

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAW] No.862 of 2022

in

Writ Petition No.166 of 2022

Municipal Council, Ner Nawabpur & another

vs.

Ashwin s/o Rasiklal Dawda & others

*Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. Firdos Mirza, Advocate for the Petitioner.

Mr. Rohan Deo h/f Mr. A.A. Naik, Advocate for Respondent Nos.1 to 13.

Mr. M.A. Kadu, A.G.P. for Respondent No.14.

CORAM : M.S. KARNIK, J.

DATE : 27th APRIL, 2022.

Heard Mr. Firdos Mirza, learned Counsel appearing on behalf of the petitioner-Municipal Council, Ner Nawabpur and Mr. Rohan Deo, learned Counsel for respondent Nos.1 to 13.

02] The petitioner-Municipal Council assailed the order passed by the trial Court under Order VI Rule 17 of the Code of Civil Procedure allowing the application (Exh.39) preferred by the plaintiffs for amendment of the plaint. The suit was filed by the plaintiffs against the defendant-Municipal Council for declaration, permanent and mandatory injunction. It is not necessary to burden this order with detailed facts in the light of the course suggested by the learned Counsel appearing on behalf of the parties which they propose to adopt.

03] It is the contention of the learned Counsel for the respondents-original plaintiffs that the auction in respect of the 13 suit shops, which is the subject matter of the suit, is scheduled today. It is also the contention of the learned Counsel that the Municipal Council has deprived them the right of preferential allotment which they agreed earlier. Having regard to the nature of the suit earlier filed, learned Counsel for the respondents, on instructions, in view of the subsequent developments submits that the plaintiffs would file a fresh suit in respect of the cause of action which is the subject matter of the amendment application.

04] Learned Counsel for the petitioner-Municipal Council, on the written instructions received from the Municipal Council, submits that till 18th May, 2022, the Municipal Council shall not take any final decision on the auction, even if it proceeds as per schedule. It is the contention of the learned Counsel for the respondents that they have preferential right of allotment even in respect of the shops which are the subject matter of the auction. All these contentions can be kept open to be raised in the civil suit that the respondent Nos.1 to 13/plaintiffs propose to institute.

05] In this view of the matter, all the contentions raised in the suit as well as those arising subsequently, are kept open to be raised in the fresh suit that the respondents-original plaintiffs propose to institute. It may not be construed that this Court has made any observation on the merits of the contentions raised in this petition or as regards

the subject matter of the earlier suit or the suit proposed to be instituted and all the contentions are kept open. It is made clear that in the event a fresh suit is filed even in respect of the cause of action which was the subject matter of the amendment application, such suit shall be decided on its own merits and in accordance with law.

06] The statement made on behalf of the learned Counsel for the petitioner that till 18/05/2022, the Municipal Council shall not finalize the auction is accepted. It is open for the respondents to apply for interim reliefs in the suit proposed to be instituted by the respondents which shall be dealt with on its own merits uninfluenced by any order passed in the suit or in the challenge thereto.

07] As a consequence, nothing survives for consideration in R.C.S. No.99/2018. The learned Counsel for the respondents-plaintiffs will take necessary steps to withdraw the suit in view of this liberty

08] The petition as well as the civil application is disposed of in the above terms.

JUDGE

**sandesh*