



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

998 WRIT PETITION NO. 6686 OF 2024

MALATI RANJENDRA AHIRE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

Mr. N. L. Choudhari, Advocate for the petitioner

Mrs. A. S. Mantri, AGP for the respondent/State

Mr. D. B. Thoke Patil, Advocate for respondent no.2 (through VC)

CORAM : R. M. JOSHI, J.

DATE : 27th NOVEMBER, 2024

PER COURT :-

1. An order came to be passed on 24/05/2024 below Exhibit 6, whereby application filed by respondent no.3 for interim relief came to be allowed. Whereas, application (Exhibit 29) filed by petitioner to add himself as a party defendant to the suit was rejected by order dated 03/05/2024. Both these orders are subjected to the challenge in this petition.

2. There is no dispute about the fact that the Special Civil Suit No. 03/2024 is filed by respondent no.3 against respondent nos.1 and 2 for specific performance of the contract. The backdrop in which the suit came to be filed is that respondent no.3 is the successful bidder in auction held by Municipal Council on 18/08/2023 in respect of the shop no. G 23 (suit property). Since the respondent nos.1 and 2 have started

initiating fresh proceeding for auction, the suit for specific performance came to be filed. In this proceeding Exhibit 6 was filed seeking direction against respondent nos.1 and 2 to permit him to conduct business from the suit premises and not to allot the suit premises any third party for the business purposes. Learned Trial Court allowed the said application by passing impugned order dated 24/05/2024, however, while passing the said order it was also held that till decision of the suit the possession of the suit property be given to respondent no.3 by evicting third person i.e. petitioner herein.

3. Admittedly the petitioner is not party to the suit. He was not heard by Trial Court. Hence, question of the trial Court passing any order evicting him from the suit premises does not arise nor such order would bind the petitioner. Though learned counsel for the Municipal Council has sought to argue that the petitioner has no right to remain in the suit premises, but still Corporation cannot take aid of this impugned order passed by the Trial Court to evict petitioner. As the order is passed without hearing the party it cannot become basis for any further action to be taken by the Corporation. However, it is always open for the Council to adopt due procedure of law to evict the petitioner from the subject property, if Council so desires.

4. In view of this discussion, the order passed below Exhibit 6

dated 24/05/2024 cannot sustain and as such the same deserves interference to the extent that the possession of the suit property be given to the respondent no.3 by evicting petitioner therefrom.

5. In so far as application filed by the petitioner vide Exhibit 29 to join himself as a party defendant to the suit is concerned, the suit is for specific performance of the contract. The petitioner is not party to the said contract. No relief is sought against him thereof. He is neither necessary nor proper party thereto. As this Court has held that no order can be passed against the present petitioner in absence of he being party or without hearing him, there is no apprehension left for the petitioner about any such order being passed against him.

6. In view of above discussion, petition is partly allowed. Order dated 24/05/2024 passed below Exhibit 6 is modified as indicated herein above. Petition is dismissed with regard to the challenge to the order dated 03/05/2024.

(R. M. JOSHI, J.)

ssp