

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 520 OF 2024

Gangadas Madhavdas Vaishnav

.. Petitioner

Versus

The State of Maharashtra and Ors.

.. Respondents

-
- Mr. Shashank Shubham a/w. Mr. Ashwin V. Sakolkar, Advocates for Petitioner.
 - Mrs. V.S. Nimbalkar, AGP for the State.
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 09, 2026.

P.C.:

1. Heard Mr. Shubham, learned Advocate for Petitioner and Mrs. Nimbalkar, learned AGP for the State.

2. The order impugned in the present Writ Petition is passed below Exhibit “92” rejecting amendment Application of the Plaintiff under Order VI Rule 17 of the Civil Procedure Code, copy of which is appended at Exhibit ‘T’ – page No.55 of the Writ Petition.

3. Suit is filed for injunction on receipt of notice of eviction / demolition dated 17.05.2012. However, during the pendency of the Suit proceedings, the land on which the Suit structure / property of Plaintiff was situated was demolished for the purpose of developing highway. This development took place in the year 2018. In the year

2021, Plaintiff filed Application seeking amendment to the Suit Plaint for bringing the subsequent events on record. However, while seeking such amendment, Plaintiff sought compensation of Rs.50 lakhs. It is this proposed amendment that has not been accepted by the learned Trial Court on the ground that the said amendment would change the nature of the Suit proceedings. There is also an oblique reference to acquisition of the land beneath the Suit structure for the public purpose. However, no details of acquisition are placed on record. Mr. Shubham has vehemently argued that the Suit structure was occupied by Plaintiff since decades. That will have to be proven in trial. I cannot disagree with the limited finding returned by the learned Trial Court in the impugned order primarily because Plaintiff will have to succeed in proving that Plaintiffs are the owners of the Suit property. Since the Suit is filed for seeking permanent injunction and as informed by the learned Advocate for the Plaintiff that the Suit is at the final stage, no purpose whatsoever will be served in interfering with the order dated 13.03.2023 at this stage.

4. Needless to state that if the Plaintiff succeeds in the Suit proceeding, it shall always be open to Plaintiff to seek appropriate compensation as available to him in accordance with law considering that the Suit property has been demolished by the Defendants forcibly. Hence, keeping all contentions of Plaintiff open, the order dated 13.03.2023 is sustained.

5. In the course of submissions, Mr. Shubham, learned Advocate for Plaintiff has referred to and relied upon the decision of the Supreme Court in the case of ***Ragu Thilak D. John Vs. S. Rayappan and Ors.***¹ to contend that in the event if during the pendency of the Suit proceedings the subject matter of the Suit property is demolished, appropriate necessary amendment should be allowed by the Court and such an amendment cannot be declined since the dominant purpose of allowing such amendment is to minimise the litigation.

6. The facts of the case which are placed before me are infact completely different and are not akin to the facts in the present case. Case before the Supreme Court, *inter alia*, was pertaining to demolition of the compound wall of the Suit property belonging to the Appellant – Plaintiff therein whereas in the present case, the Suit property which is house of the Plaintiff has been deemed to be unauthorized and completely demolished in the interregnum.

7. Suit for injunction would lie only if the Plaintiff is in a position to prove their entitlement to the property. The fact that the Suit is filed in the present case challenging the notice of eviction / unauthorized occupation and demolition itself shows that Plaintiff before me will have to first succeed in proving his entitlement. Hence the ratio of the Supreme Court Judgment which pertains to grant of amendment of the Suit plaint in those facts cannot be made *ipso facto*

¹ (2001) 2 SCC 472

applicable to the facts in the present case.

8. All contentions of the Plaintiffs before the Trial Court are expressly kept open.

9. In view of the above, Writ Petition is dismissed and disposed.

[MILIND N. JADHAV, J.]

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