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

WRIT PETITION NO.13767 OF 2019

SHAIKH AFSAR SHAIKH YASIN
VERSUS
ANANT RAKHAMAJI HAMBARDE AND ANOTHER

...

Mr N. K. Tungar, Advocate for petitioner;
Mr S. P. Brahme, Advocate for respondent No.1
Mr Y. P. Jadhav, Advocate h/f Mr V. D. Salunke, Advocate for
respondent No.2

WITH

WRIT PETITION NO.13781 OF 2019

SHAIKH AFSAR SHAIKH YASIN
VERSUS
RATNADEEP BHIMRAO NIKALJE AND ANOTHER

...

Mr N. K. Tungar, Advocate for petitioner;
Mr S. D. Hiwrekar, Advocate for respondent No.1
Mr Y. P. Jadhav, Advocate h/f Mr V. D. Salunke, Advocate for
respondent No.2

CORAM : SMT. BHARATI DANGRE, J.

DATE : 16th February, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner, the learned Counsel appearing for respondent No.1 in both the petitions and learned Counsel for respondent No.2.

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2. The petitions are filed being aggrieved by the orders passed by the learned Civil Judge Junior Division, Ashti, in two distinct suits instituted by respective respondent No.1 to the petitions, against the action proposed against them by the Municipal Council for encroachment. Under the impugned orders, the application filed by the petitioner, seeking his impleadment as defendant in the suits has been rejected.

3. The petitioner approached this Court by filing a Public Interest Litigation and invited attention of this Court to the encroachment over the property belonging to the Grampanchayat, which subsequently stood transferred to the Zilla Parishad. The Division Bench of this Court permitted him to prefer an application to the Chief Officer of the Nagar Panchayat for taking effective steps in respect of removal of alleged encroachment and direction was issued to the authority to take appropriate steps.

4. The petitioner claim that, it was at his instance, the proceedings were initiated by respondent No.2, for removal of the encroachment and this included the encroachment of respondent Nos.1 and 2.

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Upon notice is being issued to them to remove encroachment, they instituted two distinct suits in the Court of competent jurisdiction, seeking permanent injunction, in which, the Nagar Panchayat Ashti, through it's Chief Executive Officer, is impleaded as a defendant. The notices issued to the respective plaintiffs on distinct dates, are sought to be declared as illegal, null and void, and a restrain order is sought against the Municipal Council, so as to in enjoy the peaceful possession by the plaintiffs. In the said suits, application for temporary injunction has been filed and by a reasoned order dated 18/11/2017, the injunction has been granted.

5. It is in these two suits filed by the respective plaintiffs, the petitioner sought an intervention by filing application under Order I Rule 10 of the Code of Civil Procedure. He claimed his interest in the suits by inviting attention of the Court to the fact that he is the whistle blower, at whose instance, the Nagar Panchayat has initiated action for removal of encroachment, and therefore, his presence in suit is very much necessary before the Court to effectively adjudicate and settle the question involved in the suits.

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This application preferred on 23/08/2017, was opposed by the respective plaintiffs by contending that order I Rule 10(2), do not contemplate the petitioner as a 'necessary' or 'proper party' and therefore, sought dismissal of the application.

6. The learned Judge, under the impugned orders, found substance in the submissions advanced by the plaintiffs and did not find favour with the apprehension expressed by the petitioner that the Municipal Authority shall collude with the plaintiffs and will not protect the interest of the public at large, and therefore, his presence is necessary.

7. It is not in dispute that the petitioner is a person, at whose instance, the Municipal Authority became alive to the encroachment on the Government land and it initiated the proceedings for its removal. The petitioner undisputedly can be called as a whistle blower, who has invited attention of the authorities through this Court to the alleged encroachment, which resulted into issuance of notices to the encroachers for removal of the encroachment. They approached the Civil Court seeking a remedy available to them under the civil law and obtained necessary relief in the form of temporary injunction. The suits

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being filed in the year 2017 are being prosecuted diligently by the Municipal Council and even the Municipal Council has filed their written statement, opposing the claim staked in the plaint.

Merely because the petitioner apprehend that there will be a collusion between the plaintiffs and the Municipal Council or that some indulgence may be granted in favour of the plaintiffs by the Municipal Council, is not a justifiable ground to implead him as a necessary party in the proceedings.

8. The Code of Civil Procedure, in the form of an Order I Rule 10, contemplate a necessary party as one without whom the relief in the suit cannot be granted or the suit cannot be adjudicated in his absence. The lis pending in the suits is between the plaintiffs and the Municipal Council, who has initiated an action by issuing appropriate notices for removal of the encroachment and this do not make the petitioner, a necessary party, as the relief claimed by the plaintiffs, even in his absence, can either be granted or declined. The apprehension expressed by the petitioner that the suits would be not be effectively contested, is merely an apprehension, which is unfounded and has been rightly rejected by the learned Judge while refusing to entertain his intervention in

the suit proceedings. After the notices are issued to the plaintiffs, it cannot be said that the petitioner, at whose instance the action was initiated, has any interest in lis between the plaintiffs and the Municipal Council. His impleadment is therefore not warranted and the application filed by the petitioner in the two pending suits, has been rightly turned down by the learned Judge.

9. In taking the aforesaid view, I am fortified by the decision of the Hon'ble Apex Court in case of **Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay and others, 2017 (6) ALL M.R. 420**, where their Lordships of the Hon'ble Apex Court had made the following observations :

“13. In our considered opinion, having regard to the nature of the controversy, which is the subject matter of the suit, respondent Nos. 2 and 3 are neither necessary nor proper parties. As would be clear from mere perusal of the plaint, the basic question, which is required to be decided in the suit, is whether notice issued under Section 351 of the Act by respondent No. 1 (Corporation) to the appellant is legally valid or not (see prayer(a) in the plaint - page 251 of Volume II of S.L.P.Paper Book).

14. To decide this question, in our considered opinion, the only necessary and proper party to the suit is the Mumbai Municipal Corporation, Greater Mumbai,

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i.e., Respondent no 1, who has issued such notice, and for deciding this question either way, the presence of respondent Nos. 2 and 3 is not at all required. In other words, the suit can be decided even in the absence of respondent Nos. 2 and 3.

15. It is a settled principle of law, which does not need any authority to support the principle, that the plaintiff being a dominus litis cannot be forced to add any person as party to his suit unless it is held keeping in view the pleadings and the relief claimed therein that a person sought to be added as party is a necessary party and without his presence neither the suit can proceed and nor the relief can be granted. It is only then such person can be allowed to become party, else the suit will have to be dismissed for non-impleadment of such necessary party. Such does not appear to be a case here.”

10. In the wake of the above, the impugned orders are upheld and the writ petitions are dismissed.

(SMT. BHARATI DANGRE, J.)

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