



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7259 OF 2025

PETITIONER :

Kalpana Parashram Ade,
Aged about 61 years,
Occ : Household,
R/o Dardanagar,
Tal. & District Yavatmal.

V E R S U S

RESPONDENTS :

1. Smt. Bharti wd/o Bharat Bajoria,
Aged about 48 years,
Occ : Household,
R/o LIC Chowk, Pitashri Subhash Dada
Bajoriya Plaza, Tal. & District Yavatmal.
2. Chetan s/o Bharat Bajoria,
Aged about 23 years, occ : Student,
R/o LIC Chowk, Pitashri Subhash Dada
Bajoriya Plaza, Tal. & District Yavatmal.
3. Prashant Bhagwandasji Bajoria,
Aged about 50 years, Occ : Business,
R/o Opp. Collector Office,
Civil Lines, Tal. and District Yavatmal.
4. Sushilabai wd/o Bhagwandasji Bajoria,
Aged about 75 years, Occ : Household,
R/o Opp. Collector Office, Civil Lines,
Tal. and District Yavatmal.

Shri Amol Patil, Advocate for petitioner.

Shri N. S. Khubalkar, Advocate for respondent Nos.1 and 2.

CORAM: ROHIT W. JOSHI, J.

DATED : 16/03/2026.

ORAL JUDGMENT :

1. Rule. **Rule** made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. The present petition takes exception to order dated 24/09/2025 passed by the learned Civil Judge, Senior Division, Yavatmal on the application at Exh. 201. The suit is for partition and separate possession. Two of the suit properties, have been acquired, after filing of the suit, one under the provisions of the National Highways Act, 1956 (for short, “NHAI Act”) and other under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “RFCTLARR Act”).

3. Initially, the plaintiffs – respondent Nos.1 and 2 had filed an application for amendment vide Exh.88 *inter alia* seeking to incorporate pleadings with respect to the subsequent development of the acquisition of two of the suit properties under the provisions of aforesaid Acts, for addition of the State of Maharashtra, Deputy Collector (Land Acquisition) and Deputy Chief Engineer (Construction), Central Railway, Ajni, Nagpur as defendants to the suit and for a direction to the aforesaid proposed defendants not to release any amount in respect of acquisition of land to the defendant No.6. Defendant No.6 has received the same by way of gift executed in his favour by the defendant No.5 who in turn had purchased the same from the defendant No.1 and his deceased father Bhagwandas.

4. The said application at Exh.88 was rejected by the learned Trial Court vide order dated 06/03/2024. The said order was challenged

before this Court vide Writ Petition No.4576/2024. This Court has partly allowed the petition vide order dated 25/04/2025, thereby permitting the plaintiffs to amend the plaint by incorporating the facts with respect to subsequent development of acquisition of land. However, the prayer clauses were not allowed to be incorporated.

5. Thereafter, the present application came to be filed in which claim for 1/3rd share and prayer clause for payment of 1/3rd compensation to the plaintiffs is sought to be incorporated. The said application came to be allowed by the learned Trial Court vide impugned order dated 24/09/2025. The defendant No.6 has filed the present petition challenging the said order.

6. The contention of Shri Amol Patil, learned Advocate for the petitioner is that with respect to the land acquired under the NHAI Act, the plaintiffs have already moved an application before the Competent Authority under Section 3-H(4) of the said Act to refer the dispute with respect to apportionment of compensation to the Principal Civil Court i.e. the District Judge. As regards the other land which is acquired under the provisions of RFCTLARR Act, the contention is that the plaintiffs have remedy under the Act to make appropriate application before the Collector for apportionment of compensation as per Sections 64 and 76 of the said Act. Shri Patil, learned Advocate for petitioner also points out that the jurisdiction of Civil Court is barred to deal with the aspect

which the authority constituted under Section 51 of the Act is competent to deal with and decide. He draws attention to Section 63 of the Act in support of his contention.

7. Shri N. S. Khubalkar, learned Advocate for respondent Nos.1 and 2 – original plaintiffs raises a preliminary objection that having moved an application for consequential amendment in response to the amendment, which is allowed by the impugned order and further in view of the fact that the said application for consequential amendment is allowed, the petitioner is precluded from challenging the said order.

8. Shri Amol Patil, learned Advocate for the petitioner states that the application for consequential amendment was filed after filing of present petition subject to outcome of present petition.

9. As regards merits, Shri Khubalkar contends that the suit for partition and separate possession was filed prior to passing of the award. He contends that the civil rights of the parties can be adjudicated only by Civil Court. He further submits that since the application for amendment filed vide Exh. 88, is allowed to a limited extent, it is obvious that the consequential prayer clauses are permitted to be incorporated.

10. It is not in dispute that the suit is filed for partition and separate possession, which is pending. It is also not in dispute that the

acquired lands are subject matter of the suit. Likewise, it is a matter of record that earlier application for amendment of plaint filed vide Exh.88 is partly allowed permitting the respondent Nos.1 and 2 / plaintiffs to amend the plaint in order to bring on record the development pertaining to acquisition of some of the suit properties. In view of earlier order, the learned Trial Court has allowed the application for amendment with respect to apportionment of compensation. At the stage of amendment, this Court does not deem it appropriate to deal with the question of jurisdiction raised by the learned Advocate for the petitioner. The ends of justice will be subserved by maintaining the impugned order permitting the amendment of plaint and by keeping all objections pertaining to jurisdiction of Civil Court and maintainability of suit with respect to prayers for apportionment of compensation open. In view of aforesaid considered opinion of the Court, the impugned order need not be interfered with.

11. However, the objections raised by the defendant No.6 / petitioner which are pertaining to jurisdiction of the Civil Court in view of the scheme of the RFCTLARR Act and NHAI Act are also relevant. It must also be stated that the defendant has also raised a particular objection with respect to the land acquired under the NHAI Act that the plaintiffs – respondent Nos.1 and 2 have also simultaneously availed of Section 3-H(4) of the Act seeking apportionment of compensation. The objections pertaining to jurisdiction of the Civil Court in the light of the

provisions of the RFCTLARR Act as also, the NHAI Act and maintainability of prayer for seeking apportionment of compensation in view of separate application being filed under Section 3-H(4) of the NHAI Act are kept open. The petitioner – defendant No.6 will be entitled to raise objections with respect to the maintainability of claim and jurisdiction of the Court on the aforesaid grounds during the course of hearing of the suit. The objections shall be decided on merits while deciding the suit.

12. In the light of the reasons and riders as recorded above, Writ Petition is dismissed. Rule stands discharged.

[JUDGE]

Choulwar