

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.486 OF 2017

M. Visvesvaraya Industrial Research & Development
Centre (MVIRDC) ... Petitioners
Vs.
State of Maharashtra and others ... Respondents

Ms Deepa Chavan a/w. Mr. Ravi Kadam, Senior Advocate, Ms Tanmayi Gadre, Mr. Meit Sampat, Ms Reshma Nathani i/b. Little & Co. for the Petitioners.

Mr. Kedar Dighe, AGP for Respondents No.1 and 2-State.

Mr. Vivek Kantawala a/w. Mr. Amey Patil, Ms Pari Mohan and Ms Bhairavi K. i/b. M/s. Vivek Kantawala and Co. for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : JULY 20, 2017

P.C. :

Heard Ms Chavan, learned Counsel for petitioner, Mr. Dighe, learned AGP for respondents No.1 and 2 and Mr. Kantawala, learned Counsel for respondent No.3 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioners have challenged the judgment and order dated 06.02.2017 passed by the learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai (for short 'Tribunal') below application for intervention filed by the respondent No.3 herein. By that order, the Tribunal allowed the application made by the third respondent for intervention in terms of prayer clauses (a) and (b) of the application and directed the petitioners to implead the third respondent as party respondent No.3 to the appeal.

3. Petitioners have instituted appeal before the Tribunal under Section 274 of the Maharashtra Land Revenue Code, 1966 (for short

'M.L.R.C.') challenging the order dated 24.11.2016 passed by the respondent No.2, District Collector, Mumbai City. By that order, respondent No.2 ordered forfeiture of land bearing plot No.639 on the ground that petitioners had violated the terms and conditions of the lease deed. The petitioners have mainly challenged the order on the ground that show cause notices dated 19.09.2016 and 14.10.2016 were issued to the petitioners and in pursuance thereof, hearing took place before the second respondent. Respondent No.3 was not heard after issuance of show cause notices dated 19.09.2016 and 14.10.2016. In other words, only after hearing the petitioners herein, respondent No.2 had passed order on 24.11.2016. The petitioners, therefore, contend that the Tribunal was not justified in allowing the application for intervention made by the third respondent.

4. Ms Chavan submitted that the third respondent is not a juristic entity and is not directly affected by order dated 24.11.2016. It is well settled that only a party whose interest is directly affected can seek impleadment in a lis. She submitted that the jurisdiction of the Tribunal is governed by the M.L.R.C., which is a complete Code in itself. Chapter XV of the M.L.R.C. enumerates the provisions vesting the M.R.T. with jurisdiction to adjudicate claims arising under the Statute. The concept of impleading necessary / proper party is alien to the statutory adjudication under the M.L.R.C. She further submitted that Tribunal wrongly came to the conclusion that the third respondent was party to the proceedings before the respondent No.2. She submitted that in pursuance of the complaints made by the third respondent on 15.06.2015 and 12.08.2015, the Principal Secretary, Revenue and Forest Department issued direction on 19.07.2016 to the respondent No.2 to hear the petitioners and the 3rd respondent and submit report. In pursuance thereof, hearing took place before the 2nd respondent and report dated 03.09.2016 was prepared

by the second respondent. It is thereafter third respondent did not participate in the proceedings held in pursuance of show cause notices dated 19.09.2016 and 14.10.2016. She relied upon the following decisions:

- a. ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay*, (1992) 2 SCC 524**, and in particular paragraphs 12 to 14 thereof. She submitted that third respondent has no direct or legal interest in the proceedings. In paragraph 14, the Apex Court held that “it is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.”
- b. ***Northern Plastics Limited VS. Hindustan Photo Films Mfg. Co. Ltd.*, (1997) 4 SCC 452**, and in particular paragraphs 7 to 9 thereof.

5. On the other hand, Mr. Kantawala and Mr. Dighe supported the impugned orders. Mr. Kantawala invited my attention to paragraph 6 of the application for intervention dated 23.12.2016 as also paragraphs 2 to 5 of the affidavit dated 20.06.2017 made by the third respondent. He has also taken me through the Rojnama of 16.08.2016 and 22.08.2016.

6. Mr. Dighe has invited my attention to the Affidavit of Mr. Mahesh T. Ingle, Superintendent of Land Records dated 23.06.2017, and in particular paragraphs 2 to 5 thereof.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, respondent No.3 had made complaints on 15.06.2015 and 12.08.2015 as regards violation of terms and conditions of lease. In pursuance thereof, respondent No.2 issued notices to the parties, namely, petitioners and the third respondent. The proceedings were conducted on 09.08.2016, 22.08.2016 and 01.09.2016. It is not in

dispute that on all these dates, third respondent was heard by the second respondent. It is also not in dispute that on 03.09.2016, after completion of the hearing, report was prepared by the second respondent. It is the case of the petitioners that on 19.09.2016 and 14.10.2016, show cause notices were issued only to them and not to the third respondent. The hearing took place before the second respondent on 22.11.2016 when only petitioners were heard and the matter was kept for orders. The final order was passed on 24.11.2016. The question is whether the third respondent is a necessary or a proper party in the proceedings filed by the petitioners challenging the order dated 24.11.2016.

8. Ms Chavan relied upon the decision of the Apex Court in the case of **Ramesh Hirachand Kundanmal** (*supra*). In that case, appellant had instituted Suit in the City Civil Court, Bombay challenging the notice issued by the first respondent, Municipal Corporation of Greater Mumbai under Section 351 of the Mumbai Municipal Corporation Act, 1888. By that notice, Corporation called upon the appellant to demolish two chattels on the terrace of the premises on the ground that there were unauthorized structures. It was the case of the appellant that these chattels/structures are moveables on wheels and plates where servicing and/or repairs are done and used for storing implements of the mechanics. Respondent No.2, Hindustan Petroleum Corporation Limited was a lessee of that property and the appellant was the dealer of the second respondent. The appellant was in possession of the service station on the basis of the dealership agreement of 1974.

9. In paragraph 7 of that report, the Apex Court noted that respondents did not seriously dispute the position that the second respondent is not a necessary party to the suit. In paragraph 8, the Apex Court observed that the case really turns on the true construction of the

Rule in particular the meaning of the words "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." In other words, the controversy really was whether the second respondent was a proper party. In that decision, the Apex Court considered its earlier decision in ***Razia Begum Vs. Anwar Begum*, AIR 1958 SC 886**. In paragraph 13, the Apex Court noted that a clear distinction is drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party. In paragraph 14, it was observed thus,

"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on wider construction of 10 the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*, (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Miegiet Compagnie S.A v. Bank of England*, (1950) 2

All E.R.611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:

"The test is `May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights."

10. As noted earlier, respondent No.3 had filed application for intervention in the appeal preferred by the petitioners herein. In paragraph 6, respondent contended that the finding of the Collector of Mumbai, namely, the premises to be obtained in respect of creation of sub-leases and finding thereat also requires to be addressed by the third respondent as the rights of the third respondent are also affected by any orders being passed in the instant proceedings.

11. A perusal of the affidavit filed by Mahesh T. Ingle shows that respondent No.3 was heard in the matter before passing final order on 24.11.2016. It is categorically stated that order dated 24.11.2016 was passed by the Collector, Mumbai after abiding with principles of natural justice and after hearing petitioners and third respondent, who were the original complainants. It is stated that respondent No.3 through its representative, Captain Vishnu Singh and Mr. Jaideep Sajdeh have attended hearing before the Collector, Mumbai City on 09.08.2016, 22.08.2016 and 01.09.2016. It is not in dispute that on 03.09.2016, report was prepared. In paragraph 5 of the affidavit, it is stated that as the third respondent was heard at length on the three dates, their presence was not required on 22.11.2016. On 22.11.2016, matter was specifically fixed for hearing the petitioners in the matter. It is reiterated that final order was passed on 24.11.2016 after hearing all the concerned, including the third respondent in the matter. Petitioners have not filed any reply controverting / disputing the assertions made in the

affidavit of Mr. Mahesh T. Ingle dated 23.06.2017. Thus, the order dated 24.11.2016 was passed after hearing the third respondent.

12. In my opinion, the entire proceedings were initiated at the behest of the third respondent. The third respondent was heard on different dates as indicated above and after conclusion of the hearing, report was prepared on 03.09.2016 and final order was passed on 24.11.2016. Show cause notices were issued on 19.09.2016 and 14.10.2016. In my opinion, the second respondent ought to have issued notices to the third respondent as well. However, respondent No.2 issued notice only to the petitioners. Be that as it may. A perusal of the order dated 24.11.2016 passed by the second respondent clearly shows that the second respondent has held in paragraph 5 that petitioners herein have committed breach of the terms and conditions of the lease deed. The said finding was arrived at on the basis of the complaints made by the third respondent. The complaints made by the third respondent were investigated into by the second respondent after hearing the petitioners and the third respondent. The outcome of that proceedings was the report dated 03.09.2016. In view thereof, it cannot be said that respondent No.3 is not a necessary party in the proceedings before the Tribunal.

13. In the case of **Northern Plastics Limited** (*supra*), the Apex Court held that appeal is a creature of statute and appeal can be filed only by persons permitted by the statute and subject to the statutory conditions. Locus Standi even of the Union of India or a Government undertaking which was a business rival of the importer concerned to file appeal to CEGAT against an order passed under Section 122 of the Customs Act has to be determined under the provisions of that Act and not on the analogy of the locus standi in public interest litigation under

Articles 32 or 226. It was further held that the order passed by the adjudicating authority under Section 122 refusing the relief of concessional rate of duty but permitting the importer to clear the imported goods on payment of full customs duty. However, Hindustan Photo Films Manufacturing Company Limited, engaged in the same business as Northern Plastics Limited, apprehending that its commercial interest would be materially prejudiced, has no locus to file appeal as it was neither a party before the adjudicating authority nor had a direct legal interest in the said goods. It was held that in the circumstances, respondent No.1, even if covered by Article 12, had no locus standi to prefer an appeal against the order passed under Section 122. It was further held that order passed by the adjudicating authority under Section 122 refusing the grant of concessional rate of duty but permitting the importer to clear the imported goods on payment of full customs duty, Union of India neither being a party before the adjudicating authority nor having a direct legal interest in the said goods, could not prefer an appeal against the said order. Union of India could resort to the remedy under Section 129-D(1) of the said Act. The Apex Court further held that the Petition instituted by the Union of India challenging the order in public interest was however maintainable and has to be decided on merits. In my opinion, the said decision is not applicable to the present case.

14. In the light of the aforesaid discussion, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Petition fails and the same is dismissed.

15. At this stage, Mr. Kadam orally applies for continuation of the ad-interim order dated 16.02.2017. By that order, the Tribunal was directed to adjourn the proceedings till next date of hearing of the Petition. In

view thereof, the Tribunal will not proceed with the appeal for the period of four weeks from today. Order accordingly.

(R. G. KETKAR, J.)

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