



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2056 OF 2020

1. Khemchand Bherumal Bajaj Dharmshala
& Hospitals Trust bearing registration
No. E-261 AMT and having officer at
Krishna Nagar, Amravati, Tq. & Dist.
Amravati, Through its Trustees
Dr. Giridharilal Khemchand Bajaj,
Aged about 74 years, Occ.: Business,
R/o. "Ritika" Dr. Barabde Lane, Camp,
Amravati, Tq. & Dist. Amravati.
2. Dr. Giridharilal Khemchand Bajaj,
Aged about 74 years, Occu.: Business,
R/o. "Ritika" Dr. Barabde Lane, Camp,
Amravati, Tq. & Dist. Amravati.
3. Purushottam Giridharilal Bajaj,
Aged about 49 years, Occu.: Business,
4. Manoharlal Kherajmal Bajaj,
Aged about 54 years, Occu.: Business,
R/o. Galli No.1, Krushna Nagar,
Amravati, Tq. & Dist. Amravati.
5. Radheshyam Giridharilal Bajaj,
Aged about 51 years, Occu.: Business,
Defendant Nos. 3 & 5 are resident of
"Ritika" Dr. Barabde Lane, Camp,
Amravati, Tq. & Dist. Amravati.

.... **PETITIONERS.**

// VERSUS //

M/s. Bajaj Construction,
By Mahesh Chetandas Bajaj,
Office- Ram Laxman Sankul,
College Road, Amravati,
Tq & Dist. Amravti.

.... RESPONDENT.

Shri A.C.Dharmadhikari a/w Ms Ritu Jog, Advocates for Petitioners.
Shri P.R.Agrawal a/w Ms Astha Sharma, Advocates for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 18, 2023.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The order dated 10/02/2020 passed below Exh.37 by 9th Joint Civil Judge Senior Division, Amravati, partly allowing the application Exh.37 filed by the plaintiff in a suit for declaration and injunction, is under challenge in this writ petition.

4. The petitioners are the original defendant Nos.1 to 5. In the suit the rights were claimed over the water from well which is situated in the land in dispute and right to manage and maintain the temple in question. It is submitted that there was no challenge or no prayer was made in the suit in relation to the validity of the lease or the agreement dated 06/06/2008 executed by the Municipal Corporation in pursuance of the resolution No.82, dated 19/03/2008 transferring the possession of the land admeasuring 5011.87 sq.mt. to the defendant.

5. It is further submitted that by way of amendment the plaintiff has tried to raise a challenge to the agreement dated 06/06/2008 and further sought to amend the prayer clauses seeking declaration that the Corporation has no right to lease the open space. Further, the relief of mandatory injunction to hand over the possession of the open space by the defendant Nos. 1 to 5 to the Corporation is sought. He, accordingly, submits that it would amount to change the nature of the dispute and despite the same the learned trial Court allowed the application partly and permitted to carryout the amendment.

6. On the other hand, Shri Agrawal, learned counsel for the original plaintiff opposes the present writ petition and points out from para Nos. 5 to 8 of the plaint that the pleadings are made as regards the illegality committed by the Corporation in handing over the possession of the open space meant for the residents of the layout. It is submitted that therefore, the amendment would not change the nature of the dispute but the amendment is of clarificatory in nature. He, therefore, submits that the learned trial Court has rightly allowed the application for amendment. Accordingly, he prays for dismissal of the writ petition.

7. In light of the rival contentions I have perused the record and the impugned order.

8. In the suit for declaration and injunction filed by the respondent, the prayers which were made are as follows:

“(i) Declare that defendants and their agents, servants and person claiming through them have no right to disturb the right of plaintiff to get a water from well.

(ii) Declare that defendants have no right to restrain plaintiff from managing and maintaining the said temple.

(iii) That by granting permanent injunction defendants their agent, labour, person claiming through them be restrain from obstructing the plaintiff, their agents,

labours, person claiming through plaintiff from taking water from said water well.

(iv) That by granting permanent injunction defendants their agents, labour, person claiming through them be restrain from obstructing the plaintiff and agents, labours, person claiming through plaintiff to managing and maintaining the temple.

(v) Plaintiffs' costs and any other suitable relief be decreed against the defendant."

9. The prayers which are now permitted by the trial Court, to be added by way of amendment, are as follows:

"(i) Declare that defendant no.6 have no right lease the said open space to the defendant no.1 in view of said notification.

(ii) Declare that defendant no.1 to 5 have no title, interest in said open space and possession of defendant no.1 on the said open space is illegal.

(iii) Pass the Decree for mandatory injunction and direct the defendant no. 1 to 5 hand over the possession of said open space to defendant no.6.

(iv) Any other relief Hon'ble court think fit in interest of justice the to of evection of defendant no.1 and person claiming through them be passed."

10. Furthermore, after going through the pleadings made in para Nos. 5 to 8 of the plaint it is evident that knowing well that the open space was handed over by the Corporation to the defendant Nos. 1 to 5 no prayer for any such declaration was made in the suit but the suit

was simpliciter in respect of use of the water from the well and management and maintenance of the temple.

11. Further there was no prayer in respect of the illegality of the agreement dated 06/06/2008 or the powers or declaration as regards the illegal possession of the defendant Nos. 1 to 5 on the open space. However, by way of amendment the above referred reliefs were sought, which would definitely change the nature of the dispute involved in the suit.

12. In the circumstances, I am of the opinion that the learned trial Court ought not to have allowed the amendment application filed by the plaintiff.

13. Accordingly, pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 10/02/2020 passed below Exh.37 by 9th Joint Civil Judge Senior Division, Amravati in Regular Civil Suit No. 98 of 2019, is hereby quashed and set aside, consequently the application Exh.37 is rejected.

At this stage, the learned counsel for the respondent seeks liberty to raise a grievance to the agreement dated 06/06/2008, including resolution and against the action of the Corporation handing over possession of the open space contrary to the law to the defendant Nos. 1 to 5, by filing appropriate proceedings.

Accordingly, the liberty is granted, if otherwise available in law.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

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