

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

WRIT PETITION NO.5986 OF 2022

1. Rajesh s/o Laxmanprasad Sahu,
Aged about 44 years, Occupation:
Business, R/o Besides Mother's Pet
School, Ambapeth, Amravati, Tq. &
District : Amravati.

.... PETITIONER

// VERSUS //

1. Dilip Kumar Babulal Sahu,
Aged about 62 years, Occupation :
Business, R/o Near Income Tax Office,
Ambapeth, Amravati, Tq. & District :
Amravati.
2. Municipal Corporation Amravati,
Through its Commissioner, Amravati,
Tq. & District: Amravati.

... RESPONDENTS

Shri K.P. Mahalle, Advocate for the Petitioner/s
Shri J.J. Chandurkar, Advocate for the respondent No.1
Shri Ankush Kalmegh, Advocate for the respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : 22.06.2023

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of the parties.
3. The rejection of petitioner's application filed under Order I Rule 10 of the Code of Civil Procedure (CPC), is the subject matter of the present writ petition.
4. In the present matter there was a dispute about a flour mill in question, between the father of the petitioner and the respondent No.1, as the father of the petitioner took illegal possession of it. The respondent No.1 recovered the possession by virtue of a decree passed in Special Civil Suit (SCS) No.31 of 2000.
5. According to the respondent No.1, the flour mill was in dilapidated condition and therefore, he started repairing work. Thereupon, the petitioner made various complaints, alleging that the respondent No.1 is carrying out illegal construction. The respondent No.2, Municipal Corporation accordingly issued a notice on 03.12.2020, the validity of the same was challenged by the respondent No.1 by filing a Regular Civil Suit No.288 of 2020 against the Municipal Corporation.

6. In the said suit, the petitioner filed an application under Order I Rule 10 with Section 151 of the CPC on the ground that the respondent No.1 started illegal and unauthorized construction without measuring the area of the flour mill and without seeking necessary permission of the Municipal Corporation. It is further stated that by suppressing the material facts, the respondent No.1 filed the suit behind the back of the petitioner and the petitioner is a necessary party as his rights are involved in it. It is further stated that if any illegal act is committed by the plaintiff and the plaintiff succeeded in seeking an order of the Court by suppressing the material facts, the petitioner would be put to loss, as under the garb of said order, the plaintiff will construct and carry on illegal activities without following due process of law.

7. The said application came to be rejected by the trial Court vide impugned order below Exh.20, dated 28.06.2022, holding that the petitioner is neither necessary party nor proper party.

8. As the whole controversy in this case relates to addition of necessary party, it would be appropriate at this stage to reiterate the

broad principles to be considered while adding the party, (as laid down by the Hon'ble Supreme Court of India in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Grater Bombay and others*, reported in (1992) 2 SCC 524), which are as follows:

- a) A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.
- b) In a suit relating to property, a person may be added as a party having direct interest as distinguished from a commercial interest in a subject matter of litigation.
- c) Where a subject matter of litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party it would

be in a better position effectually and completely to adjudicate upon the controversy.

- d) The desirable consequence is to prevent multiplicity of action rather than its main object.
- e) The applicant should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled, unless he is a party.
- f) The proper test may be order for which the plaintiff is asking, directly affect a party seeking impleadment in the enjoyment of his legal rights.

9. Nonetheless in the following cases, a person may not be added as party.

- a) Merely because he has relevant evidence to give on some of the questions involved, which would only make him a necessary witness;

- b) Merely because he has an interest in the correct solution of some question involved and has thought of relevant argument to advance;
- c) The only object of such person is to prosecute his own cause of action.

10. In light of the above referred broad principle when a person can or cannot be made party under Order I Rule 10 of CPC, I will revert back to the facts of the present case.

11. In the case at hand, indisputably the pleadings in the application are vague.

12. It is the case of the petitioner that, he has no objection if the plaintiff measures the area of the flour mill and thereafter, makes the construction with the permission of the concerned authority. It is further stated that, any illegal act if committed by the plaintiff or any illegal construction is made by the plaintiff, the petitioner would suffer loss in case of any order passed by the trial Court. In the said backdrop, the petitioner ought to have given the details

particularly area of the land and flour mill in possession of the respondent No.1 along with the area in possession of the petitioner.

13. There are no pleadings to the effect that, how the order if any passed in the suit in favour of the respondent would adversely affect the petitioner.

14. The above referred pleadings are significant in the present matter considering the history of the present matter.

15. In the present matter despite the decree of possession passed in favour of the respondent No.1, the possession was not handed over by father of the petitioner No.1 and in the execution proceeding the Court Bailiff handed over the possession to the respondent No.1.

16. This Court in Writ Petition No. 4832 of 2017 arising out of the same dispute made certain observations against the father of the petitioner and the petitioner in the order dated 12.09.2018 to the effect that they are trying to deprive the respondent No.1 to get fruits of the decree.

17. This Court in Contempt Petition No.347 of 2018 in Second Appeal No.457 of 2013 made similar observations against the father of the petitioner.

18. In the circumstances, to show that the *bona fide* intention that the petitioner wants to protect his rights and not to create hurdles and obstructions in the enjoyment of the suit property by the respondent No.1, necessary and specific pleadings ought to have made by the petitioner.

19. Admittedly, in the present matter, it is the contention of the petitioner that if at all any illegal act is committed by the plaintiff and the plaintiff succeeded in seeking an order of the trial Court behind the back of the petitioner suppressing material facts, then in that event the appellants will be put into loss as under the garb of the said order the plaintiff will construct and carry on illegal activities. The above referred pleadings depict that, it is not the case of the plaintiff in specific that, any illegal construction has been carried out by the respondent No.1 and thereby encroached over the land of the petitioner. Hence, the facts of the present case are

distinguishable with the facts of the cases cited by the learned counsel for the petitioner, namely in the case of *Chandrakant Dharma Bhomu ..vs.. Pandurang Ramchandra Dandekar*, reported in **2004(2) Mh.L.J. 782** and in a case of *Milind Dattatraya Sugaokar ..vs.. Municipal Corporation of Greater Mumbai*, reported in **2006 (2) Bom. C.R. 617**.

20. In the present matter, admittedly the plaintiff has not sought any relief against the petitioner in the suit. Furthermore, the petitioner has not alleged in the application that there is a collusion between the respondent No.1 and the Corporation. In the circumstances, as the vague pleadings are made in the application without giving the details as pointed out herein above, allowing the petitioner to add as party would result in causing serious prejudice to the respondent No.1 considering the history as regards the dispute between the petitioner and the respondent No.1.

21. In the circumstances, I do not find favour in the submission made by the learned counsel for the petitioner that if he is not a necessary party, he is a proper party and as the Corporation initiated

the action against the respondent No.1 his presence in the suit as defendant is necessary.

22. In light of above referred observations, I do not find any merit in the present writ petition. Accordingly, the writ petition is **dismissed**. No order as to costs.

[ANIL S. KILOR, J.]