

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14851 OF 2021

LAXMIKANT SUBHASH BODHARE
VERSUS
SHANKAR HIRAMAN KHALANE AND OTHERS

Mr.A.S.Sawant, Advocate for the petitioner.

Mrs.P.V.Diggikar, AGP for State.

Mr.K.B.Jadhavar h/f Mr.N.N.Desle, Advocate for respondent Nos. 3 and 4.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 12, 2022

PER COURT :

1. The petition is filed by an activist and a whistle blower, who had invited the attention of the authorities of the Zilla Parishad, Dhule in respect of the misappropriation of funds at the instance of the Sarpanch of village Ner. Upon the details being submitted by the petitioner, an Enquiry Committee was constituted by the Chief Executive Officer, Zilla Parishad, Dhule and the preliminary enquiry report noted serious irregularities and misappropriation of funds committed by the Gramsevak and Sarpanch of village Ner. On 19/25 November 2020, the final enquiry report was submitted by the Committee, which

rendered a finding that there was misappropriation of the amount at the instance of the Gramsevak and the Sarpanch and in the wake of the said report, the proceedings were initiated for recovery of the misappropriated amount from the persons responsible for the same. When the petitioner persisted for recovery of the amount, the Block Development Officer, Panchayat Samiti, Dhule issued a notice for the recovery of the misappropriated amount to his share to the tune of Rs.16,26,000/- against respondent No.1, the then Sarpanch.

2. This constrained him to institute Spl.C.S.No.64/2021 in the Court of Civil Judge, Sr.Division Dhule vide Spl.C.S.No. No.64/2021, raising a challenge to the notice dated 04/06/2021, for recovery of amount of Rs.16,26,000/- from him. His plaint is premised on the basis that the notice is illegal and therefore it should be declared as such and the restrain order was also sought for recovery of the amount in terms of the notice. In the said suit, the State of Maharashtra, Zilla Parishad, Dhule and the Block Development Officer, Panchayat Samiti Dhule were impleaded as defendants. The Block Development Officer has filed his written statement opposing the claim in the plaint. In the said suit, the present petitioner filed an application under Order I Rule 10 of the CPC seeking his impleadment as a defendant and in his application, it was

pleaded by him that his presence in the civil suit is very much necessary since he is the one, who has brought the misappropriation of the Sarpanch and the Gramsevak to the notice of the Zilla Parishad authorities and expressing a possibility that the proceedings of recovery against the plaintiff will not be taken to a logical end on account of some political pressure/influence being exerted by which the habitants of Village Ner would be kept away from the development and the schemes which granted for village Ner may not be implemented, his impleadment was necessary. The said application was opposed by the plaintiff on the principle of "*dominus-litus*" and he was characterized as a third party with no interest with litigation.

Upon the application filed by the petitioner, the learned Jt.Civil Judge, Sr.Division, Dhule deliberated and recorded that the applicant is neither a necessary party nor a proper party, and therefore the application came to be rejected.

3. Heard the learned counsel for the petitioner/applicant, learned AGP appearing for respondent No.2 and the learned counsel Mr.K.B.Jadhavar for respondent Nos.3 and 4.

The impugned order, a lengthy one, has explored the possibility of impleadment of the petitioner as a party to the suit by invoking order I Rule 10(2) as well as Order I Rule 1 of CPC, which govern the course of action to be followed in impleading the parties to the suit. By referring to Order I Rule 1 and Order I Rule 3, the learned Judge has recorded that the plaintiff is a person who seek relief in a suit, and all persons may be joined as a defendants in the suit where any right to relief in respect of, all arising out of the same, an act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly or severally. The necessary party in a suit is the one without whose presence the questions involved in the suit cannot be completely and effectively adjudicated and therefore his presence is very much necessary to pass effective orders. A proper party is one whose presence would be necessary to effectively and completely adjudicated upon the dispute but against him no relief is sought, is a proper party.

4. In the backdrop of the scheme for impleadment of parties as contained in the CPC, it can be seen that the petitioner, who is a complainant and who was brought to light the misappropriation of the

respondent No.1 and the Gramsevak in respect of implementation of the scheme in village Ner, has done his job and rather set the machinery of the Zilla Parishad into motion, who initiated a preliminary enquiry, which was culminated into a final enquiry. The report of the preliminary enquiry and final enquiry is now in public domain and would necessarily come before the Court in the suit filed by the plaintiff. The Z.P. authorities, including the Block Development Officer has also taken further steps by issuing notice to the plaintiff seeking recovery of the amount since the final enquiry report has fastened the liability of misappropriation upon him to the extent of Rs.16,26,000/-. The plaintiff to whom the notice is issued, is entitled to avail the remedies available to him and being the civil law remedy, he has instituted the suit, claiming a notice as illegal and arbitrary. It is open for him to fight his own battle, but in the said proceeding, the present petitioner is neither a necessary party or a proper party. Once the responsibility has been fastened upon the delinquents, on conclusion of the enquiry initiated by the Zilla Parishad, it is now the responsibility of the said statutory body to take to it's logical conclusion and the petitioner is unnecessarily apprehensive that there may be collusion in between the parties or the

proceedings may be overruled by political pressure/influences. This is merely an apprehension and the petitioner should not lose sight of the fact that, till date, there are honest officers working in the Administration, who will take the proceedings to a logical end and punish the wrong doer, who has misappropriated the amount, which was meant for the welfare of the villagers under the schemes flouted by the Government.

In the wake of the aforesaid, since the petitioner is not a necessary or a proper party in the list between the plaintiff and the authorities of the Zilla Parishad and the State Government, the impugned order has rightly rejected his impleadment in the proceedings.

The impugned order dated 09/09/2021 therefore do not warrant any interference and by upholding the same, the writ petition deserves to be dismissed. The learned counsel for the petitioner, however, has advanced an argument to the effect that the respondents/authorities are slow in taking the proceedings to the logical end and consume a considerable period of time in initiating the action against respondent No.1. If the action of the Zilla Parishad is not to the satisfaction of the present petitioner, who has done a commendable job by bringing to light the misappropriation at the instance of the Sarpanch and the

Gramsevak, which deprive the citizens of this country from the benefits of the schemes flouted by the Government, he is none the less having a remedy in his hand of initiating appropriate proceedings before the appropriate authority. Reserving the aforesaid liberty, the present writ petition is dismissed.

(BHARATI H. DANGRE, J.)