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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9637 OF 2024
in WRIT PETITION NO.2149 OF 2024

Shri Sushilsingh Sahebsingh Hajari
Age: 78 yrs., Occu: Agriculture & Advocate,
R/o: Katgharpura, Dharur,
Taluka Dharur, Disrict Beed.

... APPLICANT

V/s.

1. Pramodkumar s/o Sharadkumar Tiwari,
Age: 75 yrs., Occu: Agriculture,
2. Dushant s/o Pramodkumar Tiwari,
Age: 45 yrs., Occu: Agriculture,

Both resident of: At Post Main Road, Dharur,
Tq. Dharur, Dist: Beed.

(Original Petitioners)

3. The State of Maharashtra,
Through the Principal Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
4. The District Collector,
Beed.
5. The Sub-Divisional Officer,
Majalgaon, Taluka Majalgaon,
District Beed.
6. The Tahsildar, Dharur,
Taluka Dharur, District Beed.
7. The Sub Registrar, Class - I Beed,
Taluka and District Beed.

8. The Sub Registrar Class - I Dharur,
Taluka Dharur, District Beed.
9. The Chief Officer,
Municipal Council Dharur
Taluka Dharur, District Beed.

... **RESPONDENTS**

.....
 Mr. Mukul Kulkarni, Advocate for the Applicant
 Mr. Neha Kamble, AGP for the Respondent-State in WP
 Sr. Advocate Mr. P. R. Katneshwarkar a/w. Ms. A.S. Jadhav
 for Petitioners in WP
 Mr. S.B. Ghatol Patil, Advocate for the Respondent No.7 in WP

**CORAM : RAVINDRA V. GHUGE &
 Y.G. KHOBRAGADE, JJ.**
RESERVED ON : 10th September, 2024
PRONOUNCED ON : 30th September, 2024

ORDER (Per: Y.G. Khobragade, J.) :-

1. Heard Adv. Kulkarni, the learned counsel for the Applicant/Intervenor, Mr. Katneshwarkar, Sr. Advocate with Adv. Ms. A.S. Jadhav for the Non-Applicant Nos. 1 & 2/ Ori. Petitioners, Ms. Neha Kamble the learned AGP for the Non-Applicant Nos.3 to 8/Ori. Respondent Nos. 1 to 6 and Adv. Ghatol Patil the learned counsel for the Non-Applicant No. 9/Ori. Respondent no. 7.

2. Having regard to the strenuous submissions canvassed on behalf of both the sides, the legal questions arises for our consideration that a person who is the Trustee of the Shri Balaji Mandir Trust Dharur can be said to be

“Person having interest” in the management/property of the Trust and can he be said to be a proper party in a dispute in respect of the Trust property ?

3. Advocate Mr. Kulkarni, the learned counsel appearing for the Applicant/Intervenor canvassed that, the Applicant is a Trustee of Shree Balaji Mandir Trust, Dharur, which is registered under the provisions of the Bombay Public Trust Act 1951 (now by Amendment Mah. 24 of 2012 Maharashtra Public Trusts Act) vide registration no.A-958 (Bhir) on 14.02.1964. The Trust is having landed property which is registered in Schedule I of the Trust with the Assistant Charity Commissioner, Aurangabad. So also, the present Applicant-Intervenor was a party Defendant in Special Civil Suit No.39/2010 as per order dated 30.01.2021 passed in Writ Petition No.2093/2020. Further, the Applicant was impleaded in Appeal No.79/2019 before the Additional District Judge, Majalgaon.

4. In the present petition, the Non-Applicant Nos.1 and 2 /Petitioners have challenged the order dated 25.01.2024 passed by the Non-Applicant No.4/Collector, Beed restraining the Petitioners from dealing with any transaction in respect of the Trust property bearing Survey No.359, 363 and 451. Since the Applicant is a devotee as well as the Trustee of the Trust, therefore in order to bring true and legal facts as well as the various orders passed by the Competent Authorities under the Maharashtra Public Trusts Act

as well as by the Surplus Land Determination Tribunal and by the Competent Court in various proceedings and to protect the interest of the Trust and as well as for complete adjudication, the Applicant is a necessary and proper party.

5. Per contra, Mr. P. R. Katneshwarkar, Senior Advocate, appearing for the Non-Applicant Nos.1 and 2 canvassed that, the Applicant has no locus to intervene and participate in the Writ Petition in any capacity, so also, the Applicant is not concerned with the properties of the Trust involved in the petition. Since the Non-Applicant Nos.1 and 2/Original Petitioners have challenged the order dated 25.01.2024 passed by the Non-Applicant No.4/Collector Beed restraining the Non-Applicant Nos.1 and 2 as well as Non-Applicant Nos.7 and 8, therefore, they are joined as a party Respondents, and as such the documents which are relied by the Applicant are public documents are in possession of the Respondent-Authorities. It is further canvassed that the present Application is abuse of powers of public Authorities and it is in blatant violation of *dominus litus*. Therefore, prayed for rejection of the application.

6. Needless to say that the present Applicant/Intervenor seeking permission to intervene in the matter or in alternative prayed for issuance of direction to Non-Applicant Nos.1 and 2 to implead him as a party Respondent in the writ Petition in which the Non-Applicants 1&2/ori Petitioners have challenge the order dated 25.01.2024 passed by the Respondent No.4 /

Collector thereby restrained the Non-Applicants 1 & 2/ori Petitioners as well as Non-Applicant Nos.7 and 8 from dealing with the landed property of the Trust bearing survey nos. 359, 363 and 551 situated at village Dharur, Dist. Beed which is registered in Schedule I of the Trust.

7. Section 2A of the Maharashtra Public Trusts Act provides definition of **“beneficiary”** and Section 2(10) defines **“Person having interest”** which reads as under:

“(2A) "beneficiary means any person entitled to any of the benefit as per the objects of the trust explained in the trust deed or the scheme made as per this Act and constitution of the trust and no other person;)”

“(10) "Person having interest" [includes];

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

(c) in the case of waqf, a person who is entitled to receive any pecuniary or other benefit from the waqf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf,

(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and

(e) in the case of any other public trust, [any trustee or beneficiary];”

8. Section 51 (1) of the Act provides that, if the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is specified that there is a *prima facie* case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.”

Section 51 envisages right of appeal by the affected party if the Charity Commissioner refuses his consent to the institution of the suit. Prior to this Section 50 (ii) already envisages that where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust, a suit by or against or relating to public trust or trustees or other although may be filed, consent under Section 51 of the Charity Commissioner is clearly required under Section 51 of the Act of 1950 .

9. The term ‘*Dominus Litus*’ is Latin phrase which means ‘the master of the suit’. To say aptly, the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. It is for the plaintiff in a suit, to identify the parties against whom he has any grievance and

to implead them as defendants in the suit filed for necessary relief. He cannot be compelled to face litigation with the persons against whom he has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the suit, he shall be entitled to get himself impleaded. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litus*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10.

10. In **Anil Kumar Singh V/s. Shivnath Mishra; (1995) 3 SCC 147**, Supreme Court interpreted Order 1 Rule 10(2) in the following manner:

“By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party-defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject- matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.”

11. The theory of “*dominus litus*” should not be over-stretched because it is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such persons to be impleaded. Merely because the plaintiff does not choose to implead a person, is not sufficient for rejection of an application for being impleaded.

12. In **Ramesh Hirachand Kundanmal V/s. Municipal Corporation of Greater Bombay and Ors. [1992] 2 SCR 1**, the Hon’ble Supreme Court held that though the plaintiff is a '*dominus litis*' and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case.

13. Order I, Rule 10 C.P.C. enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

14. Since the present Applicant is a Trustee of Shree Balaji Mandir Trust, Dharur and the present Non-Applicant Nos.1 and 2 who are claiming to be the Manager of the Trust and allegedly trying to grab the property of the Trust being their private property and as such by order dated 25.01.2024, the Respondent No.4/ Collector restrained the Non-Applicants 1 & 2/Ori. Petitioners from dealing with the Trust Property, which the applicant wanted to protect from their clutches. Therefore, considering the scope of Section 2 (2A) and Section 2(10) of the Maharashtra Public Trust Act, the Applicant certainly falls within the ambit of *“beneficiary”* and *Person having interest”* . Hence, in order to bring true and correct facts as well as to bring the substantial documents on record as well as to protect the interest of the Trust, the presence of the present Applicant is necessary and proper party.

15. In view of the above discussion, we are inclined to grant the present Applicant and proceed to pass the following order:

ORDER:

- i) **Civil Application No.9637 is hereby allowed.**
- ii) The Non-Applicant Nos.1 and 2 / Original Petitioners are hereby directed to implead the present Applicant as party Respondent No.8.
- iii) Necessary amendment be carried out within seven days from today.

iv) After the amendment is carried out, issue notice to the newly added Respondent No.8. Learned advocate Mr. Kulkarni waives service of notice on behalf of Respondent No.8.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]