

Ajay

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

WRIT PETITION NO. 1865 OF 2024

Chandrakant Changadev Kadam and Ors. .. Petitioners

Versus

State of Maharashtra, Through Collector and
Ors. .. Respondents

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- Mr. P.R. Arjunwadkar i/by Prabha U. Badadare, Advocate for Petitioners.
 - Mr. P.G. Sawant, AGP for the Respondents – State.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 26, 2024.

P.C.:

- 1.** Heard Mr. Arjunwadkar, learned Advocate for Petitioners.
- 2.** Mr. Sawant, learned AGP appears for Respondent Nos.1 to 3 – State.
- 3.** The order impugned in the present Writ Petition is passed on Application filed by an Intervenor seeking impleadment in the Suit proceedings being Regular Civil Suit No.74 of 2022 filed by Plaintiffs for injunction.
- 4.** Principal Defendants in the Suit proceedings are Defendant Nos.1 to 3 who are Respondent Nos.1 to 3 herein i.e. State of Maharashtra and its functionaries.

5. Mr. Arjunwadkar would submit that admittedly the Petitioners i.e. Plaintiffs are entitled to Gat No.44. He has drawn my attention to page No.30 of the Writ Petition and would submit that the upper portion of Gat No.44 was acquired in the year 1970 by the State Government, initially for project affected persons and/or for a public purpose. He would submit that as a consequence thereof, the upper portion was nomenclatured as Gat No.44/1 whereas the portion below at all times remained with the Plaintiffs as Gat No.44.

6. He would next submit that with the passage of time there is a road passing through Gat No.44/1, though after its acquisition by the due process of law it was allotted to Eknath Kanugade and four others as PAPs. He would submit that the Intervenor namely one Nanda Sanjay Patil appears to have purchased the rights of PAPs in Gat No.44/1 and stepped into the shoes of the said PAPs i.e. project affected persons. This is gathered from the Intervention Application made by Nanda Sanjay Patil seeking to be added as proposed Defendant No.4 in the Suit proceedings. Application below Exhibit “5” has been allowed by the learned Trial Court on 06.10.2022 in favour of Petitioners. The State Government and its functionaries i.e. Original Defendant Nos.1 to 3 have not challenged the same. However, on 24.01.2023 an Application is made by Nanda Sanjay Patil as Intervenor seeking to be impeaded as Defendant No.4.

7. I have perused the above Application as also the pleadings in the present case. It needs to be reiterated that this is a Suit for simplicitor injunction filed by the Plaintiffs against the original Defendant Nos.1 to 3 who are the State Government and its functionaries and more specifically because a part of their land i.e. Gat No.44/1 was acquired by following the due process of law under the Land Acquisition Act, 1894 and after passing an Award in the year 1977. In such a Suit filed for injunction by the Plaintiffs, impleadment of the proposed Defendant No.4 who claims to have stepped into the shoes of the project affected persons concerned with Gat No.44/1 cannot be allowed and rather should not be allowed as there is no nexus of this third party with the Suit proceedings and property.

8. There is no reason and purpose for impleadment of such a third party in the present Suit for injunction. If the proposed Defendant No.4 is aggrieved with any of her substantive right in Gat No.44/1, it is open to her to file an appropriate Civil Suit in the Civil Court having original jurisdiction and seek appropriate reliefs therein.

9. The learned Trial Court while considering the Application dated 24.01.2023 has passed the impugned order dated 21.08.2023 allowing the Intervention Application on two reasons namely because the Plaintiffs have filed a Suit for injunction against Defendant Nos.1 to 3 who are causing obstruction to the Plaintiffs' peaceful possession

at the instance of third parties. Hence the learned Trial Court has expressed a broad proposition that impleadment of the proposed third party in the Suit for injunction would facilitate the Court to resolve the real controversy between the parties. Such a reason for impleadment of proposed Defendant No.4 on record is unacceptable and cannot be countenanced at all in the facts of this case.

10. On the basis of above observations, impleadment of the proposed Defendant No.4 i.e. Intervenor is completely foreign to the cause of action in the Suit filed by the Plaintiffs. The Intervenor has absolutely no nexus whatsoever with the Suit property or the Plaintiffs or Defendants at all. Such action of allowing Intervention would only protract and delay the Suit proceedings. If the intervenor is aggrieved, the remedy is open to her to approach the Civil Court for appropriate reliefs by filing appropriate proceedings.

11. Hence, an arguable case has been made out by Mr. Arjunwadkar for not only issuance of notice but also for immediate stay of the Suit proceedings and stay of the impugned order of impleadment of the Intervenor as Defendant No.4. Learned Trial Court shall therefore not proceed with the hearing of RCS No.74 of 2022 until the present Writ Petition is determined by this Court.

12. On the basis of the above reasons, issue notice to the Respondents.

13. Mr. Arjunwadkar is directed to hand over a copy of the Writ Petition to Mr. Sawant. Equally, he is directed to serve copy of the Writ Petition and this order on Respondent No.4. Respondent No.4 is directed to file her Affidavit-in-Reply, on or before the next date.

14. In addition to Court notice, Petitioner is permitted to serve a copy of the Petition and this order on the Respondent No.4 and inform about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

15. Respondent No.4 is directed to remain present in Court on the next adjourned date either by herself or through Advocates.

16. Respondent No.4 is directed to take cognizance of this order and file her Affidavit-in-Reply on or before the next date, if so desired.

17. It is clarified that, present Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

18. Stand over to **18th March, 2024.**

[MILIND N. JADHAV, J.]