

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 WRIT PETITION NO. 9818 OF 2015

LAXMI GIRLS HOSTEL THROUGH ITS PROP. PREMA RAMESH
BHUTADA AND OTHERS
VERSUS
THE COMMISSIONER, LATUR MUNICIPAL CORPORATION,
LATUR AND OTHERS

.....
Advocate for Petitioners : Mr. Yogesh P. Deshmukh
Advocate for Respondent Nos. 1 and 2 : Mr. A. V. Hon
Advocate for Respondent No. 3 : Mr. T. G. Gaikwad
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CORAM : V. K. JADHAV, J.

DATED : 24th FEBRUARY, 2016

PER COURT :-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. Petitioners-original plaintiffs have filed Regular Civil Suit No. 273 of 2015 for the relief of perpetual injunction. Respondent No.3 herein, has filed a third party application Exh.25 before the trial court for impleading him as a party to the suit. Petitioners-original plaintiffs have strongly resisted the said application by filing say. Learned 4th Jt. Civil Judge Senior Division, Latur, by impugned order dated 05.09.2015 passed below Exh. 25 in R.C.S. No. 273 of 2015, allowed the said application. Hence this writ petition.

3. Learned counsel for the petitioners-original plaintiffs submits that the Latur Industrial Estate Co-Operative Society, Latur has obtained land on lease from the Government, prepared layout plan of the said land and prepared various plots of various dimensions within the said area. Petitioners-plaintiffs are in the respective possession of the respective plots and even the original allottees of petitioners/plaintiffs are holding the properties since the year 1976. Respondent Corporation has issued notices to petitioners/ plaintiffs on 27.04.2012, contending therein that they have encroached over the public road. It was communicated to them by way of said notice that the said encroachment would be demolished within 15 days. Petitioners-plaintiffs are, thus, constrained to institute the suit for perpetual injunction. Learned counsel submits that trial court has also protected the possession of petitioners-plaintiffs.

4. Learned counsel for petitioners-plaintiffs submits that respondent No.3 herein, filed application at Exh.25. Learned counsel submits that he has no concern with the suit property. Learned counsel further submits that respondent No.3 herein, is not a necessary or proper party to the suit. Learned counsel further submits that he is not a person likely to be affected by the result of the suit. Learned counsel submits that respondent No.3 herein, has merely filed certain complaints against the petitioners-plaintiffs

alleging therein about encroachment on public road. Learned counsel submits that the trial court has erroneously allowed application Exh.25 and impleaded respondent No.3 herein, as party to the suit.

5. Learned counsel for the petitioners-plaintiffs, in order to substantiate his contentions, places reliance on the decision in the case of ***Shyam Fatechand Shende and another vs. Alka w/o Vinod Ganvir and another***, reported in **1998 (1) Mh.L.J. 410**.

6. Learned counsel for respondent No. 3 submits that respondent No.3 has been allotted plot in the same society and because of the said encroachment over the public road made by petitioners/plaintiffs, it is inconvenient for him to approach his plot. Learned counsel submits that respondent No.3 herein, is a necessary/proper party to the suit and he is the person likely to be affected by the result of the suit. Learned counsel, in order to substantiate his contentions, places reliance on the decision in the case of ***Dada s/o Gopinath Nimse vs. Collector, Ahmednagar and others***, reported in **2012 (6) Mh.L.J. 257**.

7. I have also heard learned counsel appearing for respondent Nos. 1 and 2.

8. On careful perusal of application Exh.25, it appears that respondent No.3-original applicant of Exh.25 has nowhere stated that he is the person likely to be affected by the result of the suit and that he has been allotted plot in the same society. It is also not stated in application Exh.25 that because of the encroachment made by petitioners-plaintiffs on public road, inconvenience is caused to him to approach his plot. Merely respondent No.3 has filed certain complaints against petitioners/plaintiffs making allegations therein that they have made encroachment over the public road, is not sufficient ground to implead respondent No.3 herein, as a party to the suit. Furthermore, there are no allegations in the suit made against respondent No.3 by the petitioners/plaintiffs. Respondent-Corporation is competent enough to take care of the encroachment allegedly made by petitioners/plaintiffs over the public road. In view of this, the impugned order certainly calls for an interference. Learned Judge of the trial court has unnecessarily taken this exercise to implead respondent No.3 herein as party to the suit. Hence the following order:

O R D E R

- I. The writ petition is hereby allowed.
- II. The order dated 05th September, 2015 passed by 4th Jt. Civil Judge Senior Division, Latur below Exh.25 in R.C.S. No.273 of 2015, is hereby quashed and set aside.

III. Application Exh.25 is hereby rejected.

IV. The writ petition is accordingly disposed of. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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