

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

54 WRIT PETITION NO.10758 OF 2021

**KAUSHALYA DATTATRAY UNAWANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. Zafar M. Pathan
AGP for Respondent – State : Mr. S.S. Dande

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 14-02-2023

PER COURT :

. By this petition, the challenge is to the order dated 27.01.2021 passed by the Civil Judge Senior Division, Newasa whereby the petitioner's application under Section 80 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') came to be rejected and the statutory authorities were directed to be deleted from the array of the suit.

2. Regular Civil Suit No.104 of 2020 was instituted by the petitioner seeking *inter alia* directions to the respondent statutory authorities to mutate the revenue records in respect of the excess area in the name of the petitioner and the respondent nos.11 to 13 and for other reliefs.

3. In the suit, it is the specific case of the petitioner that the

statutory authorities in collusion with the some of the defendants have created revenue record, which shows the reduced area to the extent of 3 acre 5 are. The pleadings set out the role of the statutory authorities in the reduction of the area. The cause of action is that upon enquiry by the petitioner, the respondent nos.3 and 4 - statutory authorities have not supplied the requisite documents to the petitioner on the ground that the file is not traceable. In the suit, the petitioner sought direction as regards the property belonging to her and in addition has sought directions against the statutory authorities.

4. As no suit could be instituted against the government authorities without notice under Section 80 of the CPC, an application came to be preferred by the petitioner on 19.01.2021 seeking dispensing with the notice under Section 80 on the ground that the urgent and immediate reliefs are sought.

5. The trial Court while deciding the application to dispense with the notice under Section 80 of the CPC is required to consider whether any immediate and urgent relief is sought in the proceeding which require the dispensing of the notice and even in such a case no relief is to be granted without hearing the Government Officers.

6. The purpose of giving a notice under Section 80 is to enable the State authorities to take remedial steps before facing litigation and to prevent State from being embroiled in litigation when the State is capable of taking remedial steps at the outset. In the present case, the trial Court has held that the burden to prove the correctness of the revenue entries is on the defendants no.7 to 10 as the right is claimed against those defendants and not on the government officers. The trial Court held that the statutory authorities are neither necessary nor proper parties to the suit. In my opinion, the trial Court has completely ignored the averments made in the plaint and have not considered that the relief is sought as against the government officers to effect necessary mutation entry to the extent of the reduced area in favour of the petitioner. It is the specific case of the petitioner in the suit that the statutory authorities in collusion with some of the defendants have manipulated the revenue entries and necessary reliefs are accordingly sought. The trial Court has observed that some of the Judicial Officers are working in the cadre of Civil Judge Junior Division and Civil Judge Senior Division and are presiding over their respective Courts. I failed to comprehend such an observation being made considering that the officers have not been impleaded in their individual capacity, but in their official capacity and present incumbent of the office will

be liable to answer the charge in the present proceeding.

7. Considering the above, observations of the trial Court as regards the provisions of Section 32 of the Maharashtra Civil Courts Act, 1869 (in short, 'Act of 1869') and Section 24 of the Act of 1869, are completely irrelevant. The trial Court was only required to adjudicate the application as to whether the notice under Section 80 could be dispensed with. The trial Court has *suo moto* exercised the power under Order-I, Rule-10 (2) of the CPC and struck out the parties irrespective of the fact that the pleadings in the plaint *prima facie* revealed that the respondent authorities are necessary and proper parties.

8. For the reasons above, the impugned order cannot be sustained. Petition succeeds. The impugned order dated 27.01.2021 is hereby quashed and set aside. The application seeking dispensing of the notice under Section 80 of the CPC is hereby allowed. Writ Petition stands allowed in aforesaid terms.

(SHARMILA U. DESHMUKH, J.)