

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

CIVIL APPLICATION NO.1330 OF 2020
AND
CIVIL APPLICATION NOS.768 OF 2020 & 1326 OF 2020
AND
CIVIL APPLICATION NO. 1325 OF 2020
IN
WRIT PETITION NO. 859 OF 2020

Poonam W/o Vilas Katekhaye,
 ..VS..
 The Collector, Bhandara and Ors.,

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

Court's or Judge's orders

Shri M. P. Khajanchi, Advocate for the petitioner.
 Shri A. M. Deshpande, Addl.G.P for the respondent Nos.1 to 3.
 Shri N. B. Kalwaghe, Advocate for the intervenor.
 Shri S. S. Ghate, Advocate for the intervenor.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 04th December, 2020

CIVIL APPLICATION NO. 1330/2020

1. Heard.
2. During pendency of this petition, there came an order passed by the Hon'ble Minister. This order is now sought to be challenged by the petitioner on various grounds taken in the proposed amendment application. We find that the amendments are necessary for making an effective adjudication in the present case. However, we do not find that Hon'ble Minister is a necessary party, there been no malafide attributed to him. As such, we allow the amendment application partly, except for what

the application proposes as regards the Hon'ble Minister – respondent No.5.

3. Accordingly, we direct the petitioner to carry out the amendment by deleting the name of respondent No.5 as the proposed additional party respondent and also substituting the words “respondent No.5” with the words “the Hon'ble Minister (State), Urban Development Department, Mumbai” wherever they appear in the proposed amendments. Such amendments be carried out on or before next date. Copy of the amended petition be furnished to other side with liberty to other side to file reply thereto.

Application is disposed of.

CIVIL APPLICATION NOS. 768/2020 & 1326/2020

1. Heard.

2. Both these applications are opposed by Shri Khajanchi, learned counsel for the petitioner. According to him, these Councilors are not necessary parties to the lis, unless the Councilors demonstrate that they have been deprived of any legal right and had sustained some legal injury which requires protection. He placed reliance upon the law laid down by the Apex Court in this regard in the case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and Ors.*, (2012) 4 SCC 407.

3. While there can be no dispute about the principles of law that unless there is a legal injury suffered, there is no legal right inhering in a person to

prosecute or take part in the legal proceeding. In the case of *Ravi Bohair* (supra), the complaint was filed by Ex-President who could not show sustaining of any legal injury by him and it was in that context, the Supreme Court held that the complaint therein could not be any party to the lis. In that case the starting point of the inquiry was the charge-sheet presented against the petitioner therein under Section 55-A of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short the Act of 1965). Such are not the facts of the present case. In the present case, the complaint has been filed not by any Ex-President but the elected councilors, 13 out of 17 elected councilors, and the starting point of the inquiry is under Section 55-1 of the Act of 1965. There is a big difference between Ex-President and elected Councilors. Elected councilor would always have interest in the election and continuation of the President and therefore, they would be falling within the category of aggrieved party and as such would have a right to be heard, provided they want to exercise their such right. As such, they could be termed to be constituting a party interested in the lis and as such, in our respectful submission, no support from the judgment of *Ravi Bhoir* (supra) could be sought by the petitioner in order to oppose these two applications.

4. In the result, we are of the view that both the applications need to be allowed and they are allowed accordingly. The petitioner is directed to implead Mr. Kamlakar S/o Mahadeo Raipurkar and Mr. Naresh S/o Somaji Talmale as respondent Nos.5 and 6 respectively

by making necessary amendments on or before next date.

5. The respondent Nos. 5 and 6 are at liberty to file their reply in the matter.

6. Leave is also granted to the petitioner to join the remaining councilors who were part of the complaint as party respondents in this petition, by making necessary amendment to the cause title on or before next date and on their impleadment, notice be issued to them, returnable after four weeks.

7. Applications are disposed of.

CIVIL APPLICATION NO.1325/2020

This application is dismissed as infructuous.

JUDGE

JUDGE