

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3097 OF 2018

SHAIKH JAFFAR SHAIKH AHMED

VERSUS

MUNICIPAL CORPORATION AURANGABAD
AND ANOTHER

Advocate for Petitioner : Mr. S.V. Natu.
Advocate for Respondent No. 1 : Mr. S.S. Tope.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 27th March, 2018

PER COURT :

1. The petitioner/original plaintiff in R.C.S. No. 26/2016 is aggrieved by the order dated 29/11/2017, passed by the Trial Court allowing application Exhibit 43, filed by a third party which is respondent No. 2 in this petition and has directed the petitioner to array the said party as a defendant in the said suit.

2. After briefly hearing the learned advocate for the petitioner, when the matter was called out in the first session today, I deemed it proper to call upon the Panel Advocate Shri Tope, to appear on behalf of the Corporation which is respondent No. 1 in this petition. It

is in the light of these instructions that the learned advocate has appeared for the Corporation.

3. I have considered the submissions of the learned advocate for the petitioner and respondent No. 1/Corporation. With their assistance, I have gone through the petition paper book.

4. It appears that respondent No. 2 has also preferred R.C.S. Nos. 53/2017 and 74/2017 before the Civil Court. The petitioner herein had moved applications for being arrayed as defendants in the said two suits. Same have been allowed.

5. Contention of the petitioner is that as he has sought his impleadment as a defendant in the two suits of respondent No. 2, he has also moved application Exhibit 43 to be arrayed as a defendant in the suit preferred by the petitioner.

6. Though, I find that merely because this petitioner was arrayed as a defendant in the two suits filed by respondent No. 2, it cannot be 'measure for measure' that the respondent No. 2 should also be arrayed as a

defendant in the suit filed by the defendant.

7. I find from the record that it was this respondent No. 2, who claims to have exposed the encroachment, on a public road, by the petitioner. He set the machinery of the Corporation in motion as against the property encroached. The Corporation has also taken a stand in its written statement that this petitioner/plaintiff has encroached upon a public road.

8. In the plaint filed by the plaintiff, a reference has been made to respondent No. 2 in paragraph Nos. 5 and 6. *Prima facie*, it appears that respondent No. 2 might render assistance to the Court and since his role finds a reference in paragraph Nos. 5 and 6 of the pleadings in the plaint, the Trial Court, within its discretionary powers, found it appropriate to allow Exhibit 43 and permit the said applicant to be arrayed as defendant No. 2. The Trial Court has also drawn a conclusion that it appears that the participation of respondent No. 2 would be necessary for the effective adjudication on the issues emerging from the plaint.

9. Considering the above, merely because a second

view could possibly be taken, I do not find that the impugned order deserves to be interfered with. This petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.