and anr__ Vs. __ Prabha Suryakant Dalvi and ors

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

Court's or Judge's orders

Mr. P.M.Shukla, Advocate for petitioner
Mr. N.R.Bhishikar, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 13/07/2023

1] The petition challenges the order dated 16.3.2023 (pg.91) passed below Exh. 224, an application for amendment of the plaint, which has been rejected by the learned Trial Court on the ground that the earlier application of a similar nature at Exh. 220 was rejected.

2] Mr. Shukla, learned counsel for the petitioner submits that the basic plea which was sought to be raised in the application below Exh. 220 was different than what was sought to be raised in the present application at Exh. 224. This is opposed by Mr. Bhishikar, learned counsel for the respondent.

3] What was sought to be raised in Exh.220 was the description of the entire property of Gat no. 142/1 admeasuring 1.19 HR, whereas in the present application the subsequent event of land admeasuring of 1.16 HR, out of Gat No.142/1 having been acquired by

the National Highways under the award dated 14.8.2020, is sought to be brought on record. It is therefore apparent that there is difference between the two applications.

4] Since the suit is for the declaration that the petitioner should not be dispossessed from the suit field without following due process of law, the factum of acquisition of the major portion of the suit property by the National Highways during the pendency of the suit would be something which would be necessary to be considered for molding the relief, considering which the impugned order is hereby quashed and set aside and Exh. 224 is allowed at the costs already deposited.

5] Petition is allowed in above terms. No costs.

JUDGE

Rvjalit