



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10408 OF 2023

Shaikh Islam Ashraf

VERSUS

Shaikh Khalil Shamshuddin And Another

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Mr. V. V. Bhavthankar, Advocate for the Petitioner

Mr. G. K. Kshirsagar, Advocate for Respondent No. 1

Mr. A. V. Lavte, Advocate for Respondent No. 2

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CORAM : R.M. JOSHI, J

DATE : JULY 01, 2024

PER COURT :

1. Petitioner is intervenor in RCS No. 304/2021 filed by the Respondents/Plaintiffs against Respondent/Municipal Council and is aggrieved by impugned order rejecting his application to join him as Defendant.

2. Respondent/Plaintiffs filed suit against Municipal Council challenging notice issued by the Council for the alleged encroachment done by the Plaintiffs. No other relief is sought by Plaintiffs in the suit.

3. Petitioner is the person who had filed Writ Petition before this Court bearing no. 11080/2021 for

seeking action against Plaintiffs in respect of encroachment over the public road. The said Petition was disposed of by order dated 29.09.2022 with observations that the Petitioner, if desires, may resort to appropriate remedies including a request to intervene in the pending suit.

4. Learned Counsel for the Petitioner submits that the Petitioner is aggrieved by the encroachment carried out by the Plaintiffs and outcome of the suit in favour of Plaintiff would adversely affect intervenor/Petitioner. It is also contended that this Court has granted liberty to the Petitioner to file an application for intervention in the suit filed by the Plaintiffs.

5. There cannot be any dispute made with regard to the fact that a person can be join as party to the proceedings provided such proceedings/suit cannot be decided effectively in his absence. A person should be a proper or necessary party for being arrayed in any suit. As far as the application filed for intervention is concerned, except for the grievances of the Petitioner, nothing is pleaded as to how presence of

the Petitioner would be necessary for the effective and proper decision of the suit. In absence of any case being made out, the Petitioner has no right to be joined as party to the suit. Admittedly, there are no allegations against Petitioner nor any relief is sought against him. Petitioner does not claim to have any documents or information etc which would be relevant for decision of suit and that in absence of any such material suit cannot be decided properly.

6. As far as directions issued by this Court in order dated 29.09.2022 are concerned, order indicates that the liberty was given to the Petitioner to resort to appropriate remedies, which included a request to intervene in the pending suit. Passing of such order does not mean that the Petitioner is dispensed with from making out a case that he is proper are necessary to the suit. In absence of any such case being made out, no interference is called for in impugned order.

7. In view of the above, Petition stands dismissed.

(R. M. JOSHI, J.)