



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6991 OF 2024

Bhaskarrao Gopalrao Deshmukh

VERSUS

Yogesh Yashwantrao Deshmukh And Another

WITH

WRIT PETITION NO. 1334 OF 2024

Yogesh Yashwantrao Deshmukh

VERSUS

The Municipal Corporation And Another

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Mr. D. R. Kale-Patil, Advocate for Petitioner in
WP/1334/2024

Mr. S. K. Chavan, Advocate for the Petitioner in
WP/6991/2024

Mr. Y. V. Kakade, Advocate for Respondent No. 2 in
WP/6991/2024 and for Respondent No. 1 in WP/1334/2024

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CORAM : R.M. JOSHI, J

DATE : JULY 16, 2024

PER COURT :

1. Writ Petition No. 1334/2024 is not on board.

Upon mentioning, taken on board.

2. By consent of both sides, Writ Petition No.
1334 of 2024 as well as Writ Petition No. 6991 of 2024
are taken up for final hearing at admission stage.

3. Writ Petition No. 1334/2024 takes exception to
order dated 26.10.2023 passed below Exh. 17 filed by

Respondent No. 2 for adding him as party Defendant to RCS No. 373/2023.

4. Writ Petition No. 6991/2024 is filed taking exception to order passed by the District Court in Misc. Civil Appeal No. 101/2023 whereby Exh. 5 filed in RCS No. 373/2023 came to be allowed.

5. The facts as they appear from record which led to filing of these Petitions can be narrated in brief as under:

Petitioner herein in Writ Petition No. 1334/2024 has filed suit against Municipal Corporation, Parbhani for taking exception to the notice issued on 17.07.2023 under Section 54(1) of the Maharashtra Regional Town Planning Act, 1966 and sought its declaration to be null and void, illegal and not binding on the rights of the Plaintiff. In the plaint it is averred that the notice has been issued at the behest of the present Respondent no. 2. Except for this averment, the entire contents of plaint aims at challenge to the validity and legality of notice issued by the Corporation.

6. Corporation filed written statement and opposed the suit. Written statement is detailed indicating the backdrop in which the notice impugned was issued.

7. An application was filed by Respondent No. 2 vide Exh. 17 to add him as party Defendant. It is his contention that since the notice impugned in the suit has been issued at the instance of this Respondent, he is necessary party to the suit. Learned Trial Court allowed the said application. Hence, Petition bearing no. 1334/2024 is filed.

8. Learned Counsel for the Petitioner/Original Plaintiff submits that the Respondent No. 2 is neither proper nor necessary party to the suit as no relief is sought against him nor there are any allegations which are required to be met by him. To support his submissions, he placed reliance on following judgments: *Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and Others, (1992) 2 SCC 524* & *Kasturi vs. Iyyamperumal and Ors, (2005) 6 SCC 733*.

9. Learned Counsel for Respondent No. 2 supported

the impugned order by contending that on the basis of complaint made by Respondent No. 2, notice came to be issued against Petitioner/Plaintiff. It is his submission that Respondent No.2 has interest in the property in question and that outcome of the said suit would adversely affect him.

10. Order I, Rule 10 of Code of Civil Procedure contemplates that any person can be joined as party to proceedings provided he is proper or necessary party for the dispute. His presence in the suit if is found essential for the effective and proper decision of the suit, he could be added as party to the suit. In the instant case, except a statement that Corporation has taken action of issuance of notice at the behest of Respondent No. 2, there is absolutely no allegation against him which is required to be met by him. Apart from this, Respondent No. 2 is not the person who has in his possession any document/evidence which would support the act of issuance of notice issued by the Corporation. Needless to say that it is for the Corporation to defend its action of issuance of notice. Merely because notice is issued at the instance of

Respondent No. 2, he does not become necessary party to the suit.

11. In this regard, some more facts are required to be taken into consideration. The documents filed on record in these Petitions indicate that the Respondent No. 2 had executed registered gift deed in favour of Petitioner/Plaintiff. It is sought to be contended on behalf of Petitioner that in the suit property no right, title or interest of this Respondent exists. In this backdrop, if the complaint dated 11.07.2023 of Respondent No. 2 addressed to the Corporation is perused, it does not object to the grant of permission of construction. It is only claimed that such permission be granted only after providing a way for his residential house. It is also stated in the complaint that the suit property is his ancestral property and there is no partition therein. If these are the contentions of Respondent No.2, it may be open for him to raise said issue by initiating appropriate proceedings as provided by law. He however cannot be permitted to agitate these grievances before the Trial Court in the suit filed by Plaintiff for declaration of

notice issued by Corporation as illegal.

12. Learned Trial Court, therefore, has committed error in allowing application and directing Respondent No. 2 to be added as party Defendant. Perusal of the said order does not show that any finding as recorded with regard to Respondent No. 2 is proper or necessary party to the suit. Having regard to the provision of Order I, Rule 10, CPC such order cannot sustain and hence, it is interfered with. Writ Petition No. 1334/2024 stands allowed. Impugned order dated 26.10.2023 passed below Exh. 17 in RCS No. 373/2023 is set aside. Consequently, Respondent No. 2 herein not being proper or necessary party to the suit, would not get right to be heard in MCA No. 101/2023. As a result of this, no interference is caused in impugned order dated 29.02.2024 passed in MCA No. 101/2023. Accordingly, Writ Petition No. 6991/2024 is dismissed.

13. It is clarified that this order would not come in way of Respondent No. 2 to initiate appropriate action against the Petitioner as provided in law.

(R. M. JOSHI, J.)

Malani