

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

Hon'ble Justice Shampa Sarkar

CO 307 of 2021

Winsher Tie-Up Private Ltd. and another

vs.

M/s. GTR Company Private Ltd. and others

For the Petitioner	: Mr. Surajit Nath Mitra, Sr. Adv. Mr. Aniruddha Chatterjee, Sr. Adv. Ms. Noelle Banerjee, Adv. Mr. Arnab Sardar, Adv. Mr. Vivek Murarka, Adv.
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For the Howrah Municipal Corporation.	: Mr. Saptanshu Basu, Sr. Adv. Mr. Kaushik Dey, Adv. Mr. Soumyajit Mishra, Adv.
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Judgment reserved on	: 27.03.2026
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Judgment pronounced on	: 10.04.2026
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Judgment uploaded on	: 10.04.2026
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Shampa Sarkar J.:-

1. The petitioners are the defendant Nos.1 and 2 in Title Suit No. 658 of 2020. The said title suit is pending before the learned Civil Judge(Senior Division) 2nd Court at Barasat.
2. The opposite party No.1 as plaintiff filed the said suit for recovery of possession and permanent injunction under Section 6 of the Specific Relief Act, 1963. The hearing of the application for temporary injunction was fixed on January 28, 2021. The plaintiff/opposite party No.1 filed

four applications. By three different applications, the plaintiff prayed for amendment of the plaint, the injunction application and the application for local inspection. The fourth application was for deferring the hearing of the injunction application till the disposal of the amendment application. By order dated January 28, 2021, the hearing of the injunction application was deferred. The ad-interim order of injunction was vacated as the learned court was of the opinion as the ad interim order was passed in respect of a property which was allegedly incorrect, the ad interim order did not deserve to be extended.

3. The applications for amendment came up for hearing on February 1, 2021, when the learned trial judge allowed the said applications, thereby, permitting the plaintiff to amend the plaint, the injunction application and also the application for local inspection. Aggrieved by the aforementioned order, the petitioners preferred this revisional application.
4. Mr. Surajit Nath Mitra, learned Senior Advocate had assailed the order on various grounds. It was contended by Mr. Mitra that, the suit was for recovery of possession. In the said suit, the pleadings with regard to the area under the possession of the plaintiff being the staff quarters of their workers, and the area from which the workers were dispossessed, had not been clearly mentioned. The pleadings were insufficient, devoid of merits and lacking in material particulars. Taking the court through several paragraphs of the said plaint, Mr. Mitra submitted that vague and stray allegations were made with regard to the alleged dispossession. On

the one hand, the plaintiff stated that staff quarters had been erected on the south west corner of the land measuring 10 acres at 37, Dumdum Road, whereas in the other paragraphs, a contrary stand was taken, to the effect that, the dispossession took place from the said plot, when the defendants had built a wall on the western side of the premises adjacent to the staff quarters. The averments in paragraph 12 of the plaint were vague, confusing and lacked clarity. The plaintiffs spoke about four big ponds over ten acres of land and also mentioned the presence of a factory operating therefrom. Mention had been made of other ponds in the western and the northern side of the factory area. Allegation was made that, by constructing a 30 feet wide road, the factory shed was intersected. The allegation that, on the night of December 14, 2020, the defendants assembled with JCB machines and demolished the staff quarters and thereafter, started erecting a brick-built boundary wall thereby enclosing the demolished area, lacked specifications. The plaintiff averred that the staff quarters were situated in the southwest corner, but on the other hand the allegation was that the demolition was effected in order to raise a wall on the eastern part of the demolished portion. Such averments, if read together, would indicate that the plaint case was nothing but a concocted story. The plaintiff was never in possession of the area over which the defendants had constructed the wall and as such the suit was bound to fail.

5. It was next contended that, on the basis of ambiguous pleadings, the suit property was described at page 12 of the plaint. Learned senior Advocate

submitted that, as the plaint case was a false and fabricated story, the schedule was equally confusing and vague. The prayer for amendment of the schedule gave rise to a definite conclusion that, the plaintiff was completely unsure about its own case. The schedule as was originally mentioned in the plaint and subsequently sought to be amended were indefinite.

6. Neither the original description of the suit property nor the subsequent description which was sought to be incorporated in the plaint by amending the alleged schedule, afforded any clarity as to the portion from which the plaintiff alleged dispossession. Mr. Mitra thus submitted that, the learned court erred in holding that the amendment was formal in nature and was not inconsistent with the pleadings. The learned court also erred in holding that, the amendment would not change the nature and character of the suit. The finding of the trial court that, even if there was vagueness in the schedule, the appropriate stage for deciding the merits of the plaint case would be at the final hearing of the suit and not at the stage of allowing an amendment, was wholly erroneous.
7. Mr. Mitra submitted that reliance on the decisions of the Hon'ble Supreme Court were misplaced as those decisions would not apply to the facts of the present case. Amendments must be allowed in order to bring on record facts which were germane for adjudicating the real controversy between the parties. In the present case, the controversy between the parties did not find any definite expression in the plaint case. The plaint, read as a whole, would lead a reasonable man to arrive

at a conclusion that the same did not disclose any cause of action. The pleadings were erratic, conflicting and obscure. Even if the amendment of the schedule was allowed, the description of the property would remain inconclusive. The schedule would not match with the averments at paragraphs 11,12,13,14,15 and 18 of the plaint. Without determining as to whether the amendment was bona fide and would be necessary for adjudication of the real controversy between the parties, the learned trial court mechanically allowed the amendment, six months after the accrual of the cause of action. The learned court failed to appreciate that a person who claimed dispossession, should at least be aware of the area from which he was dispossessed. The suit was based on possession and consequent dispossession. The subject matter of the suit was dispossession from a portion over which the workers of the plaintiff were in settled possession. The plaintiff ought to have been able to identify the portion before filing the suit. Suddenly, after six months from filing of the suit, the plaintiff could not have changed its mind, inter alia, seeking to incorporate a different portion of the land as the area from which the plaintiff was dispossessed. Such uncertainty demonstrated that the suit was a speculative one. There was no dispossession at all, and gradually the plaintiff was seeking to alter the plaint case, being sure that the suit would fail.

8. Mr. Mitra relied on the following decisions:-

(a) *P.Sivan and Ors. Vs P. Shantha and Ors.*, decided in C.O. No.- 026 of 2018, reported in *Manu/WB/0063/2019*.

(b) Baldev Singh and Others vs Manohar Singh and Another,
reported in **(2006) 6 SCC 498.**

**(c) Revajeetu Builders and Developers vs Narayana swami and sons
and others** reported in **(2009) 10 SCC 84.**

9. The above decisions were relied upon in support of the following contentions:-
 - (a) Inconsistent averments were being sought to be introduced by amending the description of the suit property, which was not permitted in law.
 - (b) The plaintiff should have had the knowledge of the portion that was in its possession as staff quarters, and the portion from which the alleged dispossession took place should be definite. There was no room for speculation.
 - (c) Inconsistent defences could be raised in a written statement, but in case of a plaint, inconsistent averments could not be made.
 - (d) An amendment should be bonafide and necessary for proper adjudication of the disputes, which was not the case in the present suit.
10. Mr. Saptansu Basu, learned Senior Advocate for the opposite party No.1/ plaintiff submitted that the learned court neither acted illegally nor with material irregularity in allowing the amendments. Trial had not commenced. The application for injunction had not been heard. The application for local inspection was pending. At that juncture the prayer for amendment was made.

11. The contention of Mr. Mitra that, the amendment was brought in at a belated stage, that is, after six months from the date when the cause of action arose, was not tenable in law.
12. It was next contended by Mr. Basu that, instead of the word 'schedule', the property was described under the head "suit property". Incorporation of the expression 'schedule' in place of 'suit property' was a formal correction. The mistake was bona fide and the rectification was rightly allowed. It was further contended that, the merits of the amendment were not required to be looked into at the stage of disposing of an amendment application. The amendment was necessary to correct the mis-description of the property in the schedule and an obvious miscalculation. The plaintiff claimed to have been dispossessed from a particular area. This was sought to be correctly described by the amendment, upon detection of the mis-description. He referred to various averments in the plaint in order to substantiate the cause of action in filing the suit and the background of the dispute between the parties, which ultimately led to the filing of the suit.
13. The expression "an area within the boundary wall of the factory measuring about 5000 sq. ft. (115x35 sq. ft.) on the south west portion, presently demolished", suffered from certain incorrect information. The area of 5000 sq. ft. was an obvious miscalculation (115x35 sq. ft., would be 4025 sq. ft.). This was sought to be corrected. Secondly, the proper depiction of the area from which the plaintiff was dispossessed was required to be incorporated as the original expression and/or description

was incorrect. The schedule should be read as, “all that piece of parcel of staff quarter measuring about 5040 sq. ft. on the south west corner and adjacent to the Dumdum road and measuring about 4025 sq. ft. (115x35 sq. ft.) on the south west portion within the factory boundary wall”.

14. Further, in the 10th line of the said description, the expression “attached hereto” was sought to be deleted in order to incorporate the sketch map within the schedule itself. The sketch map was mentioned, but inadvertently not attached to the plaint. Such amendments could not be termed as either changing the nature and character of the suit or incorporating conflicting claims. The plaint case clearly mentioned that the factory premises was situated in the south west corner of the 10 acres of land, comprising of factory shed, structure and four big ponds. The staff quarters was the subject-matter of the suit for recovery of possession, which was allegedly demolished. The defendants tried to fill up the ponds and started raising a wall on the western side of the premises, just adjacent to the staff quarters.
15. Moreover, the contentions of the plaintiff that the defendants used JCB machines to bulldoze the staff quarters in order to access the Dumdum road by constructing a 30 ft. wide passage, was consistent with the averments in the plaint. The plaint case was that the defendants raised a high wall on the western side of the factory premises, which was towards the eastern side of the demolished portion. In any event, such issues were subject to proof. The correction of the description of the area from which the plaintiff was dispossessed, was justifiably allowed at the very

initial stage of the suit, for the ends of justice. The amendments sought to be incorporated were bona fide and necessary for adjudication of the disputes between the parties. Any mistake or mis-description of the suit property could always be corrected.

16. Mr. Basu relied upon following decisions:-

(a) ***Munsilal Rai vs Amar Nath Sen and Anr.*** reported in **2015 SCC Online Cal 10586**

(b) ***Mansoor Alam vs Dr. Maqsood Alam and Anr.*** decided in **C.O. No. 959 of 2022.**

(c) ***Mr Arvind P. Shah and Ors. vs Mussamat Zohra Hasani Vадnagarwala and Ors.*** reported in **2016 SCC Online Cal 1511.**

17. Having heard the learned Advocates for the respective parties, this court finds that the application for amendment of the plaint, the injunction application and the application for local inspection were filed before the disposal of the application for injunction. The ad-interim order of status quo was vacated by the learned trial judge by order dated January 28, 2021 as the trial court was of the view that the ad interim order of status quo was passed admittedly on an incorrect description of the suit property and should not be extended. Thus, the suit was at a preliminary stage. The amendment was neither time barred nor was such prayer for amendment hit by the proviso to Order 6 Rule 17 of the Code of Civil Procedure. Moreover, the ad-interim order was vacated. Thus, no advantage on account of such mis-description had been obtained by the plaintiff.

18. Initially, the suit property was described as hereunder:

“Suit Property

All that a piece of Staff Quarter measuring about 5040 Sq.ft & area within the boundary wall of the factory measuring about 5000 sq.ft (115x35) ft. on the South west portion (presently demolished) out of the entire 10 acres of land being premises No. 37 Dum Dum Road, being Municipal Holding No. 162 (old 142), Dum Dum Road, Cossipore Road appertaining Dag Nos. 738 739 741 744 & 748 of Khatian Nos. 921 922 & 923 respectively in Mouja Purba Sinthee, J.L. No. 22, Touzi No. 1298/2833 in P.S. Dum Dum, District North 24 Parganas specifically described in the rough sketch map attached hereto which shall form part of the plaint.”

19. The incorrect caption was sought to be amended by incorporation of the expression ‘schedule’. This was a formal correction and should be allowed.

20. The schedule of the amendment is quoted hereunder:-

“SCHEDULE OF AMENDMENT

1. At page 12 of the plaint after prayer portion the Suit property be replaced by Schedule (Suit Property)
2. In the second line of the suit property the word starting from “& ending demolished) be deleted and in its place following be inserted “ on the south West corner and adjacent to Dum Dum Road and area measuring 4025 sq.ft. (115x35 feet) on the south west portion within the factory boundary wall”
3. In 10th line of the Schedule the word starting from attached to the end be deleted and in its place the following be inserted herein below.”

21. The amended schedule indicates that the plaintiff wanted to incorporate the correct description of the portion from which dispossession was made and also rectify the miscalculation. The plaintiff wanted to depict that the staff quarters measuring about 5040 sq. ft. on the south west corner and adjacent to Dumdum Road and area measuring 4025 sq. ft.

(115x35 sq. ft.) on the south west portion within the factory boundary wall had been demolished.

22. According to the plaintiff, the original schedule suffered from a mistake.

The area was miscalculated (115x35 sq. ft.) and the fact that the said area was within the south west corner adjacent to Dumdum road within the south west portion of the factory boundary wall was sought to be incorporated to give a proper identification and definiteness to the portion of the premises from which dispossession had been alleged. Such incorporation of the facts align with the pleadings, but the correctness thereof shall be subject to proof in the suit.

23. The relevant portions of the plaint are quoted below, which will demonstrate that the amendments were not inconsistent with the plaint case. No new cause of action was introduced. No inconsistent pleadings were being introduced and no admissions were being withdrawn.

“1. That the plaintiff is a company incorporated under the Companies Act, 1956. The company was first set up at Howrah sometime in the year 1922 under the reign under British India and afterwards the same was shifted to 37 Dum Dum Road, P.S. Dum Dum, Kolkata- 700 037 in the year 1935 and since such time the plaintiff company have been running its manufacturing business over the vast land measuring about 10 acres without any break to the knowledge of the rest of the world.

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4. That in order to meet the demand of the Indian Railway in time the plaintiffs have employed huge workers and arranged one workers shed within the factory site where the workers coming outside the state are staying inside the factory premises for whose accommodation the plaintiff had erected a staff / family quarter on the South west corner of the aforesaid 10 acres of land comprising factory shed, structures, as many as four big ponds. The said Staff Quarter is the subject matter of the suit hereinafter referred to as the suit premises.

5. That sometime in the year 2017 some persons having vested interest were trying to fill up the big ponds with earth in order to make several multistoried buildings for which the plaintiff made complaint before several authorities including the competent authority of West Bengal Inland Fisheries Act, 1984 and South Dum Dum Municipality. Upon physical inspection report was submitted wherein it was reported that the pukur was being filled up by earth with JCB machine.

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11. That pertinent it to mention that the factory shed of the plaintiff is situated at the southern part of the vast land just adjacent north to the Dum Dum road. There were as many as four big ponds within the 10 acres of land. Out of said 10 acres the plaintiff's factory are being run in specific land measuring 04 acres within which one of the four ponds are lying. Out of other three ponds one is on the western side of the ponds falling with the factory area while other two are lying on the North of the plaintiff's factory area. Which is the back side of the factory. In order to make huge construction over the property the defendants since past few years are trying to fill up the pond standing on the west of the pond inside the factory area despite vehement protest by the neighboring people. Numerous mass petition as well as representation by the plaintiff failed to bring any positive result whereby the rampant filling up the pond could be arrested. Due to stoic inaction on the part of the administration the defendants with recharged enthusiasm have been able to convert the major portion of the pond into solid land. Being successful in such illegal conversion of the pond into solid land the defendants since past few months are trying to make an inroads to connect the land to the back of the factory by breaking the boundary wall of the plaintiff and to that effect they are openly holding out that said boundary wall has been made on their land, although the said boundary wall was made long before the birth of the defendants.
12. That the defendants along with their associates at their back and call came in front of the proceedings land and asked the plaintiff's staff to vacate the staff quarter so as to allow them to make construction of a pucca of 30 feet wide road intersecting the factory shed as the same is lying within their purchased land. The plaintiff's personnel politely told them that it would be better for the defendants to seek appropriate relief from the court of law and they should not do anything unlawful as during this long period of several decades the plaintiff's factory is carrying on its business with unimpeachable goodwill where numerous workers are earning their livelihood basing upon the age old factory. Before leaving the place the defendants made it unequivocally clear that they were not so fool to take the

protracted legal route rather they would take drastic steps within a short period by force.

18. That sometime in the middle part of November, 2020 some unknown persons under guidance of one Suman Mitra alias Santu a known shop owner of two wheeler repairing job were found assembling regularly in front of the staff/ family quarter on the south western corner of the company premises and they were heard saying that they would dismantle and demolish the said staff quarter and illegally encroach upon the company premises. In no time the plaintiff lodge complaint with the Dum Dum Police station on 24.11.2020 requesting them to beef up the patrolling in the locality so that stern action might be taken at the time of any such illegal actions. In the said complaint it was stated that the plaintiff were a supplier to the Indian Railways and as such irrational interference into the company quarters was creating complications in the day to day supplies to the Indian Railways.

20. That the defendants company in order to avoid the order of Executive Magistrate played a trick to bypass the restrictive order of the executive magistrate. Being advised by fertile brain the defendant filed M.P. Case No. 3288/ 2020 against one of the staffs namely Arun Mukherjee who was lodged in the staff quarter, before the Court of Executive Magistrate, Barrackpore and obtained an order directing the opposite party to not create blocking-over the common passage although it was very much within the know of the defendant No.2 that no such common passage was in existence. It is strange that although there was no direction empowering the defendant to demolish any existing structure, the defendants by way of misinterpreting the order of the Ld. Magistrate manipulated the local police station and under the cover of night on 14.12.2020 assembled along with over fifty rowdy people as well as a big JCB machine. Since CC TV were installed in the factory area covering all structures inside the factory, the mob at first broke all the camera and only thereafter drove away the said staff from the staff quarter and started demolishing the entire staff quarter by JCB Machines. On the same night the mob at the instance and direction of the defendants started erecting a big brick built boundary wall enclosing the demolished area within the rest of the land Coming to learn of such illegal demolition operation the plaintiff in a desperate attempt to stop such illegal activities rushed to the Ghugudanga Police Outpost being the nearest police camp at around 1.30 AM on 14.12.2020 but could not get any help from them. The plaintiff on the early morning reported the said incident before the Officer in charge of Dum Dum Police Station along with photographs of broken wall and the newly constructed barricade with prayer for necessary

action. At the time of reporting the plaintiff came to realise that no tangible help or assistance from the police administration was not possible as the defendants had already purchased the entire administrative high ups.

22. That having succeed in their attempt to remove the bottleneck of their intention to lay a 30 feet wide path straight through Dum Dum road to reach the extreme northern part to bring heavy truck with the earth with which they would fill up the remaining pond, the defendants have started raising high wall to the east of the demolished portion so that from outside the plaintiff cannot gauge what action was going on inside. Moreover barricade has been made denying the plaintiffs to inspect the suit premises. Most surprisingly the defendants are spreading rumour that they have recovered their portion which remains blocked by the plaintiffs. The defendants expressed that they became owner of the entire 10 acres of land by different deeds and they have every authority to deal with their property. In this regard it is submitted that in the event they purchased any property from their vendors having no semblance of possession since several decades without taking any steps to recover the possession from the plaintiffs, then simply by the strength of any deed, they have no legal authority to obtain forcible possession without due process of law.

23. That it will thus appear that the plaintiff before the dispossession from the staff quarter had been in the settled possession in or over the suit property since several decades and law of this land did not permit anybody to take forcible possession of any land by dispossessing any occupant without due process of law.”

24. As per the plaint case, the plaintiff claimed to be a company incorporated under the Companies Act, 1956. The company was first set up at Howrah and thereafter, shifted to 37 Dumdum Road, police station- Dumdum, Kolkata 700037 in the year 1935. The plaintiff was running a manufacturing business over a vast area measuring about 10 acres. Apart from the factory shed, the land also had staff quarters in the south west corner. On and from 2017, some persons started filling up the ponds in order to construct a multi-storeyed building. The plaintiff approached several authorities including the learned Executive

Magistrate, Barrackpore, alleging illegal filling up of all the ponds and also attempts to demolish the staff quarters. On the encouragement of local administration, the defendants started constructing a big wall on the western side of the premises, just adjacent to the staff quarters and upon completion of such construction, the staff were threatened and asked to vacate the quarters. Averments had been made that the defendants were trying to fill up four of such ponds which were within the 10 acres of land and within the four acres on which the factory shed had been constructed. Further allegation was that, the defendants constructed a 30 ft. wide road intersecting the plaintiff's factory shed, so that they could have access to Dumdum road. Allegation had also been made that a shop keeper known as Santu, who connived with the defendants and often gathered people on the south west corner of the staff quarters of the company premises, was threatening to demolish the rooms. On the night of December 14, 2020, the staff quarters were bulldozed and demolished with the help of JCB machines. Thereafter, the defendants started raising the wall on the eastern side of the demolished portion and hence, the suit was filed for recovery of possession, with the allegation of demolition and dispossession from the staff quarters.

25. The amendment of the schedule was an attempt on the part of the plaintiff to correctly depict the area from which the dispossession took place. The learned judge rightly held that the correctness of such statements could not be decided at the stage of considering the

applications for amendment. The plaintiff would have to prove its case at the trial, on evidence. Incorporation of the amendment would not ipso facto be acceptance of the statements made by the plaintiff. All statements made by the plaintiff would be subject to proof and the suit would be decided entirely on the evidence to be adduced by the parties.

26. Thus, this court does not find any mala fide on the part of the plaintiff in seeking to correct the alleged mis-description of the suit property in the schedule. Incorporation of the sketch map along with the schedule can also be permitted for better description, identification and demarcation of the schedule property.

27. In the matter of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*** reported in **AIR 2022 SC 4256**, the Hon'ble Apex Court laid down the principles governing amendment, in paragraph 70 of the decision. The relevant portion is quoted below:-

(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).

28. In the decision of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others*** reported in **AIR 2006 SC 1647**, the Apex Court held that

the Court was not to go into the merits of the amendment. The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

29. In the matter of ***Ganesh Prasad vs. Rajeshwar Prasad and ors.*** reported in ***2023 SCC OnLine SC 256*** it had been held that amendment should be allowed liberally.

30. The plaintiff is entitled to correct any mistake or mis-description. Such correction cannot be termed as a mala fide attempt on the part of the plaintiff to either alter the plaint case all together or resile from any admission, which had been made in the plaint. The measurement, location and the area of the property from which the plaintiff was dispossessed, was sought to be mentioned with better clarity and with proper measurements. Whether the plaint case will at all succeed is a different issue and subject to trial.

31. As a general rule, amendment should be allowed, unless the same amounts to withdrawal of admission, setting up of inconsistent pleas or when relief claimed is barred by limitation. The relevant portions of the order impugned are quoted below, which gives proper reasons as to why the amendments were allowed.

“Hd both sides, perused the materials on record.

It is seen from the petition filed by the plaintiff that the plaintiff is wanting to amend the suit property as described in the plaint, injunction petition and the local inspection petition. The amendment as sought for by the plaintiff is not of such nature by which it can be said that the same is so inconsistent with pleadings of the plaintiff that it is entirely changing the nature and character of the suit, The crux issue and the nature and character of the suit do not get vitiated in any manner whatsoever by the amendment as sought for.

I also find no reason in the submission of the Ld. Lawyer for the defendants that even if the petitions so made by the plaintiff be allowed then also vagueness of the schedule would remain and that would open floodgate of future petitions. Even if for argument's sake it be thought of that there remains vagueness in the schedule after the amendment, as stated of by the Ld. Lawyer for the defendants, then also they would be at liberty to aver the same at the appropriate stage of the trial and the case of the plaintiff would perish if the same stands established by the defendants. What can happen in future in course of the proceeding of this suit cannot be conjectured and hypothetically assessed by this Court at this stage. In view of the citation as reported in AIR 2008 Supreme Court 1147, in order to allow the prayer of the amendment the merit of the amendment is hardly a relevant consideration and it would be open to the other party to raise their objection in regard to the amendment by taking necessary steps.

It is a fact that the plaintiff ought to have been diligent enough in seeking amendment at an early stage, yet, since the proposed amendment is necessary for the purpose of bringing to the fore the real question in controversy between the parties and the same is not affecting the crux issue and or nature and character of the instant suit, the said amendment is required to be allowed.

It is a fact that in the instant case hearing of the injunction petition was done in full and at that stage these petitions have come into fore. In this regard I rely on the decision reported in AIR 2008 Supreme Court 1147, wherein the Honourable Apex Court has stated that if it is seen that the proposed amendment is necessary of bringing in fore the real controversy between the parties, the said amendment is required to be allowed, even if, there is lack of diligence in promptly seeking the amendment by the party concerned. Even if, the contention of Ld Lawyer for the defendants is taken into the contention that the plaintiff by way of the said amendment is taking contradictory plea then also in view of the citation as reported in AIR 2008 Supreme Court 1147, in order to allow the prayer of the amendment the merit of the amendment is hardly a relevant consideration and it would be open to the other party to raise their objection in regard to the amendment by taking necessary steps. So far as the point as regard to the necessity of the present amendment

for the purpose of bringing to the fore the real question in controversy between the parties is concerned, this court is of the opinion that the impugned amendment as sought for is required for the purpose of bringing the real question in controversy between the parties.

In view of all, I am of the considered view that the amendments as sought for will not in any way change the nature and character of the suit nor it will be prejudicial to the interest of the defendants. Since, though the instant petitions are made after completion of the hearing of the injunction petition and it could have been done at an earlier stage had the plaintiff been diligent enough, yet, since it is necessary for determining the real question in controversy, I am of the view that the instant petitions craving leave for making necessary amendments are required to be allowed. Hence it is.

ORDERED

that the petition dated 28-01-21 filed by the plaintiff under Order 6 Rule 17 CPC praying for amending the plaint as per the schedule of the petition be allowed on contest without cost.

that the petition dated 28-01-21 filed by the plaintiff under Order 6 Rule 17 CPC praying for amending the injunction petition as per the schedule of the petition be allowed on contest without cost.

that the petition dated 28-01-21 filed by the plaintiff under Order 6 Rule 17 CPC praying for amending the local inspection petition as per the schedule of the petition be allowed on contest without cost.

The plaintiff is allowed to amend the plaint, injunction petition and the local inspection petition according to the schedules of the petitions so filed under Order 6 Rule 17 CPC read with section 151CPC and the plaintiff is to file amended plaint, injunction petition and the local inspection petition accordingly after serving copies to the defendants.

To 02.03. 21 for filing of amended plaint, injunction petition and the local inspection petition.”

32. The scope of interference under Article 227 of the Constitution of India is very limited. The High Court, while exercising superintending power, can only decide whether the learned court had acted within the four corners of his jurisdiction or not. This court finds that the decision of the learned court is well-reasoned, based on correct parameters and also upon consideration of various decisions of the Hon'ble Apex Court. The Court passed a discretionary order.

33. In the matter of ***K. Chinnammal (dead) Thr. Lrs. Vs. L.R. Eknath & Anr.*** reported in **2023 6 SCR 831**, the Hon'ble Apex Court held as follows:-

“31. As far as the width and amplitude of powers of the High Court under Article 227 of the Constitution is concerned, we need only take note of, in praesenti, ***Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97***, and ***Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181***. In ***Estralla Rubber (supra)***, it was stated:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand* [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case *Waryam Singh v. Amarnath* [AIR 1954 SC 215 : 1954 SCR 565]. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte* [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its

jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

32. In the more recent ***Garment Craft (supra)***, this Court put it thus:

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

34. In the matter of ***M/s. Puri Investments vs M/s. Young friends and Co. and Ors*** decided in ***Civil Appeal No. 1609 of 2022***, the Hon’ble Apex Court held as follows:-

“10..... The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the

appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:-

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.”

35. In the matter of ***Ibrat Faizan vs Omaxe Buildhome Private Ltd.*** ***decided in Civil Appeal No. 3072 of 2022***, the Hon’ble Apex Court held as follows:-

“**14.1** The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97***, which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29***). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”

36. There is no quarrel with the propositions of law laid down in the decisions relied upon by Mr. Mitra, learned senior Advocate. However, I am not in agreement with Mr. Mitra on the issue that in a suit for recovery of possession, the location of the suit property i.e., staff quarters which were demolished could not be amended. An amendment to rectify the description of the suit property, which would throw more clarity on the identification of the suit property could not be said to be malafide and

impermissible in law. Only because the description of the suit property was being altered, it could not be said that the plaintiff was not aware of the location from which the dispossession took place. Allowing the amendment did not amount to changing the nature and character of the suit. If the plaintiff committed a mistake in providing the exact location/description of the suit property, such mistake could always be amended. The order impugned is upheld. Amended plaint, injunction application and application for local inspection will be filed within four weeks from date, if not already filed. Additional written statement and additional written objection/ objection to the amended injunction application as also the amended application for local inspection shall be filed within the time fixed by the learned trial court upon communication of this decision.

37. The order impugned is upheld.
38. The revisional application is hereby dismissed.
39. There will be no order as to costs.
40. Parties are directed to act on the server copy of this judgment.
41. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties, upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)