

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 855 OF 2017

Ramgopal Ramchandra Darak

.. **Petitioner**

Versus

Municipal Corporation, Aurangabad
and another

.. **Respondents**

Mr. Ajit D. Kasliwal, Advocate for the Petitioner.
Mr. Sambhaji S. Tope, Advocate for Respondent
No. 1.

Mr. Pradeep N. Sonpethakar, Advocate for
Respondent No. 2.

CORAM: S. V. GANGAPURWALA, J.

DATE: 16th August, 2018

PER COURT :

1. The petitioner assails the order rejecting his application for continuation of *status-quo*, so also, assails the order passed on an application filed by respondent no. 2 for addition as a party.

2. Mr. Kasliwal, the learned counsel submits that the suit filed by the petitioner is for declaration that the notice issued by the Municipal Corporation is illegal and for injunction restraining the Municipal Corporation

from proceeding further pursuant to the notice. The learned counsel submits that the status-quo order was passed by the Court, however, the Court did not continue the order of *status-quo*, though the application for temporary injunction was pending and this Court on 18.01.2017 granted order of *status-quo*. The learned counsel further submits that the suit is only for the relief of declaration that the notice issued by Municipal Corporation is illegal and for injunction restraining the Municipal Corporation from proceeding further pursuant to the notice. The respondent no. 2 is not a necessary party. The petitioner is a *dominus litis* of his case and he cannot be compelled to litigate as against the third party. The respondent no. 2 is not concerned with the issue involved in the suit.

3. Mr. Sonpethkar, the learned counsel for respondent no. 2 submits that it is at the behest of respondent no. 2 the notice is issued. Because of the unauthorised construction of the petitioner

the respondent no. 2 is being inconvenienced. The southern wall of the house of the respondent no. 2 / defendant no. 2 is damaged because of unauthorised act of the petitioner.

4. I have considered the submissions canvassed by the learned counsel for respective parties.

5. It is not disputed by the parties that application filed by the petitioner for temporary injunction is pending and order of *status quo* was granted by the Trial Court. This Court had also granted the order of *status-quo* and the same is still in force. A person who is a proper party can be added under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908. The defendant no. 2 has shown his concern with the construction of the petitioner and has made averments to that effect. Considering the contents in the application the defendant no. 2 would be a proper party to the suit.

6. In the light of above, I pass following order -

ORDER

I] The order of *status-quo* granted by this Court on 18.01.2017 is continued till the decision on Exhibit 5 in Special Civil Suit No. 10 of 2016.

II] The petition challenging the order on an application by the defendant no. 2 for addition of party is dismissed.

7. Writ Petition accordingly stands disposed of.
No costs.

[S. V. GANGAPURWALA, J.]

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