

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2371 OF 2019

Mohamed Khan Rehaman Khan Pathan

-vs-

Shree Balaji Sansthan, Public Trust Akola, Thr. Trustee Dnyaneshwar Narayanrao Kalo

WITH

WRIT PETITION NO.2387 OF 2019

Narayan Namdeorao Kamble

-vs-

Shree Balaji Sansthan, Public Trust Akola, Thr. Trustee Dnyaneshwar Narayanrao Kalo

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri B. N. Mohta, Advocate for petitioners.
Shri S. S. Deshpande, for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : September 23, 2019

Since identical orders are challenged in these writ petitions, they are being decided by this common order.

The petitioner in Writ Petition No.2387/2019 is the original defendant in the suit for possession filed by the respondent-Trust. In the plaint it has been specifically pleaded that the suit property is open land which is part and parcel of CTS No.2599. In the written statement a stand has been taken that the suit property is located in CTS No.2557 and that area is owned by the Municipal Council. The defendant therefore moved an application at Exhibit-16 seeking addition of the Municipal Council as a

defendant in the suit. The trial Court initially by an order dated 09/09/2015 directed the plaintiff to add Municipal Council as defendant No.2. The plaintiff therefore sought review of that order and the trial Court by order dated 30/10/2017 allowed the review application and set aside the order passed below Exhibit-16. The defendant therefore filed a miscellaneous appeal for challenging that order. The appellate Court dismissed the said appeal and hence that order is challenged in the present writ petition.

2. Shri B. N. Mohta, learned counsel for the petitioner submitted that by allowing the review application and thereafter dismissing the appeal, the Courts have committed an error. Since a specific ground was raised that the suit property was part and parcel of CTS No.2557 which was owned by the Municipal Council, it was necessary to add the Municipal Council as a defendant. The trial Court initially had rightly directed such addition but by exceeding its jurisdiction said order was reviewed. Any adjudication in absence of Municipal Council would result in breach of principles of natural justice. Hence the impugned orders were liable to be set aside.

3. Shri S. S. Deshpande, learned counsel for the respondent supported the impugned order. He referred to the adjudication in the earlier round of litigation to urge that in said proceedings it was admitted by the defendant herein that the suit property was situated in CTS No.2599. The order dated 30/10/2017 was rightly passed reviewing the initial order and hence no interference with the same was called for. The burden to prove the location would be discharged by the plaintiff and it would be for the defendant to justify his defence. He therefore submitted that there was no reason to interfere with the impugned order.

In reply it was submitted by the learned counsel for the petitioner that the counsel who had earlier represented the Trust in the miscellaneous appeal was the counsel for the shopkeepers and that aspect also needs to be taken into consideration.

4. I have heard the learned counsel for the parties and I have perused the documents placed on record. The specific case of the plaintiff is that the suit property lies in CTS No.2599. The defence raised is that said suit property lies in CTS No.2557. The initial burden to prove the contents of the plaint would be on the plaintiff and it would be for the defendant to justify the defence as raised. To adjudicate that aspect it is not found necessary that the

Municipal Council is required to be added. This aspect has been considered by the trial Court while allowing the review application and the appellate Court while dismissing the appeal. Moreover, before the trial Court the parties are free to lead such evidence which would be necessary to substantiate their respective stand.

5. In that view of the matter I do not find any error committed by the Courts while reviewing the order passed earlier and not permitting addition of a defendant. Hence no interference is called for. Both the writ petitions are dismissed with no order as to costs.

JUDGE