

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO. 13003 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
RAMESHWAR S/O BALIRAM MALKAR & ANOTHER

WITH
WRIT PETITION NO. 4787 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
NARAYAN S/O SAMPAT PATIL AND ANOTHER

WITH
WRIT PETITION NO. 4788 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
GITABAI W/O TUKARAM MAHAJAN AND ANOTHER

WITH
WRIT PETITION NO. 4789 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
SURENDRA S/O UMRAOSING PATIL

WITH
WRIT PETITION NO. 4790 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
DEORAM S/O BALIRAM MALKAR AND ANOTHER

WITH
WRIT PETITION NO. 4791 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
SOU. REKHA W/O VINAYAK BENDALE AND ANOTHER

WITH
WRIT PETITION NO. 4792 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
SAMADHAN S/O NARAYAN MAHAJAN AND ANOTHER

WITH
WRIT PETITION NO. 4793 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
RAVINDRA S/O UMRAOSING PATIL AND ANOTHER

WITH
WRIT PETITION NO. 4794 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
JAGAN S/O ANANDA MANKAR AND ANOTHER

WITH
WRIT PETITION NO. 4795 OF 2017

SMT. KASTURBAI WD/O KASHIRAM SATRE
VERSUS
JIVAN S/O VISHWANATH SHELKE AND ANOTHER

.....

Mr. Gholap Ajit M., Advocate for the Petitioner in all WPs.
Mr. P. B. Sirsath for Respondent No.1 in WP/4787/2017 &
WP/4791/2017
Mr. G.V.Wani, Advocate for Respondent No.2 in all WPs.

.....

CORAM : V. K. JADHAV, J.
DATED : 14th MARCH, 2018

PER COURT:-

1. In all these Writ Petitions, common question is involved and therefore, all these Writ Petitions are taken together for hearing and decided by this common order.

2. Between the agricultural land of the petitioner and the State Highway No. 46, towards the western boundary of the land of the petitioner, there is an open space to the extent of 70-80 feet. The said open space is situated in between the State Highway and the land owned and possessed by the petitioner. Respondent no.2-Grampanchayat has given on lease the portion of the above stated open space for 11 months to some persons from village Jamthi and even to some outsiders. The said open space does not belong to the respondent-Grampanchayat. Besides that, the allotment of the land on lease in the aforesaid manner is also in contravention of the provisions of the Mumbai

Highway Act, 1955 and in some cases, the concerned persons have even made permanent construction. In the aforesaid premise, the petitioner has filed complaint to the District Collector, Jalgaon and accordingly, the Collector has directed an inquiry to be conducted by the Block Development Officer, Panchayat Samiti, Bodwad. In terms of the said inquiry, the Panchayat Samiti has directed the respondent Grampanchayat to take action for evicting the said persons. Pursuant to the directions given by Panchayat Samiti, Bodwad, the respondent/Grampanchayat has issued notices to the persons to whom the said open space has been allotted on lease for 11 months, to vacate the same. Consequently, those persons approached the Civil Court by instituting suit for declaration that the said notice issued by respondent-Grampanchayat is void and illegal and also for a decree of perpetual injunction restraining the Grampanchayat from causing obstruction in the peaceful possession of the said persons over their respective portions.

3. The petitioner in all these petitions has filed applications under Order 1 Rule 10 of the Code of Civil Procedure for impleading her as a party defendant in the said suits. The

learned Judge of the trial court has rejected all such applications by order separately passed in each and every suit. The petitioner, therefore, approached this Court by filing these Writ Petitions.

4. The learned counsel for the petitioner submits that in all the applications, the petitioner has specifically contended that prior to the said temporary lease for 11 months executed by the Grampanchayat in favour of the plaintiffs, the road, as an access to the highway from the agricultural lands of the petitioner, came to be reduced in breadth and at present, only 10 feet road in breadth is available which is inadequate for transportation of goods from the agricultural lands to the various destinations. The learned counsel submits that even in all such suits, the respondents/plaintiffs, though not referred specifically the name of the petitioner, contended that on the basis of such a false and frivolous complaint, the action has been proposed by the respondent/Grampanchayat. The learned counsel submits that the petitioner may not be the necessary party to the suits, but in the given set of facts, she is the proper party. She is the affected person and she is certainly concerned with the outcome of the said pending suits. The learned counsel submits that, however,

the trial court has not considered the same and rejected her applications mainly on the ground that the petitioner is having no concern with the suit land/plots.

5. The learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the decisions in the following three cases:

1. *Ramesh Hirachand Kundanmal vs Municipal Corporation of Greater Bombay and Ors.*, reported in (1992) 2 SCC 524,
2. *Neelam Ajit vs V. Suresh Reddy*, reported in 2005 (5) ALT 471 and
3. *N. Anantha Reddy vs Anshu Kathuria and Ors.*, reported in (2014) 3 SCJ 534.

6. The learned counsel for the respondents/original plaintiffs submits that the respondents/plaintiffs have instituted the suits in respect of the suit plots against the Grampanchayat for declaration that the notice, which has been issued by the Grampanchayat, is void and illegal and further, a decree of perpetual injunction preventing the Grampanchayat from

causing obstruction in the peaceful possession of the plaintiffs till they are evicted from the suit plots under due process of law. The learned counsel submits that in the backdrop of this, the petitioner is neither the necessary party, nor the proper party. The respondents/plaintiffs are the *dominus litis* of their suits and as such, the applications filed by the petitioner under Order 1 Rule 10 of CPC can not be entertained. The learned counsel submits that in the given set of facts, the trial court has exercised discretion under Order 1 Rule 10 of CPC and it is not proper at this stage to interfere in the said discretion exercised by the trial court fairly with due regard to the provisions of law.

7. The learned counsel for the respondents/original plaintiffs, in order to substantiate his contention, placed reliance on the decisions in the following two cases:

1. *Baluram vs P.Chellathangam & Ors*, reported in *AIR 2015 SC 1264* and
2. *Mahendra Jayantilal Vora & Ors. vs Aditya Enterprises & Ors.*, reported in *2006 (3) All.M.R. 209*.

8. I have also heard the learned counsel for respondent/Grampanchayat. The learned counsel for respondent/Grampanchayat submits that pursuant to the directions given by the Panchayat Samiti, Bodwad, the respondent-Grampanchayat has issued notices to the respondents/plaintiffs for vacating the suit plots and the respondent-Grampanchayat has also strongly resisted the suit instituted by such persons by filing written statement. The learned counsel submits that even the respondent-Grampanchayat has strongly opposed the relief of temporary injunction and accordingly, the trial court has rejected the application seeking order of issuance of temporary injunction.

9. It is well settled that the question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 of CPC which provides that only a necessary or a proper party may be added. It is also well settled that a “necessary party” is one without whom no order can be made effectively and a “proper party” is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

10. In the instant case, admittedly, the petitioner is having no interest in the suit property and according to her, she is the affected person because of the allotment of plots by respondent-Grampanchayat, though temporarily, in favour of such persons on lease basis. It is also not disputed that this open space is between the agricultural lands of the petitioner and the State Highway No.46. In the case of ***Ramesh Hirachand Kundanmal vs Municipal Corporation of Greater Bombay and Ors.*** (supra), relied upon by the learned counsel for the petitioner, the Supreme Court, in para 6 of the judgment, has made the following observations:

“6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order I Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A property party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The

addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

11. It is thus clear that addition of the parties is not a question of initial jurisdiction of the court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

12. In the case of ***N. Anantha Reddy vs Anshu Kathuria and Ors.*** (supra), the Supreme Court has considered the case of the petitioner therein because due to the construction raised by the other side, the petitioner's right of light and air was infringed. In the case of ***Neelam Ajit vs V. Suresh Reddy*** (supra), the Andhra Pradesh High Court considered the question as to whether the petitioners in that case are entitled to be impleaded as 'proper parties' to the suit or not and in the facts of the said case, has decided the issue in favour of the petitioners therein on the ground that the alleged act will affect the petitioners' interest to the extent of their right to light, air and sanitation unconnected with and independent of any easementary rights.

13. In the instant case, when the Panchayat Samiti, Bodwad has conducted inquiry and found that the Grampanchayat has leased those plots unauthorizedly in favour of certain persons without taking permission and also without having any right over the said open space, issued directions to the respondent-Grampanchayat to issue notice of eviction to those persons in whose favour the plots have been allotted on temporary lease basis. It further appears that being aggrieved by the said notice, those persons have instituted suits before the Civil Court for declaration and also for a decree of perpetual injunction. In the given set of facts, I do not think that the present petitioner is the proper party and her presence is necessary for a complete and final decision on the question involved in the proceedings. It is not the case of the petitioner that respondent-Grampanchayat has joined hands with respondents/plaintiffs in those suits and accordingly, in her absence in the suits, there would not be complete and final decision on the question involved in the suits. On the other hand, it appears that the respondent-Grampanchayat has heavily contested those suits and even the trial court has rejected the applications of the respondents/plaintiffs seeking issuance of the order of temporary

injunction.

14. In view of the above, I do not think that the trial court has exercised jurisdiction as vested in it in terms of the provisions of Order 1 Rule 10 of CPC arbitrarily without looking into the facts of the case, on the other hand, the court has exercised discretion in accordance with law keeping in mind the legal rights of the parties involved in the matter. I do not find any fault in the impugned orders passed by the trial court. Hence the following order:

All the above Writ Petitions are hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

vre/