

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

WRIT PETITION (WP) NO.2957 OF 2020

PETITIONER : Mahadeo Sadashiv Narwade,
Aged about 41 years, Occu:
Agriculturist, R/o Changeval, Tq.
Sindhkhedraja, Distt : Buldhana.

--VERSUS--

RESPONDENTS : 1. State of Maharashtra, Through
Collector, Buldhana, Tq. and Distt :
Buldhana

2. Tahsildar, Sindhkhedraja, Tahsil Office,
Sindhkhedraja, Tq: Sindhkhedraja,
Distt: Buldhana.

3. Deputy Superintendent, Taluka
Inspector, Land Record office,
Sindhkhedraja, Tq : Sindhkhedraja,
Distt : Buldhana

4. Satish Janardhan Mogal,
Aged about 40 years, Occu: Service,
R/o Siddhivinayak Complex, Plot No.21,
Sector-10, Room No.A, Wing 302,
Kamothe, Tq: Panvel, Distt: Raigadh.

Official Address:- At the office of
Minister Hon'ble Shri Sandipan
Bhumare, Designation-P.A. Mantralaya,
Mumbai.

5. Dinkar Sampat Mogal,
Aged 55 years, Occu: Agriculturist

6. Shivhari Gyandev Mogal,
Aged 37 years, Occu: Agriculturist

7. Ashok Balasaheb Mogal,
Aged 38 years, Occu: Agriculturist

8. Vinod Asaram Mogal,
Aged 42 years, Occu: Agriculturist

All Resp. Nos.5-8 R/o Changeval, Tq :
Sindhkhedraja, Distt : Buldhana

9. Karbhari Punjaram Gande,
Aged 37 years, Occu : Agriculturist, R/o
Borkhedi Gande, Post : Changeval, Tq :
Sindhkhedraja, Distt : Buldhana.

Shri. K. V. Deshmukh, Advocate for the Petitioner
Ms. T. H. Khan, Asst. G. P. for the Respondent Nos.1 to 3
Shri. M. D. Lakey, Advocate for the Respondent No.4
Shri. N. A. Gaikwad, Advocate for the Respondent Nos.5 to 9.

CORAM : **N. B. SURYAWANSHI, J.**

DATE : **04.08.2021**

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 15.10.2020 (Annexure-A) passed below Exh-25 in Regular Civil Suit No.33 of 2020, thereby permitting the Respondent Nos.5 to 9 to be added as party Defendants in the suit filed by the Petitioner.

3. The facts, in brief, are as follows :

Regular Civil Suit No.33 of 2020 is filed by the Petitioner/Plaintiff seeking a declaration and permanent injunction against the Defendants and measurement of land Gat No.66, Survey No.15 situated at village Changefal, Taluka Sindhkhedraja, District Buldhana (for short, "suit land"), which is 'E' class Government land. The Defendants appeared and resisted the suit on merits.

4. The Respondent/Defendant Nos.5 to 9 sought their impleadment in the suit as party Defendants by filing application (Exh-25) under Order 1 Rule 10 and under Section 151 of the Code of Civil Procedure, contending that they being the residents of the village of the Plaintiff, are interested persons, as the Plaintiff has encroached on the suit land, which is owned by the Government. The Defendant No.4 has made encroachment over the suit land, his father is Sarpanch of village Changefal. Therefore, the present suit is filed

by the Plaintiff in collusion with the Defendant No.4 so as to avoid the disqualification of the father of the Defendant No.4. The measurement of Government land was done at the instance of the Applicant No.1/Respondent No.5. Sister-in-law of the Plaintiff Prayagbai Bhanudas Narwade is also Gram Panchayat Member and her husband has also made an encroachment over the Government land. The Respondent Nos. 5 to 9 therefore filed disqualification proceedings before the Collector. In order to bring true facts before the Court, the Respondent Nos.5 to 9 are necessary parties. Therefore, they prayed that they be added as party Defendants.

This application was resisted by the Plaintiff by filing written say. The Trial Court allowed the application, hence, the present petition.

5. Heard the learned Advocate for the Petitioner and the learned Advocate for the Respondents.

6. The learned Advocate for the Petitioner submitted that in terms of Section 50 of the Maharashtra Land Revenue Code, 1966 (for short, "the MLR Code"), the Collector has power to remove the encroachment. Therefore, the Defendant Nos.1 to 3 are arrayed as the Defendants in the suit. Merely because, the Respondent No.5 filed an application for measurement of Gat No.66 that itself cannot be a ground to claim that he be added as party Defendant. Though, disqualification proceedings are filed by other Defendants that will take its own course and that also is not a proper ground to add them as party Defendants. The Trial Court has observed in the impugned order that they have no right or interest in the suit property, and therefore, he claims that the order passed is contrary to the criteria laid down in Order 1 Rule 10 (2). He relied in support of his arguments in the decision of this Court in *Writ Petition No.6238 of 2019 (Bharat s/o Ganeshlal Choudhari .vs. The Municipal Council, Jalna and one), Ramesh s/o. Shama Kumbhar and Anr. .vs. Sudhakar s/o. Budha Kumbhar and Ors., 2013(3) All.M.R. 196 and Amit Kumar Shaw .vs. Farid*

Khatoon, 2005 AIR(SC) 2209. He therefore claimed that the impugned order is unsustainable and the same may be quashed and set aside.

7. Per contra, the learned Advocate for the Respondent Nos.5 to 9 submitted that on 24.07.2020, he filed an application seeking measurement of Gat No.66. Thereafter, the suit was filed on 02.09.2020. By pointing out pleadings in Para 5 of the suit, he submitted that the Petitioner has specifically pleaded in the plaint that the Defendant No.4 in collusion with the Defendant Nos.2 and 3 gave an application by the hands of his puppet to the Defendant No.2 for measurement of Gat No.66. He submitted that since he has filed an application, he is the interested party in that suit, and therefore, the Trial Court was perfectly justified in allowing the application and adding them as proper party Defendants. By placing reliance on the reply filed in the present proceedings, he submitted that a report is submitted to the Collector by Tahsildar, wherein it is mentioned that the Defendant No.4/Respondent No.4 has erected his poultry shade in

Gat No.66 instead of Gat No.92. He further submitted that the Respondent Nos.5 to 9 have filed disqualification proceedings against the father of the Respondent No.4. In that view of the matter, also they are proper parties. In support of his submissions, he placed reliance in the decision of this Court in *Writ Petition No.3391 of 2020* and connected petitions.

8. It is a settled law that when it comes to a litigation between the parties, the Plaintiff normally is *dominus litis*. He is the master of his suit. He seeks reliefs against such a party, whose action has caused him a legal injury. The party can be added, whose presence in the opinion of the Court, may be necessary, in order to enable the Court to effectively and completely adjudicate the dispute involved in the suit. Admittedly, in the present case, the suit property belongs to the Government and the Government Authorities i.e. the Collector, Tahsildar and Deputy Superintendent of Taluka Inspector of Land Record are arrayed as the Defendants. The suit is filed seeking reliefs against the Government

Authorities and against the Defendant No.4, who has encroached on the Government land. Thus, there is no prayer made against the Respondent Nos.5 to 9 in the suit.

9. Merely because an application for measurement was filed by the Respondent No.5 for measuring the suit land Gat No.66, he cannot be said to be a proper and interested party. Similarly, since the Respondent Nos.5 to 9 have applied for disqualification of the father of the Defendant No.4 from the post of Sarpanch, it cannot be a ground to come to a conclusion that they are necessary parties.

The power of a Court to add a party to a proceeding does not depend wholly on the question, whether he has interest in the suit property. The question needs to be considered is that whether an enforceable legal right of a person may be affected, if he is not added as a party [*vide Amit Kumar Shaw (supra)*].

10. Perusal of the impugned order shows that the Trial Court has recorded a finding that “In the present suit admittedly, no relief is sought against the applicants. So also, they have no direct interest to the suit land. However, it is also pertinent to note that applicant No.1 has applied for the measurement of ‘E’ Class land bearing Gut No.66 and on that basis measurement of that gut number is carried out. So also, these applicants on the basis of that measurement and the encroachment shown therein have applied to the Collector, Buldhana for disqualification of father of defendant No.4 from the post of Sarpanch. It shows the nexus and the interest of the applicants.”

11. These observations reflect non-application of mind on the part of the Trial Court to the settled legal position and to the fact that the presence of the Respondent Nos.5 to 9 is not necessary for effectively deciding the real controversy between the parties. Since no relief is claimed against them by no stretch of imagination, it can be said that without their

participation, the Trial Court would not be in a position to effectively adjudicate the dispute.

12. The learned Advocate for the Respondent Nos.5 to 9 has placed reliance in the judgment rendered in *Writ Petition No.3391 of 2020* and connected matters, the facts, in that matter were different. The Petitioner/Plaintiff therein had filed a complaint seeking disqualification of the Respondent under Section 55-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. On the basis of their complaint, the proceeding was initiated and in the writ petition filed by the disqualified respondent, the Petitioners were not made party. In those circumstances, this Court held that though the petitioners are not necessary party, but taking into consideration the allegations of *mala fides* and that they had complained, they were proper parties and directed to add them. This ruling is not applicable to the facts of the present case.

13. For the aforestated reasons, the impugned order cannot sustain and the same is liable to be quashed and set aside. Hence, the following order :

ORDER

i) Writ Petition No.2957 of 2020 is **allowed.**

ii) The impugned order passed below Exh-25 by the learned Civil Judge Senior Division, Mehkar in Regular Civil Suit No.33 of 2020, is hereby quashed and set aside.

Rule is made absolute in the above terms with no order as to costs.

JUDGE