

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 6789 OF 2022

Sagar Vitthaldas Lahoti

..Petitioner

V/s.

Chief Executive Officer,
Satara Nagar Parishad, Kesarkar
Peth, Satara.

..Respondent

Mr. Sugandh B. Deshmukh alongwith Irvin D'souza, Advocate for the
Petitioner.

CORAM : ROHIT B. DEO, J.

DATE : 14th JUNE 2022

P.C.

1. The Petitioner is the plaintiff in Regular Suit 131 of 2020, who is aggrieved by the order dated 21.03.2022 rendered by the 5th Joint Civil Judge Senior Division, Satara, rejecting application Exh.34 made by the plaintiff seeking leave to amend the plaint.

2. The suit is for declaration and perpetual injunction. The sole Defendant is Satara Municipal Council. The plaintiff has sought injunctive relief seeking declaration that the notice dated 11.02.2020 issued by the Satara Municipal Council is illegal and further consequential injunction restraining Satara Municipal Council from initiating action on the basis of the said notice.

3. Perusal of the plaint reveals that the case of the plaintiff is that on 01.09.1983 Satara Municipal Council executed Lease Agreement in favour of Mr. Subhash Tukaram Khairmate. Mr. Subhash Tukaram Khairmate then executed an Agreement of Sub Lease in favour of the plaintiff on 29.01.2001 and since then the plaintiff is in possession of the suit property.

4. The substratum of the cause of action pleaded is that according to the plaintiff the Satara Municipal Council is precluded from initiating action since the term of the lease between the local authority and Mr. Subhash Tukaram Khairmate had not expired, the lease being for a period of 30 years.

5. The amendment which the learned Trial Court has refused to permit seeks to incorporate the relief that Satara Municipal Council be directed to execute the lease for a period of 30 years in favour of the plaintiff.

6. The Trial Judge has reasoned that the entire structure of the suit shall stand changed. I see no reason to differ.

7. The suit seeks injunction restraining the Satara Municipal Council from initiating action pursuant to the notice for recovery of possession. Mr. Subhash Tukaram Khairmate, who admittedly is a lessee is not a party to the suit. By the proposed amendment, without impleading Mr. Subhash Khairmate in the suit, the plaintiff is seeking to enforce the terms and conditions of the agreement between the Satara Municipal Council and Subhash Khairmate.

8. The learned Trial Judge is well justified in observing that the very structure of the suit shall be altered. The learned counsel for the petitioner does assail the observation of the learned Trial Court that the plaintiff has

no locus as such. The said observation will have to be understood in the context. Be that as it may, irrespective of the reasons recorded by the learned Judge, I am satisfied that the ultimate conclusion is right and that a suit for injunction simplicitor cannot be converted into specific performance of the terms and conditions of Lease Deed, to which the plaintiff is not a party.

9. The petition is dismissed.

(ROHIT B. DEO, J.)