

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

WRIT PETITION NO. 10881 OF 2022

Uttam Appasaheb Varale

.. Petitioner

Versus

The Chief Officer, Rahuri Municipal
Council and others

.. Respondents

Shri Swapnil S. Rathi, Advocate for the Petitioner.

Shri Sanjay N. Gaikwad, Advocate for the Respondent No. 5.

CORAM : SANDEEP V. MARNE, J.

DATE : 20TH OCTOBER, 2022.

FINAL ORDER :

. By this petition, the petitioner assails order dated 23rd September, 2022 passed by the 02nd Joint Civil Judge Junior Division, Rahuri below Exhibit 28 in R.C.S. No. 677 of 2021. The Trial Court has allowed the application filed by respondent Nos. 2 to 21 for their impleadment as defendants to the suit.

2. Appearing for the petitioner, Mr. Rathi, the learned counsel would submit that the role of the respondent Nos. 2 to 21 would end after bringing the matter to the notice of the respondent No. 1 who has already initiated action by issuance of notice dated 01.09.2021. Notice dated 01.09.2021 is subject matter of challenge in the suit filed by the petitioner. He would submit that once the notice is issued by the respondent No. 1, it is the respondent No. 1 alone who can defend the suit filed by the petitioner and respondent Nos. 2 to 21 cannot insist for being impleaded in that suit. Mr. Rathi would rely upon judgment of

this Court in **Shyam Fatechand Shende and another Vs. Alka Vinod Ganvir and another** reported in **1998(1) Mh.L.J. 410** in support of his contentions.

3. Per contra, Mr. Gaikwad, learned counsel appearing for the respondent No. 5 opposes the petition and supports the order passed by the Trial Court. He would submit that since the action is initiated on the basis of complaints made by respondent Nos. 2 to 21, they are interested in the outcome of the suit filed by the petitioner and, therefore, they are necessary parties to the suit. He relies on the judgment of this Court in **Ashok Babarao Patil Vs. The State of Maharashtra and others** in Writ Petition No. 10493 of 2022 decided on 11th October, 2022.

4. Having heard learned counsel for parties, I do not find that any error is committed by the Trial Court in allowing application of respondent Nos. 2 to 21 for their impleadment as defendants to the suit. No doubt, the plaintiff is *dominus litis* of his own suit and can choose the defendants against whom he wants to claim relief. In the suit as originally filed, plaintiff has not claimed any relief against the respondent Nos. 2 to 21. However, it is respondent Nos. 2 to 21, who claim to be affected by the poultry farm of the plaintiff stating that they would be affected by the ultimate outcome of the suit filed by the plaintiff.

5. Even otherwise Under Order I Rule 10(2) of the Code of Civil Procedure, Civil Court enjoys wide power to implead any party whose presence is required for effective adjudication of the suit. Such powers cannot be circumscribed on the basis of principle of plaintiff being *dominus litis* of his own suit.

6. In **Ashok Babarao Patil** (supra), the scope and power of Court to implead third parties to the suit has been dealt with. In para No. 20, it is held as under :

"20. The theory of *dominus litis* cannot be overstretched in the matter of impleading of parties, which results in ineffective decrees being passed in absence of necessary parties or where the theory is misused to deliberately obtain decree against non- interested persons/officials and then use it to assert rights of Plaintiff. It is also for the Court to ensure that the real matter in dispute is effectively decided by impleading all those who are necessary parties. Merely because plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. If the Court feels it appropriate that any particular party's presence is necessary before the Court for adjudicating upon the issue involved in the suit, the Court has full power under Order I Rule 10(2) of the Code to direct addition of such party to the suit."

7. The decision in **Shyam Fatechand Shende** (supra) relied by Mr. Rathi is clearly distinguishable. In that case, the third parties who were seeking impleadment to the suit were claiming right to way, which was apparently affected on account of unauthorized construction erected by the plaintiff in the suit. In the facts of that case, this Court has held that the issue regarding right to way is an independent and different issue than the nature of construction being authorized or unauthorized. The judgment therefore, is clearly distinguishable. I am therefore of the opinion that no error is committed by the Trial Court while allowing application for impleadment of defendant Nos. 2 to 21 to the suit.

8. Petition is devoid of merits. It is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]

bsb/Oct. 22