

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

WRIT PETITION NO.13144 OF 2022

**NAMDEV PANDURANG SHINDE
VERSUS
THE COLLECTOR, AURANGABAD AND OTHERS**

...

Advocate for Petitioners : Mr. Prashant L. Sirsamkar
AGP for Respondent No.1 : Mr. P.G. Borade
Advocate for Respondent No.2 : Mr. Ameet R. Vaidya
Advocate for Respondent No.3 : Mr. D.K. Kulkarni

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th JUNE, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner challenges order dated 27/09/2022, passed by learned Civil Judge, Senior Division (Corporation Court), Aurangabad, below Exhibit-31/D in Regular Civil Suit No.40/2019, thereby rejecting the application filed by petitioner/plaintiff for recasting of the issues.

2. Petitioner/plaintiff filed the suit for mandatory injunction against defendants/respondent Nos.1 to 3. The suit was resisted by the defendants by filing written statements. The Trial Court framed issues at Exhibit-24. Being dissatisfied with the issues framed by the Trial Court, petitioner filed application Exhibit-31/D, thereby proposing issue:

"Whether the plaintiff proves that he is entitled to get mandatory and perpetual injunction for restraining use of the playground for the purpose other than playground, and for getting any senior officer of the senior rank designated to supervise and restrain use of the playground for any purpose other than playing games and, to ensure effective, speedy and judicious redressal of grievance about use of the said playground for the purpose other than games"

He also prayed for deletion of issue No.1 in respect of *locus standi* of the plaintiff and issuance of notice under Section 487 of the M.M.C. Act, which according to him, is not at all in dispute.

3. By the impugned order, trial Court rejected the application. Hence, the present petition.

4. In fact, though the impugned order is passed below Exhibit-31/D, it is wrongly mentioned as order below Exhibit-1.

5. Heard learned advocate for petitioner, learned advocate for respondent No.2, learned advocate for respondent No.3 and the learned Additional Government Pleader for respondent No.1. Perused the writ petition memo, annexures thereto and the impugned order.

6. Admittedly, there are specific pleadings of petitioner in paragraph 9 of the plaint in respect of seeking injunction thereby directing respondent Nos.1 and 2 to restrain the playground from being used for any purpose other than playing games and to

designate officer of senior rank to supervise and restrain use of said playground from it's use for any purpose other than playground. It is prayed in prayer clause 'c' of the plaint that,

"c] The Defendant No.2, by writ of mandatory injunction be kindly directed to designate forthwith an officer of senior rank to supervise and restrain use of the said playground for any purpose other than games, and to ensure effective, speedy & judicious redressal of grievance about the use of the said playground for the purpose other than games."

7. In the written statement filed by respondent Nos.1 and 2, it is stated that *"..... the ground is used by nearby persons of the locality. However, there is no complaint from the persons of locality or defendant No.3, either to police or with this defendant in regards to the drinkers who are consuming liquor in the said ground. This defendant has no knowledge about the same and now will take appropriate steps and action for the safety of the persons residing there and the students.*

This defendant has received notice by Regd. Post A/D from the plaintiff. The broken portion of the well is closed by iron net and iron bars (लोखंडी जाळी) and green net is also covered on it. The ground is under use of the school as a play ground to it's students, should have kept security guard for stopping un-social work."

8. Taking into consideration the pleadings of the parties, plaintiff is justified in proposing issue in application Exhibit-31/D.

While rejecting the application, Trial Court has failed to appreciate the pleadings of the parties in proper perspective. The impugned order to that extent is, therefore, unsustainable.

9. So far as the second prayer in the application Exhibit-31/D is concerned, learned advocate for respondent No.2 submits that though receipt of notice issued by R.P.A.D. is admitted by the second respondent, the legality of said notice is being contested and therefore, let the issue No.4 be there. Respondent No.2 is entitled to contest the issue of legality of notice before the Trial Court and therefore, it would be appropriate to let the issue No.4 be as it is.

10. For the aforestated reasons, writ petition is partly allowed. The impugned order dated 27/09/2022, passed below Exhibit-31/D in Regular Civil Suit No.40/2019, to the extent it rejects prayer of the petitioner to frame the proposed issue, is hereby quashed and set aside. Application Exhibit-31/D is allowed. Trial Court is directed to frame the proposed issue mentioned in application Exhibit-31/D.

(NITIN B. SURYAWANSHI, J.)