

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

WRIT PETITION NO.2156 OF 2022

SAYYAD ANWAR CHANDMIYA ALIAS SAYYAD HAFIZMIYA AND
OTHERS
VERSUS
AHMEDNAGAR MUNICIPAL CORPORATION, AHMEDNAGAR AND
ANOTHER

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Advocate for Petitioners : Mr. N.C. Garud
Advocate for Respondent No.1 : Mr. V.S. Bedre
Advocate for Respondent No.2 : Mr. S.S. Bora

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th AUGUST, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 14/10/2021, passed by learned 7th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-15 in Regular Civil Suit No.619/2019, thereby allowing application filed by respondent No.2 under Rule 10 of Order I of the Code of Civil Procedure.

2. Petitioners have filed the suit challenging notice/order dated 26/06/2019 issued by respondent No.1 Municipal Corporation. In the suit, initially temporary injunction is granted in favour of petitioners by order dated 07/01/2020, as the defendant Corporation failed to appear and the suit proceeded *ex parte*.

3. Respondent No.2 then filed application Exhibit-15

claiming that he has filed R.C.S. No.255/2016 in respect of the suit property, claiming mandatory injunction to demolish the illegal construction of gallery and other constructions made by the petitioners and also sought permanent injunction against petitioners. Petitioners have deliberately not added him as defendant in the suit and in the interest of justice, it is necessary to add him as defendant to the suit. Petitioners resisted the application by filing say Exhibit-22 and denied all the contentions. Petitioners claim that there is no connection between present suit and the suit bearing R.C.S. No.215/2016. Respondent No.2 is not concerned with the suit property. Since the suit is filed by petitioners against Municipal Corporation, second respondent does not have any *locus standi* to file the present application. Trial Court after hearing the parties, has allowed the application. Hence, the present petition.

4. Heard learned advocate for petitioners, learned advocate for respondent No.1 and learned advocate for respondent No.2. Perused the writ petition memo, annexures thereto and the impugned order.

5. It is a mater of record that R.C.S. No.255/2016 was filed by the second respondent against petitioners claiming mandatory and permanent injunction in respect of the suit property.

The said suit is decreed on 25/11/2021 in following terms:

" **ORDER**

- 1] *Suit is decreed with costs.*
- 2] *Defendants are directed by way of mandatory injunction to demolish the illegal construction of gallery and other construction which has disturbed plaintiffs' right to use the suit lane and make the suit lane open.*
- 3] *Defendants are further permanently restrained from raising any type of construction towards eastern side of CTS No.1091 which will disturb plaintiffs' right to use the suit lane as approach way.*
- 4] *Defendants are also permanently restrained from restraining/preventing plaintiffs from using the suit lane as approach way to CTS No.1090.*
- 5] *Defendants are directed by way of mandatory injunction to remove all the construction material, waste material, woods and any other material kept by them in the suit lane and make the lane open for free access of plaintiffs within one month from the date of decree.*
- 6] *Decree be drawn up accordingly."*

6. It further appears from record that, filing of the suit by second respondent is not brought to the notice of trial Court by the petitioners. It is clear that *ex parte* interim injunction is granted in favour of petitioners by the trial Court. Perusal of the plaint shows that there is a specific pleading of petitioners that second respondent has filed false complaint due to which Corporation has issued notice to the petitioners for removal of encroachment.

7. Considering all these aspects, trial Court has rightly allowed the application filed by second respondent by a reasoned

order. It is admitted fact that, on the basis of complaint made by second respondent, first respondent Corporation has issued notice to the petitioners. In the light of these facts, no fault can be found with the order impugned in present petition, thereby allowing application Exhibit-15 filed by the second respondent and directing his impleadment in the suit.

8. There is no illegality or perversity in the order impugned in present petition. No case is made out by the petitioners to warrant interference in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

(NITIN B. SURYAWANSHI, J.)