



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 6203 of 2022

Shree Ekvira Devi Sanstha and others

Versus

Municipal Corporation of the City of Amravati and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Anjan De, Advocate for the petitioners.

Shri A.J.Gilda, Advocate for the respondent no.2 (a to g,
l,m,s)

CORAM : ANIL S. KILOR, J.

DATED : 27th SEPTEMBER, 2023.

Heard.

2. The application under Order I Rule 10 read with Order VI Rule 17 alongwith Section 151 of the Code of Civil Procedure, moved by the petitioner-plaintiff came to be rejected vide impugned order dated 14th June, 2022 passed by the learned 2nd Joint Civil Judge, Senior Division, Amravati in Regular Civil Suit No. 52 of 2019, is under challenge in this writ petition.

3. The petitioner is the plaintiff who filed a suit for declaration and injunction seeking following reliefs:-

“1] for declaration and injunction seeking declaration that the sanction of construction granted by the defendant no.1 in favour of defendant no.2 vide building permit no.____ dated 30/07/2015 is

illegal and contrary to the development plan site no.514 of the D.P. plan of City of Amravati and act of construction of the multi storied building by the defendant no.2 and it's trustees is illegal and contrary to the development plan of site no. 514 "Ambadevi and Ekviradevi Environment Project" AND

2] for injunction restraining the defendant no.2 from making further construction on the suit property i.e. on the disputed property in pursuance of the said building permit AND further restraining the defendant no.1 from issuing occupancy certificate in favour of the defendant no.2 in respect of the said building permanently by granting permanent injunction and the defendant no. 1 and 2 be directed to remove and demolish the building illegally constructed as described above by granting mandatory injunction.

3] Cost of the suit be saddled on the defendants.

4] Any other relief deems fit under the circumstances of the case be granted to the plaintiff."

4. In the plaint there are pleadings made against the State Government, though the State Government was not made a party to the suit. Subsequently, on the allegation of stalling of the project by the State Government, the amendment was sought to the plaint with the addition of State as a party to the suit. It is the case of the plaintiff therefore, that, amount which they contributed i.e. Rs.29,85,000/- towards the development as part of their plaintiff's contribution, the plaintiff is entitled for recovery back from the State Government.

5. The said application came to be rejected on the ground that the plaintiff is praying for incorporation of the State for refund of the amount from the State Government and said prayer is totally different than the previous prayer and the said prayer has no concerned with the present defendant.

6. It is further observed that the prayers in the suit have no concerned with the State of Maharashtra and accordingly the amendment was rejected. Further, the learned trial Court has observed that the plaintiff can file separate suit for recovery of the amount.

7. Thus, it is evident from the findings recorded by the learned trial Court that, the learned trial Court has completely ignored the fact that the petitioner has prayed for addition of State Government as a party and therefore it cannot be said that the prayers made in the suit have no concerned with the State Government.

8. The prayers which the petitioner wants to add to the prayer clause of the suit is against the State Government and therefore, the petitioner sought to implead State Government as a party defendant.

9. Furthermore, the learned trial Court has not considered the issue that if the application is rejected, it will lead to multiplicity of proceedings particularly

when the trial Court has observed that the plaintiff has remedy to file a separate suit.

10. Shri Gilda, learned counsel for the respondent no.2 has argued that though it is permissible to raise inconsistent defence by the defendant but it is not permissible for the plaintiff to make inconsistent pleadings.

11. It is submitted that in the suit, it is the case of the plaintiff that amount of Rs.29,85,000/- was deposited with the Municipal Corporation, whereas, by way of amendment, the plaintiff wants to introduce the case that the amount was paid to the State Government. He, therefore, submits that the rejection of the application is just and proper.

12. However, the ground which has been argued by the learned counsel for the respondent no.2 is not a sufficient ground for rejection of the application for amendment.

13. Thus, in the above referred background, I am of the opinion that the matter needs to be remanded back to the learned trial Court to decide the application for addition of party as well as amendment afresh after hearing both the parties. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

- ii. The order below Exhibit 25 dated 14th June, 2022 passed by the learned 2nd Joint Civil Judge, Senior Division, Amravati in Regular Civil Suit No. 52 of 2019 is hereby quashed and set aside;
- iii. The learned trial Court is directed to decide the application Exhibit 25 afresh after hearing both the parties.
- iv. All points are kept open.

[ANIL S. KILOR, J.]