

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2456 OF 2016

Rameshwar Shivlingappa Gulve

... Petitioner

Versus

The Municipal Council, Kille Dharur and others

... Respondents

....

Mr. Mayur V. Salunke, Advocate i/b Mr. V. D. Salunke, Advocate for petitioner.

Mr. M. S. Karad, Advocate for respondent Nos. 2 and 3.

....

CORAM : M. S. KARNIK, J.

DATED : 22nd AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the petitioner.
2. This petition challenges the order dated 19.01.2016 passed by the trial Court directing the petitioner-original plaintiff to add respondent Nos. 2 and 3 i.e. Vilas Baburao Gaibi and Sunil @ Balasaheb Vilas Gaibi in the array of defendants.
3. Learned counsel for the petitioner submitted that the suit is filed against the Municipal Council, Dharur for permanent injunction restraining the defendant and all others from interfering with the possession of the suit property owned by the the petitioner-plaintiff.

4. It is the contention of learned counsel for the petitioner that it was at the instance of the respondent Nos. 2 and 3 herein that the Municipal Council had issued notice on 05.02.2014 to the petitioner to remove the unauthorised construction within 15 days. Learned counsel for the petitioner submitted that based on the complaints made, the action is taken by the Municipal Council. It is the submission of learned counsel for petitioner that his grievance is only against the Municipal Council. He would further submit that respondent Nos. 2 and 3 have filed separate suit bearing Regular Civil Suit No.40 of 2014 for removing the encroachment from the access road. He would thus submit that the respondent Nos. 2 and 3 having filed separate suit, their rights will be decided in the Regular Civil Suit No. 40 of 2015. He would further submit that, insofar as the present suit is concerned, which is for injunction against the Municipal Council in pursuance of the complaint made by the respondent Nos. 2 and 3, their presence is not at all necessary. Moreover, as the plaintiff is the *dominus litis*.

5. Learned counsel for respondent Nos. 2 and 3 supported the order passed by the trial Court. He would submit that on the access road to the defendants' property, the petitioner by committing encroachment made unauthorised construction. The action is taken by the Municipal Council on the basis of the complaint made by the defendants. They

have also filed a separate suit for removing the encroachment. He would submit that the prayer clause in the plaint would reveal that the petitioner has sought relief not only against the Municipal Council but also against the agents and all others.

6. I have heard the learned counsel for the petitioner. No doubt it is the plaintiff who is *dominus litis*. The plaintiff has claimed the relief of permanent injunction restraining the Municipal Council from interfering and/or obstructing with the peaceful possession of the plaintiff over the suit property. He claims to have constructed the suit property strictly in accordance with the sanctioned plan. He further submits that almost for 16 years no action has been taken and only on the complaint of respondent Nos. 2 and 3 the Municipal Council has now issued the notice.

7. I find that, though the notice is issued on 05.02.2014 for removing the unauthorised encroachment within a period of 15 days, the petitioner has not challenged the said notice dated 05.02.2014, but he has sought relief of permanent injunction restraining the Municipal Council, agents and others from interfering with or obstructing the peaceful possession of the plaintiff over the suit property. In the plaint, it is averred that it is at the instance of Sunil @ Balasaheb Vilas Gaibi (the added respondent) that the Municipal Council has issued

notice dated 05.02.2014. It is also seen that respondent Nos. 2 and 3 have filed Regular Civil Suit No.40 of 2014 for removal of the encroachment on the access road to approach their property.

8. In this view of the matter, I see no reason to interfere with the order of the trial Court. The order passed by the trial Court does not warrant any interference. The writ petition is therefore dismissed.

[M. S. KARNIK, J.]

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