



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

WRIT PETITION NO.7054 OF 2011

1. Mallikarjunappa s/o Sidramappa Bidwe,
Deceased through his legal heir
Shivshankar s/o Mallikarjunappa Bidwe,
Age: 58 years, Occu.: Business,
R/o.: Latur.
2. Sambappa s/o Trimbakappa Girwalkar,
Age: 80 years, Occu.: Agri. & Advocate,
R/o.: Latur.
3. Dr. Sow. Sarojini 2/o Sambappa Girwalkar,
Age: 74 years, Occu.: Medical Practioner,
R/o.: Latur.
4. Yogesh @ Trimbak s/o Sambappa Girwalkar,
Age: 34 years, Occu.: Agri.,
R/o.: Latur.
5. Channabasweshwar Trust, Latur
Through its Trustee.
6. Gopalkrishna Trust, Latur,
Through its Trustee.

..Petitioners
(Orig. Plaintiffs)

Versus

1. The Collector,
Latur, Dist. Latur.
2. The Agricultural Produce Market Committee,
Latur, Dist. Latur,
Through its Secretary.
3. The Deputy Director of Marketing,
Central Building, Pune.
4. M/s. Ram Nivruti Reddy,
Latur, through its Partner,
Laxman s/o Nivruti Reddy,
Age: 41 years, Occu.: Commission Agent,
R/o.: Latur.

5. M/s. K. M. Shaha,
Latur, Through its Partner,
Govindlal s/o Mohanlal Shaha,
Age: 51 years, Occu.: Commission Agent,
R/o.: Latur **(Deleted as per order
dated 25.01.2024)**
6. Gulabbai Thoshetti,
Age: 73 years, Occu.: Agril, & Household,
R/o: Latur, Tq. & Dist. Latur.
7. Baswanappa @ Shivappa Gundappa Bargale,
Age: 70 years, Occu.: Agril,
R/o.: Latur, Tq. & Dist. Latur.
8. Vishwanath s/o Gundappa Bargale,
Deceased through his legal heir
- 8/1. Kasturbai w/o Vishanath Bargale,
Age: 68 yrs., Occu.: Household,
R/o. Latur, Tq. & Dist. Latur.
- 8/2. Minakshi Seshrao Birajdar,
Age: 39 yrs., Occu.: Household,
R/o. Latur, Tq. & Dist. Latur.
9. Shashikalabai 2/o Sidramappa Mitkari,
Age: 66 years, Occu.: Household,
R/o.: Latur, Tq. & Dist. Latur.
10. Rajkumar s/o Gundappa Bargale (Died)
- 10-A. Indubai w/o Rajkumar Bargale,
Age: 48 years, Occu.: Household,
R/o.: Latur, Tq. & Dist. Latur.
- 10-B Ganesh s/o Rajkumar Bargale,
Age: 20 years, Occu.: Education,
R/o.: Latur, Tq. & Dist. Latur.
- 10-C. Ashwini D/o. Rajkumar Bargale,
Age: 25 years, Occu.: Education,
R/o.: Latur, Tq. & Dist. Latur.
11. Kondabai w/o Suryakant Yelge,
Age: 56 years, Occu.: Household,

R/o.: Latur, Tq. & Dist. Latur.

12. Madol s/o Gundappa Bargale,
Age: 50 years, Occu.: Agri.,
R/o.: Latur, Tq. & Dist. Latur.

..Respondents
(Orig. Defendants)

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Mr. S. V. Natu, Advocate for Petitioners.

Mr. S. P. Joshi, AGP for Respondents-State.

Mrs. P. G. Sontakke, Advocate for Respondent Nos.6, 7, 9, 10A to 10C, 11 and 12.

Respondent No.4 is served.

Respondent No.5 is deleted.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th JULY, 2025.

JUDGMENT:-

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

2. The present Writ Petition takes exception to order dated 02.07.2011 passed by learned Civil Judge Senior Division, Latur below Exhibit-214 in Special Civil Suit No.249/1984, thereby directing addition of respondent nos.6 to 12 as plaintiffs in suit.

3. In nutshell, facts leading to present Writ Petition are as under:

The petitioners are owners of land Survey No.141/2 admeasuring 14 acres and 14 gunthas. Out of land within ownership of petitioners, 12 acres 7 gunthas land has been acquired for Market Yard by State Government in the year 1979. The respondent nos.1 to 3 encroached on additional land

admeasuring 23 R from Survey No.141/2 and raised construction thereon. The petitioners filed Special Civil Suit No.249/1984 seeking decree of perpetual and mandatory injunction against respondent nos.1 to 3. The respondent nos.1 to 5 appeared in suit and filed written statement. Eventually, issues were framed. The petitioners tendered evidence affidavit. At this stage, respondent nos.6 to 12 filed application Exhibit-214 seeking direction against petitioners to add them as plaintiffs on the ground that one Laxmibai was tenant of land and applicants being her legal representatives are interested in suit property.

The petitioners opposed application for intervention. However, Trial Court allowed application directing addition of respondent nos.6 to 12 as plaintiffs in suit.

4. Mr. Natu, learned Advocate appearing for petitioners submits that Trial Court erroneously assumed that Late Gundappa was tenant over suit land and compensation is paid to his wife Laxmibai as per order passed in Land Acquisition Reference No.311/1979, therefore, petitioners are interested persons. Mr. Natu submits that land in question was reserved for non-agricultural and industrial development by State Government under Section 88(1)(b) of Maharashtra Tenancy and Agricultural Lands Act, 1948. Therefore, provisions of Tenancy Act does not apply. He would further submit that only because Laxmibai was

given share in compensation in respect of acquired land, respondent nos.6 to 12 cannot claim any right in respect of land beyond acquisition from Survey No.141/2, which is encroached by respondent nos.1 to 3. According to Mr. Natu, respondent nos.6 to 12 are neither necessary nor proper parties.

5. Per contra, Mrs. Sonatakke, learned Advocate appearing for respondents submits that Award passed in Land Acquisition Reference Nos.311/1979 and 312/1979 specifies right of respondents over land Survey No.141/2. Therefore, Trial Court was justified in directing their addition in suit.

6. Having considered submissions advanced, it can be observed that there is no dispute that petitioners are owners of land Survey No.141/2 admeasuring 14 acres and 14 gunthas. As per acquisition took place in the year 1979 for Market yard, 12 acres 7 gunthas land is subjected to land acquisition award and possession is handed over to Government. Balance 2 acres and 14 gunthas land still left in ownership of petitioners. The petitioners filed Special Civil suit No.249/1984 before Civil Judge Senior Division, Latur against respondent nos.1 to 5 seeking relief of perpetual and mandatory injunction in respect of area admeasuring 23 R out of balance land from Survey No.141/2. The decree of perpetual injunction and possession of encroached area of 23 R is sought against respondent nos.1 to 5.

7. The respondent nos.12 to 16 are legal heirs of Gundappa and claim that Gundappa was tenant over land Survey No.141/2 and thereafter, Laxmibai continued her possession, eventually, in Land Acquisition Reference No.311/1979, share of compensation was given to Laxmibai against acquisition of 12 acres 7 gunthas for Market Yard. However, there is nothing on record to show that so far as suit land admeasuring 2 acres 14 gunthas left behind after acquisition out of Survey No.141/2, Laxmibai had any right, more particularly tenancy right. Even assuming that Laxmibai had any semblance of tenancy right, controversy in present case does not require presence of respondent nos.6 to 12 for adjudication of suit. The petitioners, who are owners of land are litigating against respondent nos.1 to 5/alleged encroachers of 23 R land from Survey No.141/2. Therefore, even decree of possession is passed, the tenancy right, if any, with respondent nos.6 to 12 would not be prejudiced.

8. Order I Rule 10 of Code of Civil Procedure empowers Court to issue direction for addition of any party to the suit or proceeding, if presence of such party is necessary for adjudication of dispute involved in suit. Apparently, for adjudication of claim as to removal of encroachment and possession of encroached land, presence of respondent nos.6 to 12 would not be necessary. They do not have independent right in suit property, particularly when,

they are claiming tenancy right through petitioners. In that view of the matter, learned Trial Judge has committed patent illegality while directing petitioners to amend plaint and add respondent nos.6 to 12 as plaintiffs in suit.

9. In result, Writ Petition is allowed in terms of prayer Clause (B).

10. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2025