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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4318 OF 2014

Sawita w/o Gopinath Sarode
Age - 59 years, Occ - Household
R/o Ramdas Nagar, Parbhani

PETITIONER

VERSUS

1. Municipal Council, Parbhani
Through its Chief Officer,
having its office at Parbhani
2. The Samirshra Sahakari Graha
Nirman Sanstha Ltd., Parbhani,
Through its Secretary,
Ramchandra Digambarrao Kale
Age - 68 years, Occ - Pensioner
and Secretary of society
R/o Plot No. 29, Ramdas Nagar,
Parbhani

RESPONDENTS

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Mr. Amit A. Mukhedkar, Advocate for the petitioner
Mr. S. S. Bora, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th JUNE, 2018

ORAL JUDGMENT :

1. Despite opportunity on last occasion none appears for respondent No.2.
2. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally by consent.
3. Mr. Mukhedkar, learned advocate for the petitioner submits

that the petitioner – plaintiff is *dominus litis* and it is her choice to have addition, deletion or keeping the parties. The suit has been instituted by the petitioner – plaintiff seeking declaration that notice issued to her by the Municipal Council is illegal and for perpetual injunction. According to learned advocate for the petitioner, neither respondent No. 2 is a necessary party at all nor the petitioner – plaintiff has claimed any relief against respondent No. 2. He submits that while an attempt had been made earlier on by Chairman of the Society – respondent No. 2 to be a party to the suit, the same had not been successful up to this court. In the circumstances, he contends that a second round for a similar purpose is untenable.

4. Apart from aforesaid, Mr. Mukhedkar goes on to submit that learned judge of the trial court has only referred to the documents and has not discussed the same at all. The impugned order does not depict application of mind to said documents. He, therefore, submits that on that count as well the order impugned in present writ petition is untenable.

5. Mr. Bora, learned advocate appearing for respondent No. 1 - Municipal Council, however, supports the order. He submits that learned judge has referred to that it is at the behest of

respondent No. 2 an action had been mooted against present petitioner. He submits that the impugned order contains elaborate reasons showing as to why and how respondent No. 2 would not only be a proper but necessary party. The trial court has considered that for disposal of suit effectively, respondent No. 2 would have to be on record. He further refers to that this court in earlier round of litigation has observed, rather unequivocally, that had the application been made for impleading party to the suit by the society, things would have been otherwise.

6. Without prejudice to the contentions of the parties, it may have to be seen that property concerned is claimed to be of the society and perhaps the petitioner claims to be one of the allottees of the same whereas, contentions of the other side appear to be otherwise.

7. Mr. Mukhedkhar, learned advocate during the course of submissions, refers to and relies on a judgment of this court in the case of *“Jivanlal Damodardas Wani V/s Narayan Ukha Sali”* reported in 1972 BCI 30 : 1972 Mh.L.J. 64. It was on background that application for impleading party had been rejected for direct interest could not be shown by the party seeking to intervene

and have it impleaded in the suit. Here, in the present matter, factual background is entirely different. There does not appear to be any dispute about ownership being vested in the society. As such, it does not appear that the judgment relied on by learned advocate for the petitioner would carry her case forward.

8. Certain proceedings appear to have been initiated before local authority, which have caused issuance of notice to which challenge is being posed at the behest of present petitioner. In the circumstances, having regard to the reasons which went into making of the impugned order, while in its discretion the trial court finds that presence of respondent No. 2 to be necessary for final and effectual adjudication of the suit, the discretion, which is with reference to certain background and documents, does not appear to be in absolute breach of judicial principles requiring interference with in discretionary powers of this court under Articles 226 and 227 of the Constitution of India.

9. Writ petition, is therefore, rejected. Rule stands discharged. It is made clear that observations hitherto made in the present order shall not prejudice and / or influence decision in the suit on merits.

[SUNIL P. DESHMUKH, J.]