

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

WRIT PETITION NO.3207 OF 2016

Sheikh Mirawali Maula Saheb ... Petitioner

-vs-

Gram Panchayat Allapalli and ors. ... Respondents.

Shri R. R. Dawda, Advocate for petitioner.
Respondent served.

CORAM : A.S.CHANDURKAR, J.

DATE : June 24, 2019

P.C.

The respondents are duly served but they have not chosen to contest the writ petition. Rule heard forthwith.

2. An order passed below Exhibit-53 on the application for amendment is under challenge. The petitioner is the original plaintiff who has sought a declaration that the notice dated 10/02/2015 issued by the respondent No.1-Gram Panchayat under Section 53-B of the Maharashtra Village Panchayats Act, 1958 (for short, the said Act) is illegal and that the defendants were not entitled to remove the construction as made by the plaintiff. In the plaint it has been pleaded that the said notice came to be issued at the instance of defendant No.3. After the written statements were filed and the issues were framed, the plaintiff moved an application below Exhibit-53 seeking to

amend the plaint. The trial Court has rejected the said application on the ground that the proposed amendment was not necessary as the averments in the plaint in that regard were present. Hence the present writ petition.

3. Shri R. R. Dawda, learned counsel for the petitioner submitted that the application for amendment having been moved before the commencement of evidence and with a view to amplify the pleadings already made, it ought to have been allowed by the trial Court. The basic pleadings in the plaint indicated that it was the case of the plaintiff that the notice under Section 53-B of the said Act had been issued at the instance of defendant Nos.2 and 3. Said fact was sought to be highlighted by bringing on record further pleadings in that regard. No prejudice would have been caused to the defendants and that the nature of the suit would not have been changed. Hence the trial Court ought to have allowed the said application.

4. The respondents have not chosen to contest the writ petition.

I have perused the plaint as filed. In paragraphs 5 to 9 it is the case of the plaintiff that the notice in question was issued at the instance of defendant Nos.2 and 3. In the amendment it was sought to be pleaded that the defendant No.3 in an illegal manner had sought to have the aforesaid notice issued to the plaintiff. The trial Court has infact observed that the plaint as filed indicated the basis of challenge by the petitioner. It is found

that there was no justifiable reason of the trial Court to have refused the said amendment. The evidence of the parties was yet to commence and by adding paragraph 6A in the plaint the case of the plaintiff was sought to be amplified. There was an opportunity to the defendants to oppose the amended pleadings by amending their written statement. Moreover, the suit in question was filed in March 2015 and the application for amendment was moved in October 2015. In the circumstances the application ought to have been allowed by the trial Court.

5. Hence the order dated 13/04/2016 passed below Exhibit-53 is set aside. The application for amendment stands allowed. The defendants are at liberty to consequentially amend their pleadings. The trial Court shall proceed with the adjudication of the suit on its own merits and in accordance with law.

The Writ Petition is allowed and disposed of. No costs.

JUDGE