

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.9648 of 2016

* Mohiniraj s/o Prabhakar Rajhans,
Age 46 years,
Occupation : Agriculture,
R/o. Sonai, Taluka Newasa,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through District Collector,
Ahmednagar.
- 2) The Executive Engineer,
Mula Irrigation Department,
Aurangabad Road,
Ahmednagar.
- 3) The Tahsildar,
Tahsil Office, Newasa,
Taluka Newasa,
District Ahmednagar.
- 4) Sanjay s/o Padmakar Joshi,
Age 46 years,
Occupation: Agriculture,
R/o Sonai, Taluka Newasa,
District Ahmednagar. **.. Respondents.**

Shri. Angad L. Kanade, Advocate, for petitioner.

Shri. S.N. Kendre, Assistant Government Pleader, for
respondent Nos.1 and 3.

Shri. B.R. Survase, Advocate, for respondent No.2.

Shri. S.P. Brahme, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 22 NOVEMBER 2016

ORAL JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The present petition is filed to challenge the order made by the learned Civil Judge, Senior Division, Newasa in Regular Civil Suit No.165/2015. The suit is filed by present respondent No.4 for relief of injunction and following relief is claimed :-

"Defendant Nos.1 to 3 be prevented from interfering in the lawful possession over the suit property and they should be prevented from taking back the possession if the plaintiff is paying Khand, lease amount to the defendants."

3) It is the case of the plaintiff that the land Survey No.629/2 was given for cultivation by the Government to the plaintiff in the year 1964-65 and since then he has been in possession. This Court asked learned counsel for the plaintiff to show record of giving lease hold rights but there is no such record. Learned counsel showed to this Court only entry made in the crop

cultivation column. On the other hand, learned counsel for the petitioner, who wants to intervene in the suit as defendant, submitted that the suit property was belonging to the ancestors of the petitioner. It was acquired for percolation tank by the Government in the year 1967 and after that in the year 1977 lease hold rights were given to the ancestors of the petitioner. Again order was made in the year 2015 and lease hold rights were given to the petitioner and in spite of this circumstance, the suit for aforesaid relief is filed behind the back of the petitioner. Learned counsel submitted that in view of Government policy which can be found in the rules made by the Public Works Department in the year 1984, the previous owner from whom the land is acquired has the right of priority to take the land for cultivation on lease basis from the Government. Thus the intervener wants to show to the Court that the lease hold rights were given to him and the land was belonging to his ancestors and as per the policy of the Government, the intervener is entitled to have the lease hold rights and to cultivate the land. On the other hand, there is record only of aforesaid nature in favour of the plaintiff.

4) Learned counsel for the plaintiff submitted that the Government is not disputing the claim of the plaintiff as the order of allotment of lease is issued in favour of the plaintiff and the application for temporary injunction filed against the Government is allowed. It is clear that the party who wants to contest the matter is kept out Court and the plaintiff has claimed relief by making only the Government as party defendants.

5) In view of the aforesaid circumstances this Court holds that the present petitioner is a necessary party and his rights need to be considered before making any order in respect of the relief claimed by the plaintiff in the suit.

6) In the result, the petition is allowed. The order made by the trial Court is hereby quashed and set aside. The application is allowed. If felt necessary permission can be granted to the plaintiff to make amendment in the plaint after filing of written statement by the present petitioner. Rule made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

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