

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

923 WRIT PETITION NO.1397 OF 2020

**ABHAY BANSILAL MUTHA AND OTHERS
VERSUS**

SHAIKH RAMJAN ALIAS RAMJANI GANI QURESHI

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Advocate for Petitioners : Mr. Bedre Vinayak Sudhakar.

CORAM : MANGESH S. PATIL, J.

DATE : 24.06.2022.

PER COURT :

The petitioners are the original defendant Nos. 1 to 3 in a suit for perpetual injunction filed by the respondent No. 1.

2. During pendency of the suit the Municipal Council was impleaded as a defendant No. 4. Initially no relief was claimed against it and it was merely averred that it was a necessary party.

3. During the course of trial, by moving application (Exh. 189) the respondent/plaintiff sought amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure so as to aver that after hearing the arguments in respect of temporary injunction that was being claimed by him against the Municipal Council/defendant No. 4, its officers removed the suit stall without following due process of law. He also sought to add a prayer seeking mandatory injunction against the defendant No. 4/Municipal Council. By the order under challenge that application has been allowed and the respondent has been allowed to carry out the amendment in the plaint.

4. I have heard the learned advocate Mr. Bedre for the petitioners. Needless to state that the proposed amendment is only directed against

the defendant No. 4-Municipal Council. Even the relief sought to be added is being claimed against it alone. Though the petitioners are the defendant Nos. 1 to 3, one cannot comprehend as to how when the defendant No. 4-Municipal Council is not aggrieved by the order allowing the respondent to carry out the amendment, the petitioners are adversely affected.

5. Besides, veracity or otherwise of the contents of the proposed amendment cannot be prejudged. The fact remains that going by the proposed amendment the respondent intends to assert that during pendency of the suit, after the arguments on the application for temporary injunction were heard and even before any order could be passed, the officers of the defendant No. 4 - Municipal Council have removed his stall. In the circumstances, it would be just and proper to allow the respondent to prove the allegation which he intends to make by way of proposed amendment and seek the appropriate relief against the defendant No. 4-Municipal Council, which even otherwise has not been arrayed in the present petition.

6. In the circumstances, I find no perversity or illegality in the order passed by the trial court allowing the respondent to carry out amendment and seek additional relief.

7. There is no substance in the petition. It is dismissed.

(MANGESH S. PATIL, J.)

mkd/-