



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7072 OF 2022

Dnyanoba Sambhaji Chalwad

VERSUS

The Competent Authority Of National Highway Project And
Sub Divisional Officer And Others

- Mr. A. N. Sabnis h/f Mr. V. D. Gunale, Advocate for the Petitioner
- Mr. R. B. Bagul, Advocate for the Respondent No. 1
- Mr. S. V. Dixit, Advocate for Respondent No. 2

CORAM : R.M. JOSHI, J

DATE : DECEMBER 03, 2024

PER COURT :

1. This Petition takes exception to order passed below Exh. 131 in RCS No. 610/2018 whereby application was filed by Respondent in LAR No. 19/2020 for amendment to the written statement. Since said application came to be rejected by impugned order, this Petition is filed.

2. The facts, which led to the filing of this Petition, can be narrated in brief as under:-

It is the case of the Petitioner that his father was the owner and possessor of the land old Survey No. 56/B. His father sold land admeasuring 1 Acre and 39R from the said survey to the husband of the

Respondent No. 2 by sale deed dated 20.01.1971. The said old survey no. 56/B came to be converted in Survey Nos. 72/E and 72/B. Respondent No. 2 filed an application to Respondent No. 1 that she is entitled to receive compensation in respect of 40R land being sole owner thereof. Petitioner and Respondent Nos. 3 to 6 filed objection and claim compensation for the acquired land by National Authority. Respondent No. 2, therefore, filed Writ Petition No. 1340/2019 for seeking necessary direction to the competent authority to make reference under Section 3(H)(4) of the National Highways Act. The said Writ Petition was disposed of with said directions. As per the directions issued by this Court by order dated 24.02.2020, Respondent No. 1/Competent Authority made reference of the said dispute to the competent Court. The proceeding was registered as LAR No. 19/2020 before Civil Judge, Senior Division, Latur. The said proceeding was tagged along with RCS No. 610/2018. An application came to be filed vide Exh. 131 by Petitioner for seeking amendment to the written statement filed by him vide Exh. 20 in LAR No. 19/2020. The said application came to be rejected.

3. Learned Counsel for the Petitioner submits that the law on the point of amendment to the written statement is fairly settled to say that amendment to the written statement should be liberally allowed. It is his further submission that the amendment sought by the Petitioner is necessary for the decision of the proceeding. It is contended that there is specific averment in the application Exh. 131 that certain documents were not available with the Petitioner to file proper written statement. As such, he claims for interference in the impugned order.

4. Learned Counsels for Respondents supported the impugned order.

5. There cannot be any dispute made with regard to the proposition sought to be canvassed on behalf of Petitioner that the written statement needs to be allowed to be amended liberally as compared to the amendment to the plaint. However, that does not give unfettered right to the Defendants to amend the written statement at any stage of the proceedings. There is no dispute about the fact that the written statement came

to be filed vide Exh. 20. It is sought to be contended on behalf of the Petitioner before the Trial Court that for want of certain documents the amendment now sought could not be made as a part of the pleadings of the written statement. In this regard, perusal of the application shows that there is no reference made as to which documents were not available with the Petitioner at the time of filing of the written statement. Pertinently, no such documents are produced along with application. In order to seek amendment to the written statement, there ought to have been genuine reasons made out by the Applicant/Petitioner.

6. In so far as the contention of the Counsel for the Petitioner about order passed by Collector is concerned, it indicates from the record that the said order of the Collector was passed before filing of the written statement and the said fact was within the knowledge of the Petitioner. Pertinently, evidence is already led by the parties and as such, unless due diligence is shown, as expected by the proviso to Order VI, Rule 17 CPC, Court has no right to allow any application after commencement of the trial. Thus, for

want of showing any due diligence and also making out a case for causing amendment to the written statement, the application for the amendment ought to have been rejected and rightly rejected by the Trial Court.

7. In view of above discussion, this Court finds no perversity in the impugned order. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)