

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 10517 OF 2012

SHOBHADEVI OMPRAKASH MUNDADA
VERSUS
MAHAVIR BAHUBALI KORALE AND ANOTHER

...

Advocate for Petitioner : Mr. C. R. Deshpande.

Advocate for Respondent No.1 : Mr. Adgaonkar Ravibhushan P.

Advocate for Respondent No.2 : Mr. Hon Vinayak D., Senior Counsel.

...

CORAM : **N. W. SAMBRE, J.**

DATE : 01st April, 2015.

Per Court:

1 The order of grant of amendment passed by the learned Civil Court vide order dated 16th October, 2012 in Regular Civil Suit No.662 of 2009, is the subject matter of present petition at the behest of Defendant.

2 The Plaintiff – Respondent filed a Regular Civil Suit No.662 of 2009 on the file of Joint Civil Judge (Junior Division), at Latur. In the said suit, the Respondent had made the following prayers”

“1) That, Defendant No.1 may perpetually be restrained from raising any illegal construction of first floor of her house situated at Moti Nagar Pvt. Plot No.73 and 74 M.C. No.R-436-10-7 in violation of Rules and

Bye Laws of M.C. Latur.

2) That, direction may be given to Defendant No.2 to stop illegal construction of Defendant No.1 as mentioned above.”

3 Subsequent to framing of issues and after examination-in-chief, the Respondent moved an application for amendment of the plaint vide Exhibit – 58, which is granted by the impugned order. As such, the present writ petition.

4 The learned counsel for the Petitioner Mr.Deshpande would urge that indulgence shown by the learned trial Court while granting injunction is not permissible in law as according to him, as the trial in the suit is commenced, the amendment ought not to have been granted in view of the provisions of Order 6, Rule 17. He would further urge that based on the provisions of Section 149 of the MRTP Act, the cause that is sought to be incorporated and espoused before the learned trial Court is not permissible as the orders granting sanction to the construction of the present Petitioner was passed by the competent authority, which has attained finality in view of the said provisions. In addition to above, he would urge that by granting amendment, the entire nature of the suit changes.

5 The learned counsel for the Respondents would urge that originally the suit was filed for perpetual injunction seeking an order of injunction against the Petitioner for carrying out illegal construction on the first floor of the suit property. He would urge that by way of amendment, what is sought to be incorporated, is the details in relation to the construction carried out. He would urge that once the trial Court has exercised its discretion in grant of amendment, this Court in absence of any jurisdictional error shall not interfere and prayed for dismissal of the petition.

6 Upon analyzing the submissions of the parties concerned, it is required to be noted that the Respondent filed a suit for perpetual injunction based on the title against the Defendant – Petitioner. What is claimed in the said suit is a restraintment order against the Petitioner from carrying any illegal construction on the first floor. If the said prayer is considered in light of the provisions of Section 149 of the MRTP Act, though the said provision provides for attaining finality to the orders passed by the authority under the said Act, however, in my opinion, it will be premature to say that same also covers any illegal orders or an action taken recourse to by the authority under the Act. Such an issue if is sought to be canvassed in the suit, in my opinion,

there is no statutory embargo to raise such a plea before the Court which of course will be decided on its own merits.

7 So far as the next contention as regards change in the nature of the suit and beginning of trial is concerned, it is required to be noted that originally the suit was filed by the Plaintiff seeking an order of restraintment based on the theory of perpetual injunction. What is sought to be incorporated by way of amendment is the complete details in relation to the construction carried out by the Petitioner, which is claimed to be in connivance with the officials / authority under the MRTP Act particularly under Section 149. In my opinion, once there is a prayer to that effect in the suit, the Petitioner – Defendant was not taken by surprise by moving the amendment application, which in its discretion was granted by the learned trial Court by reasoned orders.

8 So far as the beginning of trial in the suit is concerned, though the issues are framed and examination-in-chief is filed, the issue that is sought to be incorporated by virtue of amendment since goes to the root of the matter and is required to be decided so as to decide the controversy in the suit, it was appropriate for the trial Court to grant such amendment.

9 In view of the above observations, in my opinion, no case for interference is made out. The petition fails and the same stands dismissed.

10 The observations made are *prima-facie*.

[N. W. SAMBRE, J.]

ndm