

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

**WRIT PETITION 3571 OF 2022**

Parag Bhausahab Patil & Anr. ... Petitioners

V/s.

Sitaram Vitthal Yadav & Ors. ... Respondents

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Mr. Sarang S. Aradhya for the Petitioners.

Mr. Ashok Tajane for the Respondent 1.

Ms. V. S. Nimbalkar for State.

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**CORAM : ROHIT B. DEO, J.**

**DATE : 20<sup>th</sup> JUNE 2022**

**P.C.**

1. The petitioners are the plaintiffs who have brought suit for declaration and injunction against the State of Maharashtra and its officers challenging the order dated 22.01.2021 rendered by the Deputy Collector, Rehabilitation, Solapur by and under which the land allotted to the original allottees Krishnabai and Surekha was confiscated.

2. According to the petitioners, they have purchased the land in question from Krishnabai and Sureka and are a bonafide purchasers.

3. Respondent 1 third party preferred an application under Order I Rule 10 of Civil Procedure Code, 1908 (“Code”) seeking impleadment. The third party averred that he was the owner of the property which the State of Maharashtra acquired for the purpose of rehabilitation of Project Affected Persons. According to the third party it was he who brought to the notice of the Government Officials that the order of allotment in favour of Krishnabai and Surekha is illegal and is obtained by practising misrepresentation and fraud. The third party claims that his complaint was accepted and the allotment cancelled, and that he is proper if necessary party. The learned Trial Judge has agreed.

4. The plaintiff is *dominus litis* which means that he is master of the suit. Unless there is a legal compulsion, the plaintiff cannot be compelled to wage a legal battle against any person against his will. The third party has no share or interest in the property. His ownership stood extinguished and the property stood vested in the State Government due to the acquisition. The third party is clearly not a necessary party since even in the absence of third party there can be effective decree in the matter.

5. The next question is whether the third party is a proper party. Again the answer must be an emphatic no. A proper party is one in whose absence there may be an effective decree, however, his absence may preclude the Court from completely and effectively adjudicating all the issues which arise in the matter. Applying this test the complainant is not even a proper party.

6. The fact that it was at the instance of the third party that the allotment in favour of Krishnabai and Sureka were cancelled does not make the third party a proper party to a civil suit. As is articulated by the Hon'ble Apex Court in **Ramesh Kundanmal V/s. M.C.G.M & Ors., 1992 (2) SCC 524**, the fact that a person has in possession some material or evidence which would assist the Court in adjudication or the fact that such person can otherwise assist the court to arrive at a correct conclusion does not make that person a necessary or proper party particularly since the plaintiff as *dominus litis* is opposing the impleadment of the third party. It would be apposite to note the following observations in the said decision:-

*“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a*

*necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tucj & Sons Ltd.*, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Miegiet Companie S.A. v. Bank of England*, that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:*

*"The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights'."*

7. I am not impressed by the submission for the learned counsel for a third party that the order impugned is an exercise of discretion and therefore, I should refrain from interfering in writ jurisdiction. Discretion cannot be exercised contrary to settled position of law.

8. The order impugned is set aside. The application 'Exh.36' referred by the third party under Order 1 Rule 10 of CPC is dismissed.

9. At this stage, the learned counsel for the third party points out, one reason is given by the learned Trial Judge to allow the petition Order I Rule 10 is the purported casual and callous attitude of the State Government and its officers who are not effectively defending the suit claim. The learned AGP assures the Court that proper instructions have been issued to the defendants to contest the suit vigorously and effectively. The statement is accepted.

**(ROHIT B. DEO, J.)**