

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

CIVIL APPLICATION (CAW) NO.113/2021

IN

WRIT PETITION NO.3391/2020

Sau.Vaishali w/o Dilip Thakur and ors

..VS..

State of Mah., thr. its Principal Secretary, Urban Development Department,
Mantralaya, Mumbai and anr

AND

CIVIL APPLICATION (CAW) NO.153/2021

IN

WRIT PETITION NO.3392/2020

Sau.Vaishali w/o Dilip Thakur and ors

..VS..

State of Mah., thr. its Principal Secretary, Urban Development Department,
Mantralaya, Mumbai and anr

AND

CIVIL APPLICATION (CAW) NO.151/2021

IN

WRIT PETITION NO.3393/2020

Sau.Vaishali w/o Dilip Thakur and ors

..VS..

State of Mah., thr. its Principal Secretary, Urban Development Department,
Mantralaya, Mumbai and anr

AND

CIVIL APPLICATION (CAW) NOS.112 & 150/2021

IN

WRIT PETITION NO.3394/2020

Charansingh s/o Babulalji Thakur and ors

..VS..

State of Mah., thr. its Principal Secretary, Urban Development Department,
Mantralaya, Mumbai and anr

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

Court's or Judge's Order

CAW NO.113/2021

Shri S.V.Manohar, Senior Counsel with Advocates Shri Shakeel Deshmukh and Kapil Deshmukh for the applicant.
Shri M.G.Bhangde, Senior Counsel with Advocate Shri M.P.Khajanchi for the petitioner.
Shri S.M.Ukey, Addl.G.P. for the respondents.

CAW NO.153/2021

Shri S.V.Manohar, Senior Counsel with Advocates Shri Shakeel Deshmukh and Kapil Deshmukh for the applicant.
Shri M.G.Bhangde, Senior Counsel with Advocate Shri M.P.Khajanchi for the petitioner.
Shri S.M.Ukey, Addl.G.P. for the respondents.

(CAW) NO.151/2021

Shri S.V.Manohar, Senior Counsel with Advocates Shri Shakeel Deshmukh and Kapil Deshmukh for the applicant.
Shri M.G.Bhangde, Senior Counsel with Advocate Shri M.P.Khajanchi for the petitioner.
Shri S.M.Ukey, Addl.G.P. for the respondents.

(CAW) Nos.112 & 1502021

Shri S.V.Manohar, Senior Counsel with Advocates Shri Shakeel Deshmukh and Kapil Deshmukh for the applicant.
Shri M.G.Bhangde, Senior Counsel with Advocate Shri M.P.Khajanchi for the petitioner.
Shri S.M.Ukey, Addl.G.P. for the respondents.

CORAM : V.M.DESHPANDE J.
DATED : FEBRUARY 25, 2021.

1. These civil applications in these writ petitions are filed by applicants named therein seeking direction to be given to petitioners to add them as party respondents.
2. These applications are being disposed of by this common order since they were heard simultaneously.

3. The applicant in Civil Application No.113/2021 is a citizen of Katol city. Whereas, applicants in other applications are elected municipal councillors of Katol Municipal Council.

4. Very lengthy arguments were advanced before this Court from both sides, namely on the side of applicants and on the side of petitioners regarding fate of these applications.

5. Learned senior counsel Shri S.V.Manohar, is representing all applicants who are seeking direction to get themselves added as party respondents in these writ petitions. Learned senior counsel Shri M.G.Bhangde, is appearing on behalf of petitioners in all these petitions and he is opposing these applications.

6. Cursory look to the petitions will have to be there in this order for deciding these applications.

7. These writ petitions are filed challenging order dated 4.12.2020 by respondent No.2 i.e. Honourable State Minister, Urban Development Department, Mumbai. By the said order dated 4.12.2020, respondent No.2 exercised powers under Sections 42 and 55-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, "the said Act") and disqualified petitioners to hold office as President, Vice President, and councillors of Municipal Council, Katol.

8. The petitioners in these writ petitions approached to this Court by filing these four different writ petitions challenging order dated 4.12.2020. This Court (Coram : Manish Pitale, J.), after hearing learned counsel for petitioners, issued notices and granted interim order in terms of prayer clause (b) of these writ petitions till disposal of writ petitions. Stay was granted to effect, operation, implementation, and execution of order dated 4.12.2020 passed by respondent No.2.

9. After the order was passed by this Court, applicants approached by filing these civil applications and they are praying that they be joined as party respondents.

10. Learned senior counsel Shri Manohar, placed reliance on order passed by the Division Bench of this Court in Civil Application Nos.768 and 1326/2020 in Writ Petition No.859/2020 to buttress his point that applicants be joined as party respondents in these writ petitions. On the other hand, learned senior counsel Shri Bhangde for the petitioners submitted that the reliance on the order of the Division Bench is misplaced, inasmuch as Writ Petition NO.859/2020 was pertaining to removal of the President under Section 55-1 of the said Act and, therefore, the said order is of no use inasmuch as statutory right is given to elected councillors to invoke powers under Section 55-1 of the said Act. He submitted that such is not the case herein. He submitted that petitioners are removed by respondent No.2 by exercising powers under Section 55-A and Section

42 of the said Act. Learned senior counsel Shri Bhangde relied upon an authoritative pronouncement of the Honourable Apex Court in the case of Ravi Yashwant Bhoir vs. District Collector, Raigad and ors reported at (2012)4 SCC 407 to point out that complainant can be a witness but he cannot be the necessary party. He read out paragraph Nos.58 to 60 and also opening line of paragraph No.69 of the case cited *supra*. He, therefore, submitted that applicant are not having any legal right inasmuch as there is no legal injury to them. Therefore, they cannot be permitted to join as party respondents.

11. It is not disputed before this Court from the side of petitioners that starting point of order dated 4.12.2020 rests in complaints filed by these four applicants. Their complaints are different and those were filed before respondent No.2 on different dates. In those complaints, these applicants submitted before respondent No.2 that respondent No.2 should exercise powers under the said Act and to declare that petitioners have earned disqualification. The applicants gave vivid accounts in their applications as to why petitioners have earned disqualification. It is also not disputed before this Court that after receipt of complaints from applicants, authority directed holding of enquiry by the Divisional Commissioner, Nagpur Division, Nagpur who in turn conducted enquiry and submitted report before the authority. It is also not disputed before this Court, in fact petitioners themselves have filed copy of notice of hearing

given on 9.8.2019 and 5.11.2020 not only to petitioners but also to present applicants given by the authority. It is also not disputed before this Court that in pursuance to hearing given by respondent No.2, applicants and petitioners appeared before authority i.e. respondent No.2 and submitted their oral arguments apart from replies. Thereafter, the order impugned is passed.

12. According to learned senior counsel Shri Manohar for applicants, since petitioners have not joined applicants as party, they are required to file these civil applications. He submitted that behind and back of applicants though direct allegations of *mala fide* are not made, pleadings made in writ petitions would show that petitioners are indirectly suggesting *mala fide* against applicants. Therefore, those allegations even in the nature of suggestions cannot go unheard and will have to be heard by this Court after hearing them.

13. To counter this submission, learned senior counsel Shri Bhangde for petitioners submitted that there is no direct allegation of *mala fide* against applicants and even if those are there, as submitted by learned senior counsel from the other side, he has instructions from petitioners to make a statement that petitioners are abandoning the said aspect. He, therefore, submitted that interest of applicants can be taken care of.

14. In respect of allegations of *mala fide*, either

direct or suggestive in nature, will require to be decided by this Court. At this juncture, I am reminded of the word of the Honourable Apex Court in the case of Express Newspapers Pvt.Ltd. and others vs. Union of India and others reported at AIR 1986 SC 872. In paragraph No.115 of the said judgment, the Honourable Apex Court observed as under:

“Where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability.”

In view of observations of the Honourable Apex Court, opportunity will have to be given to the applicants to place their case before the Court so they will not go unheard on the point of *mala fides*.

15. Further, submission of learned senior counsel Shri Bhangde, as noted in paragraph No.13, is very attractive and the Court may tend to accept the same. Whether such submission can be accepted for rejecting these applications?

16. As observed in earlier part of this order, on 15.12.2020 this Court (Coram : Manish Pitale, J.) granted *ad interim* relief in terms of prayer clause (b) of writ

petitions while issuing notices. Perusal of order dated 15.12.2020 reveals that it was the case of petitioners that entire action is *mala fide* as it could be seen from paragraph No.4 of the said order. Now, action which is sought to be questioned in these writ petitions is, complaints filed by applicants. In this view of the matter, submission that entire action of respondent No.2 was actuated with *mala fide* was one of factors at the time of granting interim relief in favour of petitioners. By interim relief, exit of petitioners from public office is stayed. Thus, they are enjoying public office from 15.12.2020 in view of protection granted to them by this Court. If that be so, if now petitioners are permitted to submit that they are abandoning their case based on *mala fide*, will nothing but allowing petitioners to blow both hot and cold and/or in other words they will be permitted to approbate and reprobate which, in my view, is impermissible. The petitioners will have to take their case even on point of *mala fide* to its logical end especially when they are being protected and they are enjoying public office in view of order dated 15.12.2020.

17. According to learned senior counsel Shri Bhangde for petitioners, the fate of applications is governed by decision of the Honourable Supreme court in the case of Ravi Yashwant Bhoir vs. District Collector, Raigad and ors cited supra. In the said case, question was whether respondent No.5 therein i.e. one Chintaman was necessary party or not.

Before me, learned senior counsel Shri Manohar for applicants, submitted that applicants are not stating that they are necessary parties to *lis* but they are proper parties.

18. The ratio of Ravi Yashwant Bhoir cited *supra* was that whether the complainant is necessary party. The Honourable Apex Court has not decided the issue as to whether complainant can be a proper party. Therefore, in my view, applications of applicants cannot be thrown out by keeping reliance on the case cited *supra*, as submitted by learned senior counsel Shri Bhangde.

19. A party to litigation is necessary party or a proper party. The Honourable Apex Court in the case of Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar and another, reported at AIR 1963 SC 786 ruled that a necessary party is one without whom no order can be made effectively, whereas a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. In my view, this principle, as enunciated by the Honourable Apex Court, on the point is aptly applicable in this case.

20. As observed in earlier part of this order, applicants are persons on whose complaints ultimately final action is taken by respondent No.2. Though applicants may not be necessary parties, looking to fact that they are persons at whose behest the action was initiated, this Court is of view

that their presence would enable the Court to completely, effectively, and adequately adjudicate upon all matters involved in these writ petitions.

21. On behalf of petitioners, it was contended that applicants have not pointed out any statutory right in their favour. In that behalf it is to be observed that applicants are not claiming that they are necessary parties. Therefore, in my view, to be in the *lis*, as proper party, applicants may not have any statutory right in their favour but for effective decision their presence is required.

22. At this stage, it will have to be observed that after show cause notice was given to petitioners by respondent No.2, and when they were called for hearing, applicants were also called by respondent No.2 for hearing. Not only that, till reply is filed to these applications on behalf of petitioners at no point of time, objected presence of applicants. They were never objected before respondent No.2 on behalf of petitioners on the ground that that they have no legal right in their favour to participate in proceedings. In fact, they were also heard along with petitioners rivalry by respondent No.2 before passing the order impugned.

23. According to learned senior counsel Shri Bhangde for petitioners, merely because they were not objected at initial stage that does not mean that they cannot be objected at later stage inasmuch as according to his

submission, illegality committed by respondent No.2 by allowing applicants to participate in proceedings cannot be perpetuated. I am not interested by this submission also, because of distinction between necessary party and proper party. In fact, the authority whose order is being questioned in these writ petitions also found that presence of applicants as proper party and, therefore, they were also heard.

24. Learned senior counsel for the applicants submitted that petitioners did not file various documents which were before the authority below before passing the order. Therefore, they have suppressed material from this Court. I am not impressed by this submission because these writ petitions are at initial stage inasmuch only notices are issued. The petitioners can avail opportunity of filing of appropriate applications for placing documents and can also file applications seeking amendment of pleadings.

25. The applicants have every right to point out to this Court under what circumstances they have moved before the authority and what were their submissions and they have right to assist this Court.

26. After hearing learned senior counsel from both sides and after perusing various documents filed on record, this Court is of view that though applicants may not be necessary parties, they are proper parties.

27. The upshot of the aforesaid, leads me to pass

following order:

ORDER

- (1) Civil Applications are allowed.
- (2) The petitioners in these writ petitions are directed to join applicants as party respondents.
- (3) After joining applicants as proper parties, they will be permitted to assist this Court in deciding these writ petitions by filing their written submissions in these writ petitions and also entitled to be heard.
- (4) Two weeks' time is granted to learned counsel for petitioners to amend the cause title.

JUDGE

!! BRW !!

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