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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8905 OF 2022

Mohammed Hamiduddin Basheeruddin (Died) LRs PETITIONERS

VERSUS

Rama Dashratha Jadhav (Died) LRs and Others RESPONDENTS

.....
Mr. Gopal D. Kale, Advocate for the petitioners
Mr. Sharad V. Natu, Advocate for respondent No1.
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd SEPTEMBER, 2022

ORDER :

1. The petitioners-original plaintiffs in Regular Civil Suit No. 1007 of 1989 are aggrieved by the order dated 6th July, 2022 passed by the learned Civil Judge, Senior Division, Nanded below Exhibit-614, thereby rejecting the application filed by the plaintiff under Order I, Rule 10 and Order VI, Rule 17 of the Civil Procedure Code.

2. The suit is filed by the petitioners challenging compromise made by defendants No.1 to 5 before the Supreme Court on 18th August, 1989. A further declaration is sought that the suit land is

service Inam land and not Madatmash. The plaintiffs have further claimed that the defendants are not entitled to retain possession of the suit land and decree for delivery of possession of the entire suit land or to the extent of half, by partition and separate possession, by removing all the encroachments be passed in favour of the plaintiffs.

3. Temporary injunction is granted in the said suit in favour of the plaintiffs, thereby directing the parties to maintain *status quo*.

4. It is the contention of the plaintiffs that the defendants have moved for sanction of the layout of the suit land, therefore, the plaintiffs filed application Exhibit-614 seeking to add the Commissioner, Nanded Waghale Municipal Corporation, Nanded and the State of Maharashtra, through Collector, as defendants No.6 and 7 in the suit and further sought to amend the plaint by addition paragraphs No. VIII and 29/B and prayers that the decree for perpetual injunction restraining defendant No.7 from granting sale permission of the Service Inam land (suit land) be granted and further restrain defendant No.6 from granting construction permission over the entire suit land. The application is resisted by the defendants and the Trial Court has rejected the same. The plaintiffs – petitioners are before this Court in writ

petition, aggrieved by this order.

5. Heard learned advocate for the petitioners and learned advocate for respondent No.1. I have given due consideration to the rival contentions. Perused the documents placed on record and the grounds raised in the writ petition.

6. It is a matter of record that the Commissioner, by order dated 10th February, 2018, has already stayed the temporary sanction of the layout of the defendants. The said order is directed to operate till decision of the Civil Court and the dispute is resolved before the Revenue Authorities.

7. Learned advocate for the petitioners points out notings of the Hon'ble Minster on the application filed by defendants, by which the Commissioner, Municipal Corporation, Nanded is directed to take decision on merits, after giving opportunity of hearing to the parties. According to the petitioners, there is every likelihood that the Commissioner may vacate the stay and /or pass any order in favour of the defendants.

8. The apprehension expressed by the petitioners cannot be said to be well founded. The Civil Court has already granted *staus quo* in respect of possession and for alleged disobedience of the said order, the petitioners have already initiated

appropriate proceedings. In view of the stay granted by the Commissioner, to the layout, it appears that the apprehension of the petitioners is misplaced and misconceived.

9. The Trial Court has rejected the application of the plaintiffs, taking into consideration the reliefs claimed in the suit. The Trial Court has also noted that Regular Civil Suit No. 992 of 2012 filed against the State and the Superintendent of Land Records and other two defendants, is pending and the proposed defendants are parties in that suit. The parties have filed a *purshis* in RCS No. 992 of 2012 submitting that the said suit arises out of the dispute in the present suit and hence, both the suits be decided simultaneously and evidence in both the suits will be common.

10. The Trial Court has, therefore, rightly held that if the plaintiffs have any grievance regarding measurement or sanction layout or its misuse, then plaintiffs can seek relief in that proceeding.

11. The facts of the present case indicate that in absence of the proposed defendants, the Trial Court can effectively decide the dispute between the parties and the proposed defendants are neither necessary nor proper parties in the present suit.

12. In view of aforesaid reasons, no fault can be found with

the order impugned in the present writ petition to exercise extraordinary writ jurisdiction. Writ petition, being devoid of substance is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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