

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11937 OF 2014

Jeevandasji Guru Jamnadasji Udasin

..PETITIONER

VERSUS

The State of Mah. & ors.

..RESPONDENTS

Mr M.V. Ghatge, Advocate holding for Mr B.N. Gadegaonkar, Advocate for petitioner;

Mrs B.B. Gunjal, A.G.P. for respondents no.1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 9th March, 2015

ORAL ORDER :

The order dated 1st March, 2014, passed by Civil Judge Senior Division, Nanded, below Exh.19 - application moved by the third party for impleading him as defendant no.3 to Regular Civil Suit No.578 of 2013, is questioned by the petitioner/original plaintiff.

2. Learned Counsel appearing on behalf of the petitioner/plaintiff would urge that the scope of the suit is to the extent of examining the legality and validity of the acquisition of the land, to the extent of 3 Hectares and 20 R, out of Gat No.179, which was acquired on 20th February, 1990. According to him, by impleading defendant no.3, the scope of inquiry in the said suit cannot be enlarged, to the extent of

covering the claim of defendant no.3 who claims to be a public spirited person. In support of his contention, learned Counsel has relied on the judgment of this Court in the **Waman s/o Nago Choudhari & ors. vs. Mahadu Nago & ors.**, reported in **2010 (5) Mh.L.J. 452**.

3. Learned Counsel appearing on behalf of the petitioner would urge that the provisions of section 91 of the Code of Civil Procedure govern the issue as regards public nuisance to be taken care of. He would further urge that members of the public can pray for impleading as a party in the suit, in case a public cause is sought to be espoused.

4. By considering the above referred contention, it is noticed that defendant no.3 has come out with a case that the land was acquired in 1990 and the same was for the purpose of extension of Gavthan, to which party like defendant no.3 could be a beneficiary.

5. Once the said issue is looked into by the Trial Court, the submission of the learned Counsel for the petitioner in relation to provisions of section 91 of the Code of Civil Procedure, in my opinion, so far as the present case is concerned, will be of hardly any assistance.

6. Having considered the observations made by the learned Trial Court, impugned order dated 1st March, 2014 and the submissions

canvassed by the petitioner, it is noticed that the petitioner/plaintiff is disputing the very acquisition of the land on 20th February, 1990. In the light thereof, the petitioner has made the following prayers in the plaint :-

“1. Perpetual injunction restraining defendants, their persons and offices from causing any sort of interference and obstruction in peaceful possession and enjoyment of plaintiff over the land Gut No.179 of village Talni,Tq. and Dist. Nanded, an area 4 H,93 R within the boundaries as mentioned in claim clause.

2. Issue of injunction restraining defendants, their officers and persons for measuring, demarcating the plots and allotting the plots to any person of the land Gut No.179 of village Talni, as detail described in claim clause - 1 of the plaint.”

7. Perusal of the aforesaid prayers made in the plaint reflects that the injunction is sought against the defendants - State authorities from taking recourse to demarcating and distributing plots in the suit land to respondent no.3/defendant no.3.

8. In the light of above discussion, in my opinion, the learned Trial Court was right in exercising discretion in granting application for impleadment of defendant no.3 to the suit.

9. So far as reliance placed by the learned Counsel on the judgment of this Court in the matter of Waman (cited supra) is concerned, this Court

in paragraph 7 of the said judgment, has considered determinative test, in such a case, would be as to whether the presence of third party would be necessary for complete and final adjudication of the question involved in the case. In my opinion, once the acquisition, which is disputed by the petitioner herein is upheld or the suit of the petitioner is dismissed, the automatic consequence thereof will be that, the respondent will be entitled to claim allotment of plot in the light of prayer clause (2) of the plaint.

10. In view of the foregoing discussion, in my opinion, the order impugned does not call for any interference. The writ petition, therefore, stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

amj