

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 277/2019

(Satish S. Bhandari vs. Maroti G. Chandel & ors.)

AND

WRIT PETITION NO. 594/2019

(Ashok R. Hingade & ors. vs. N.U. Rangari & ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

WRIT PETITION NO. 277/2019

Shri A.S. Deshpande, Advocate for the petitioner

Shri H.R. Gadhia, Advocate for the respondent nos. 1 to 3

Shri A.M. Ghare, Advocate for the respondent nos. 5 to 7

WRIT PETITION NO. 594/2019

Shri G.M. Kubade, Advocate for the petitioner(s)

Shri K.S. Narwade, Advocate for the respondent no. 1

Shri A.M. Ghare, Advocate for the respondent nos. 2 to 4

CORAM : Z.A.HAQ, J.

DATED : 13/08/2019

Heard.

These two petitions are disposed by common judgment as the same issue arises for consideration in both these petitions and the impugned orders were passed in the same civil suit between the same parties.

RULE. Rule made returnable forthwith.

The plaintiffs (respondent nos. 1 to 3 in Writ Petition No. 277/2019 and respondent nos. 5 to 7 in Writ Petition No. 594/2019) had filed S.C.S.No. 25/2017 praying for decree for declaration that the sale-deed in respect of Field Survey No. 75 executed on 05/09/2014 was illegal and

null and void. The plaintiffs had prayed for other reliefs also. Initially, the civil suit was filed against 9 defendants [(1) State of Maharashtra, Through Collector, Yavatmal (2) Registrar, Co-operative Societies, Pune (3) Divisional Joint Registrar, Co-operative Societies, Division Amravati, (4) District Deputy Registrar, Co-operative Societies, Yavatmal (5) Assistant Registrar, Co-operative Societies, Pusad, Yavatmal, and respondent nos. 4 to 7 in Writ Petition No. 277/2019]. An application (Exh. 51) under Order 1 Rule 10 of the Code of Civil Procedure was filed by 8 applicants (respondent nos. 8 to 15 in Writ Petition No. 277/2019). Similar application (Exh. 57) was filed by the petitioner in Writ Petition No. 277/2019.

After dictating the order to this extent, I realized that the facts are jumbled up because of filing of two different petitions by the parties seeking same relief. I have wasted almost 10 minutes in trying to understand and dictate the facts. Initially, prima-facie, I intended to allow the petitions and direct the trial Court to consider the application (Exh. 70) and Pursis (Exh. 69) afresh, however, at this stage, it is noticed that common application (Exh. 70) was filed by the petitioner in Writ Petition No. 277/2019 and petitioners in Writ Petition No. 594/2019 praying that they be permitted to get transposed as plaintiffs.

In Writ Petition No. 277/2019, Shri A.S. Deshpande, Advocate who represents the petitioner submitted that though there is no explanation in the petition as to why the petitioner has alone filed the petition to challenge the order dated 10/12/2018, he submitted that as per his instructions, the petitioner (Shri Satish S/o Shivchand

Bhandari) in Writ Petition No. 277/2019 had asked the petitioners in Writ Petition No. 594/2019 to accompany him in filing the petition, however, they had not shown their willingness.

Shri G.M. Kubade, Advocate representing the petitioners in Writ Petition No. 594/2019 has pointed out para no. 11 of the petition which is as follows:-

“11. It is submitted that a learned Civil Judge, Sr. Dn. however has not decided this application and disposed of the suit on the basis of the pursis of withdrawal (Exh. 69). An order to that extent is passed below the plaint i.e. Annexure A.

Being aggrieved by the said order the original defendant No. 18 Satish Shivchand Bhandari has filed a Writ Petition No. 277/2019 before the Honorable Court on 9.1.2019. By an order dated 16.1.2019 the Honorable Court was pleased to issue notice to the respondents including the petitioners. It is submitted that since Satish Shivchand Bhandari has filed a separate Writ Petition No. 277/2019 hence he is not arrayed as party in this petition. It is submitted that said Writ Petition No. 277/2019 needs to be tagged with this petition.”

After going through para no. 11 of the petition, I find that there is no explanation given by the petitioners for not filing joint petition or not filing an application in Writ Petition No. 277/2019 seeking permission to get impleaded in that petition.

The above facts show that the petitioners have not approached this Court with clean hands. In Writ Petition No. 277/2019, this Court issued notice of the petition to 15 respondents and again 7 parties who are respondents in Writ Petition No. 277/2019 are required to be served with notice of Writ Petition No. 594/2019. The defendant nos. 1 to 5 [(1) State of Maharashtra, Through Collector, Yavatmal (2) Registrar, Co-operative Societies, Pune (3) Divisional Joint Registrar, Co-operative Societies, Division Amravati, (4) District Deputy Registrar, Co-operative Societies, Yavatmal (5) Assistant Registrar, Co-operative Societies, Pusad, Yavatmal] are not added as respondents in both these petitions, the explanation being that the petitioners in both these petitions are not seeking relief against any of those defendants.

Shri A.M. Ghare, Advocate appearing for the respondent nos. 2 to 4 in Writ Petition No. 594/2019 has raised an objection that the petitioner nos. 2 to 8 in Writ Petition No. 594/2019 have not moved any application before the trial Court praying that they be permitted to get transposed as plaintiffs in the civil suit.

In my view, one of the reason for filing Writ Petition No. 594/2019 separately appears to be that certain persons who have not moved application for transposition before the trial Court have directly approached this Court and such prayer cannot be considered.

Prima facie, I have a feeling that the petitioner in Writ Petition No. 277/2019 and the petitioners in Writ Petition No. 594/2019 have made an attempt to obtain orders

in favour of the petitioner nos. 2 to 8 in Writ Petition No. 594/2019 by creating confusion.

Hence, the writ petitions are **dismissed** with liberty to the petitioners to file proper petition, if so advised.

The petitioner in Writ Petition No. 277/2019 shall pay costs of Rs. 3,000/- to each of the respondent nos. 5 to 7 in that petition and the petitioners in Writ Petition No. 594/2019 shall pay costs of Rs. 3,000/- to each of the respondent nos. 2 to 4 in that petition.

The amount of costs shall be paid to the concerned respondents by demand draft.

JUDGE

Ansari