

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

CIVIL APPLICATION NO.10688 OF 2018
IN WP/3476/1997

ABHIMANYU JANKU LOKHANDE
VERSUS
BHAIRAVNATH DEOSTHAN SONARI AND OTHERS.

WITH
WRIT PETITION NO.3476 OF 1997
BHAIRAVNATH DEOSTHAN THO.PANDURANG LAXMAN
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

...
Advocate for the Applicant : Shri Shailendra S. Kulkarni.
Advocate for the original Petitioners : Shri M M Patil Beedkar.
AGP for Respondents 2 to 5/ State : Shri S.P.Tiwari
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th June, 2019

Per Court:

1 In Civil Application No.10688/2018, the learned advocate for the applicant/ third party has strenuously argued that the applicant is litigating against the original petitioner/trust at different levels and on different grounds. In one litigation, he has tried to point out that the terms and conditions under which the registration was granted to the petitioner/ trust, have been flouted. In one litigation, he has tried to point out that the trust is being mismanaged. He was also before the District Collector,

Osmanabad in Case No.2006/Dharmik/ Kavi- 549 seeking allotment of the land, from 722 acres of the Inam land in possession of the trust, for cultivation to the Scheduled Caste (SC), Scheduled Tribe (ST), Nomadic Tribe (NT), Vimukta Jati Nomadic Tribe (VJNT) and Other Backward Class (OBC) landless Shetmajoor (farm labourers). By the order dated 30.05.2007, the District Collector, Osmanabad has held that as the present litigation is pending, the claims of the third party applicant cannot be considered.

2 It requires no debate that when a person is to be arrayed as a respondent/ defendant, it must appear to the court that he is a necessary party or an answering respondent/ defendant or a proper party. This Court has already passed an order on 13.06.2000 in Civil Application No.2531/2000 that this Court would be required to assess as to whether, the Government is right in contending that the Trust holds the land beyond the ceiling limit. If the land is less than the ceiling limit, it will have to be concluded that the Trust does not possess surplus land.

3 Considering the above and the limited compass in considering this petition, the issue as to whether, the surplus land, if any, could be allotted to the categories mentioned by the third party/ applicant, is pending before the District Collector, Osmanabad.

4 Reliance placed upon the judgments of the Honourable Supreme Court in *Municipal Council, Hansi, District Hissar, Haryana*

vs. Mani Raj and others, (2001) 4 SCC 173, and in the matter of *M.K.Utthan Sudhar Samiti Maryadit vs. Babulal Shukla and others, 2016 (4) Scale 330 : (2016) 4 JT 463*, would be misconceived for the reason that in *Municipal Council* (supra), the third party was in possession of the disputed property and the Honourable Supreme Court concluded that if the possession is to be taken away from him and delivered to someone else, he will have to be heard. In *M.K.Utthan* (supra), the Honourable Supreme Court has held that in the interest of justice, intervention application could be allowed.

5 In the case in hand, the third party /applicant has his interest in the distribution of the surplus lands to certain backward categories and that issue is pending before the District Collector and is not the subject matter of this writ petition.

6 In view of the above, this Civil Application No.10688/2018 is rejected.

7 List the writ petition for final hearing on 18.07.2019.