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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10154 OF 2022

Vijay Anand Kulkarni and Others

PETITIONERS

VERSUS

The Collector, Ahmednagar and Others

RESPONDENTS

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Mr. Sudhir D. Kulkarni, Advocate for the petitioners

Mr. S. R. Yadav Lonikar, AGP for respondents No.1 and 2 - State

Mr. P. S. Mantri h/f Mr. P. V. Barde, Advocate for respondent No.3

Mr. V. D. Hon, Senior Advocate a/w Mr. Ashwin V. Hon, Advocate
for respondents No.4 to 6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th JUNE, 2023

ORDER :

1. The petitioners are aggrieved by order dated 4th May, 2022 passed by the learned Civil Judge, Senior Division, Rahata below Exhibit-30 in Regular Civil Suit No. 56 of 2021.

2. The suit is filed by the petitioners for declaration that the notice issued by respondent No.2 dated 18th January, 2021 for re-allotment of land be stayed permanently and possession of the plaintiffs may not be disturbed, pursuant to the said notice. The suit is filed making respondents No.1 to 3, the Government authorities and Corporation as party defendants.

3. Respondents No.4 to 6 filed application Exhibit-30 in the said suit under Order I, Rule 10 of the Civil Procedure Code, claiming that they be impleaded as party defendants in the suit. In spite of strong opposition on the part of the petitioners – plaintiffs, the application is allowed by the Trial Court, hence the present petition.

4. Heard learned advocate for the petitioners, learned senior advocate for respondents No. 4 to 6, learned Assistant Government Pleader for respondents No.1 and 2 and the learned advocate for respondent No.3.

5. Admittedly, the notice, which is impugned in the suit, refers to share No.3 and 4 of Gut No. 116. Share No.3 is allotted to the predecessor of the petitioners and share No.4 is allotted to the predecessor of respondent No.4 to 6, vide order dated 7th October, 2019 passed by respondent No.2. It is also clear from the said order that share No.1 was allotted to Keshav Govind Kulkarni and share No.2 was allotted to Shrikrushna Khanderao Kulkarni.

6. Since the petitioners have challenged the notice, which seeks re-allotment of shares No.3 and 4 allotted to the predecessor of the petitioners and respondents No.4 to 6,

respectively, respondents No.4 to 6 have interest in the immovable property and hence, they are necessary and proper party and therefore, in my view, the Trial Court is justified in allowing application Exhibit-30, by the order impugned in the present petition.

7. Learned advocate for the petitioners vehemently submits that the plaintiffs are the *dominus litis* and they cannot be compelled to add party against whom no relief is claimed. In support of his submission, he placed reliance on "***Devchand Constructions V/s Board of Trustees of the Port of Mormugao and Others***" 2006 (5) Mh.L.J. 644, "***Sarvinder Singh V/s Dalip Singh and Others***" (1996) 5 SCC 359 and unreported judgment of the Supreme Court in "***Sudhamayee Pattnaik and Others V/s Bibhu Prasad Sahoo and Others***" in Civil Appeal No. 6370 of 2002. He submits that respondents No.4 to 6 are neither proper nor necessary parties in the present suit.

8. In the citations relied on by the learned advocate for the petitioners, the principle of law that the plaintiff is the *dominus litis* and he cannot be compelled to add party against whom no relief is claimed in the suit and if the suit can be decided without participation of the intervenor, the plaintiff should not be compelled to add the intervenor as party defendant is reiterated.

9. Coming to the facts of the present case, since re-allotment is to be done in respect of the share allotted to the predecessor of respondents No.4 to 6, in my view, their interest in the immovable property is directly involved in the present case and, therefore, they are necessary and proper parties. No prejudice is likely to be caused to the petitioners if respondents No.4 to 6 are added as defendants in the suit. For the above reasons, no fault can be found in the order impugned in the present writ petition. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. The petition being devoid of any merit, is dismissed with no order as to costs.

10. It is however made clear that while deciding the suit, the Trial Court shall be confined to the merits of the notice impugned in the suit by the petitioners.

[NITIN B. SURYAWANSHI]
JUDGE