

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.18030 OF 2023
IN
INTERIM APPLICATION NO.17573 OF 2023
IN
WRIT PETITION NO.8997 OF 2003**

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Shashikant Sahadev Mainkar .. Applicant/Intervener

IN THE MATTER BETWEEN:

Jaganath Vinayak Dhopeshwarkar & Ors. ..Petitioners

Vs.

The State of Maharashtra & Ors. .. Respondents

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Mr. A. Y. Sakhare, Senior Advocate with Ms. Preeti Walimbe, Ms. Vaishnavi Nagargoje, Advocates for the applicant/Intervener in IA/18030/2023.

Mr. Tejas Dande with Mr. Aniket Shitole, Mr. Pratik Sabrad, Mr. Vinayak Shelar, Advocates for the applicant in IA/17573/2023 and for the respondent no.2 in WP/8997/2003.

Mr. Ashutosh M. Kulkarni appointed as Amicus Curie.

Mr. A. I. Patel, Additional Government Pleader with Mr. Aditya R. Deolekar, Assistant Government Pleader for the respondent nos.1 to 3-State.

Mr. Y. S. Jahagirdar, Senior Advocate i/by Mr. Vikram N. Walawalkar, Advocates for the respondent no.4.

Mr. Tejpal Ingale, Advocate for the respondent no.6.

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**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 22nd OCTOBER, 2024.

P.C. :

1. This application seeking leave to intervene in Interim

Application No.17573 of 2023 has been filed by Mr. Shashikant Sahadev Mainkar through his power of attorney holder Mr. Parag Prakash Vardam. It is prayed that the Intervenor be permitted to intervene in the Interim Application that has been preferred by the Liquidation Committee, Bhudargad Nagari Sahakari Patsanstha Ltd-the respondent no.2 in Writ Petition No.8997 of 2003. In that Interim Application, the respondent no.2 seeks permission to accept the proposal that has been given by the respondent no.3-Kudalbeshkar Guad Brahman Sahyog, Dombivili, a Public Trust for surrendering lease-hold rights in the subject area subject to terms and conditions. In the Interim Application, it has been stated that the Intervenor seeks leave to place before the Court the material aspects, that the subject property was wrongly acquired by the petitioner no.5, Kolhapur District Central Cooperative Bank by entering a lease with the Trust Deed on 03/11/1995. Further the Trust had no authority to induct a sub-lessee without the consent of the owner-the present applicant. Another aspect sought to be raised is that acceptance of amounts towards surrender of the rights are at the behest of the Trust which is not the owner of the property. Accepting the prayer made in the Interim Application preferred by the Liquidation Committee would result in further litigation. It is therefore prayed that the application be allowed and

the applicant be permitted to intervene in the present proceedings.

2. Affidavit in reply has been filed by the Chairman of the Liquidation Committee opposing the prayers made in the Interim Application. It has been stated that the applicant was neither a necessary party nor a proper party whose presence is necessary for deciding Interim Application No.17573 of 2023. The applicant having filed civil proceedings against the Trust, he was free to pursue the same in accordance with law. There was no privity of contract between the applicant and the Society under Liquidation. It has been further stated that the Commissioner of Corporation having considered the matter and having issued the communication dated 05/10/2023, it is not open for the applicant to oppose the prayer made in Interim Application No.17573 of 2023. It is thus stated that the Interim Application is liable to be rejected.

Affidavit in reply has also been filed on behalf of the Working President of the respondent no.4-Public Trust. It has been stated that the present applicant had filed an application under provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') in SCS No.260/2015 which came to be rejected by the trial Court on 15/10/2018. It is further stated that the Intervener was no longer interested in the subject property

since he had entered into an agreement with Mr. Parag Prakash Vardam and Mrs. Aruna Gajanan Vyapari for sale of the aforesaid property to them. The registered agreement indicated amount of Rs.30 lakhs paid to the applicant as earnest amount. Hence, the Intervener had no interest in the subject property and the application therefore was liable to be rejected.

3. We have heard the learned counsel for the parties and we have perused the documents on record. It may be noted that Interim Application No.17573 of 2023 has been filed by the respondent no.2 in Writ Petition No.8997 of 2003 praying that permission be granted to accept the proposal given by the Public Trust to surrender lease-hold rights in the subject property for a consideration of Rs.1 crore 36 lakhs. The basis for seeking this prayer is the communication dated 05/10/2023 issued by the Additional Registrar, Co-operative Societies addressed to the Liquidation Committee by which the aforesaid proposal has been accepted subject to leave of the Court. It is in this Interim Application that the applicant seeks leave to intervene. It is seen from the record that the Intervener has filed Special Civil Suit No.379 of 2022 against the Public Trust and its Trustees as well as the Society under liquidation seeking a decree for possession of the subject property. The aforesaid civil suit is still pending.

Similarly, the Trust has also filed Special Civil Suit No.260 of 2015 against the Society under Liquidation and another seeking a decree for recovery of possession from the Society. In those proceedings, the present applicant had moved application below Exhibit-19 under provisions of Order I Rule 10 (2) of the Code seeking leave to be impleaded as a defendant. The said application came to be dismissed on 15/10/2018 and it has not been shown that this order passed by the trial Court has been modified or set aside.

It can thus be seen that the parties to the present proceedings are agitating their respective rights before the Civil Court and their respective suits are pending.

4. The issue to be considered in Interim Application No.17573 of 2023 is with regard to approval that is sought to the permission granted by the Additional Registrar, Co-operative Societies in the matter of surrender of lease-hold rights. In our view, the presence of the applicant for consideration of Interim Application No.17573 of 2023 is not warranted as the applicant has already filed Special Civil Suit No.379 of 2022 seeking possession of the subject property from the Public Trust. Moreover, the Intervener himself having agreed to transfer his interest in the said property in favour of Mr. Parag Prakash Vardam and Mrs. Aruna Gajanan

Vyapari cannot be said to be a person interested so as to oppose the prayers made in Interim Application No.17573 of 2023. Needless to state that the rights of the parties would be determined in the respective suits filed by them and any adjudication of Interim Application No.17573 of 2023 would not prejudice the legal rights of the present applicant.

5. In that view of the matter, we are not inclined to grant the prayers made in the Interim Application. The same is accordingly rejected. Needless to observe that the applicant is free to agitate his rights in the pending proceedings before the Civil Court and any observations made in this order would not come in the way of the applicant in the pending civil suits.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]