

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2667 OF 2020**

Shri. Ramchandra Baburao Bhosale

.. Petitioner

V/s.

Pandharpur Nagar Parishad, through
its Chief Executive Officer, Pandharpur
Dist-Solapur

.. Respondent

...

Mr. Ajay A. Joshi a/w. Ms. Pranali P. Railkar, for Petitioner.

None for the Respondent.

...

CORAM : SANDEEP V. MARNE, J.

Dated : August 17, 2023.

P.C. :

1. Heard Mr. Joshi, the learned counsel for Petitioner.
Though the Respondent is served, none appears for it.

2. By this petition, Petitioner challenges order dated January 8, 2020 passed by the Ad-hoc District Judge-1, Pandharpur rejecting Petitioner's application for amendment. The Respondent-Municipal Council instituted Regular Civil Suit No.175/2000, *inter-alia* for recovery of possession of the suit property, as well as for recovery of amount of Rs.45,460/-. Petitioner-defendant filed Written Statement, *inter-alia* contending that he is an Ex-Serviceman and that the suit property was allotted to him in his capacity as Ex-Serviceman under the Scheme formulated by the State Government. Though Petitioner-defendant filed Written Statement, it appears that

the Advocate for the Petitioner-defendant was not present at the time of decision of the suit and by judgment and decree dated February 11, 2023, the Trial Court proceeded to decree the suit by directing the Petitioner-defendant to handover vacant possession of the suit property to the Respondent-Municipal Council within two months.

3. Petitioner-defendant has filed Civil Appeal No.122/2015 before the District Court challenging the decree dated February 11, 2013. In that Appeal, Petitioner-defendant moved an application for amendment of the Written Statement on April 25, 2019. The Appellate Court has proceeded to reject the application on twin grounds of inconsistency in the stands taken in the original and amended Written Statement, as well as delay in filing the application for amendment.

4. Mr. Joshi, learned counsel appearing for the Petitioner would submit that so far as ground of inconsistency is concerned, it is permissible for a Defendant to take inconsistent defences in the Written Statement and in that regard would place reliance on the judgments of the Apex Court in the case of (i) **Baldev Singh & Ors. Vs. Manohar Singh & Anr.**, 2006 (5) Supreme 943 and (ii) **Chakreshwari Constructions Private Limited Vs. Manohar Lal** (2017) 5 SCC 212.

5. So far as second ground of delay is concerned, he would submit that the Respondent being a Municipal Council, no prejudice would be caused to it if the amendment as sought to be proposed was

to be allowed. He would further submit that on account of absence of the advocate engaged by the Petitioner-defendant during the course of decision of the suit, steps could not be undertaken at appropriate time for amending the Written Statement.

6. I have gone through the original Written Statement as well as the proposed amendment suggested in application at Exhibit-13. In the original Written Statement, Petitioner-defendant has raised the defence that he is an Ex-serviceman and that the suit property was allotted to him by the Municipal Council under the Scheme formulated by the State Government for allotment of land to Ex-Servicemen. The further defence taken by the Petitioner-defendant in the original Written Statement is that the suit property was allotted on purchase basis by the Respondent-Municipal Council and that therefore there was no question of paying any rent. The Petitioner-defendant also requested the Trial Court to fix the purchase price in respect of the suit property.

7. In the amendment sought to be introduced in the Written Statement, additional plea sought to be raised is that, Petitioner-defendant cannot be evicted from the suit property without allotting alternate land as per the Scheme formulated by the State Government. Another amendment sought to be added is that Petitioner-defendant could not be evicted without seeking permission of the State Government.

8. Thus the main plea sought to be added by way of

amendment in the Written Statement is about Defendant's alleged right of allotment of alternate land. In my view, the Defendant has already taken a stand in the original Written Statement that he is an Ex-Serviceman and that the allotment of the land was in pursuance of specific scheme formulated by the State Government. If such Scheme indeed contains any restriction on eviction of an allottee before allotment of alternate land, it would be open to the Petitioner-defendant to rely upon such a provision in the Scheme. For that purpose, amendment of the Written Statement in my view, would be unnecessary.

9. So far as amended ground about impermissibility of eviction without permission of the State Government is concerned, if indeed there is any restriction under the Scheme formulated by the State Government to that effect, the Petitioner-defendant would be entitled to rely upon such a provision during the course of hearing of the Appeal. Amendment of the Written Statement in that regard would again be unnecessary.

10. Accordingly, leaving open the right of the Petitioner-defendant to rely upon the provisions of the Scheme formulated by the State Government with regard to allotment of land to Ex-Servicemen during the course of hearing of the Appeal, I uphold the impugned order. The Writ Petition is accordingly disposed of.

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
SAWANT
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SANDEEP V. MARNE, J.