



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2510 OF 2020

The Church of Nazrene of Bharat,
A registered Trust, P.T.R. No.F-81/
Buldhana, through its Chairman/
Moderator, Rev. Suhas Uday Gurjar,
Aged 52 years, Resident at the Bungalow
for Moderator, in the premises of the
Church of Nazrene of Bharat, Buldhana.

.... **PETITIONER**

VERSUS

1) General Board of the Church of Nazrene
Mission in India, Regn. No.F-520/
Akola, through its alleged Trustees,
Chairperson and Property Incharge,
namely,

- A) Rev. Diwakar H. Wankhede,
Age – Major, Occ. – Trustee,
as well as Priest, R/o Miniland
Tank Road, Bhandup (West),
Mumbai – 400 078.
- B) Rev. P.L. Manmothe,
Age – Major, Occ. – Trustee,
as well as Priest, R/o Washim, Church
Campus, Washim, Tq. District Washim.

2) Solomom Smith F. Masiha,
Age 79 years, Occ. – Business,
Alleged Moderator of alleged Indian
Canadian Presbyterian Mission, UCC
Mission in India, Resident of Tirupati
Colony, District Indore.

3) Ulhas Ramnath Nagare,
Age 55 years, Occ. – Business,
R/o Bhendi Bazar, Laxminarayan Mandir,
Nashik, Taluka and District Nashik.

- 4) Sau. Archana Satish Khabutre,
Age 49 years, Occ- Agriculturist,
R/o Behind Anuradha Urban Co-op
Bank, Chikhali, Taluka Chikhali,
District Buldhana.
- 5) Ashish Devidas Dhablobhe,
Age 44 years, Occ. – Agriculturist
and Business.
- 6) Atul Devidas Dhablobhe,
Age 36 years, Occ. – Agriculturist and
Business.
- 7) Sau. Yogita Ashish Dhanlobhe,
Age 39 years, Occ. – Agriculturist,
- Respondent Nos. 5 to 7 R/o Rayali
Jin, Chikhli, Taluka Chikhli, District
Buldhana.
- 8) Ramrao Jayawant Hiwale,
Age 64 years, Occ. – Agriculturist,
R/o Sunderkhed, Taluka and District
Buldhana.

.... RESPONDENTS

Mr. N.A. Padhye, Counsel for the petitioner,
None for the respondents.

CORAM : ABHAY J. MANTRI, J.

DATE : 14-12-2024

ORAL JUDGMENT :

Heard. **Rule.** Rule is made returnable forthwith.

None appears for the respondents though served.

2. By this petition, the petitioner is challenging the order dated
05-07-2016 passed by the learned Civil Judge, Senior Division,

Buldhana, below Exhibit 27 in Special Civil Suit No.28/2015, thereby allowing the application moved by the third party to implead it as a party to the suit.

3. Mr. N.A. Padhye, learned Counsel for the petitioner, vehemently argued that the trial Court, without giving an opportunity to the petitioner/plaintiff and in its absence, passed the impugned order, and on that ground alone, the order impugned is liable to be set aside. He further canvassed that the proposed intervenors were not trustees of the Trust; however, the trial Court, without considering the said fact, erred in allowing the said application. He has drawn my attention to the order dated 08-03-2018 and submitted that the learned Assistant Charity Commissioner, Washim, has rejected the Change Report submitted by the intervenor No.1 (A), personating him as a Chairman of the Trust. Therefore, he submitted that the application filed by the intervenors was bereft of any merit and was liable to be rejected at the threshold. In the plaintiff's absence, the passing of the impugned order by the learned Judge is erroneous for the reason stated in the petition. Hence, he urged for setting aside the direction to the plaintiff to implead them as a party.

4. I have appreciated the arguments of the learned counsel for the petitioner and perused the impugned order and record.

5. At the outset, it seems that one Mr. D.H. Wankhede and Mr. P.L. Manmothe had filed an application before the trial Court representing them as trustees of the General Board of Church of Nazrene Mission in India and, therefore, he canvassed that Trust is the necessary party to the suit so it be impleaded in the suit as a defendant. It reveals from the impugned order that in the absence of the counsel for the plaintiff, the learned Judge passed the impugned order without considering the record in its proper perspectives, holding that “*the intervenor/ applicant has claimed an interest in the subject matter of the suit and, therefore, they are necessary parties to the suit and directed the plaintiff to implead it as a defendant*”. In fact, in the application, though the intervenors are shown as trustees, no document has been produced on record in support of their claim. Moreover, nothing has been stated as to how their rights are affected or how they are related to the property in question. They are not related to the suit property nor had any authority to represent the Trust as the competent authority did not accept the change report submitted by them till the filing of the application. In the absence of the same, the said application is not tenable.

6. Apart from the above, during the pendency of the suit, the learned Assistant Charity Commissioner has rejected the Change Report submitted by the alleged trustees by order dated 08-03-2018. However,

the respondents have not brought anything on record to show that they have challenged the said order. That being so, it seems that the intervenor/respondent Trust, represented through Mr. D.H. Wankhede and Mr. P.L. Manmothe, failed to show that they have the right in the Trust as trustees. Therefore, they are the necessary parties. On the contrary, it is evident that the application was vague and bereft of any merit.

7. The learned Judge has not considered all the facts and, solely based on the averments in the application, presumed that the intervenors, Mr. D.H. Wankhede and Mr. P.L. Manmothe, are the trustees of the Trust, allowed the application. In fact, the Change Report was not accepted by the competent authority. Notably, it was incumbent on the trial Court to ascertain whether the Change Report was accepted by the competent authority or not or whether the intervenors had produced the authentic document before the Court to show their rights in the suit property.

8. *Furthermore*, it is a settled principle of law that the plaintiff is the *dominus litis* and cannot be forced to add parties against whom it does not want to fight unless there is a compulsion of the rule of law or the party proposed to be added has direct and legal interest in the controversy involved in the suit.

9. *Besides*, the intervenors/applicants have not stated in their application how they have the right in the suit property or the authority to represent the Trust. Nothing has been produced on record by them. In such circumstances, in my view, passing of the order impugned by the learned trial Court cannot be sustained in the eyes of the law, and the same is liable to be quashed and set aside.

10. In the aforesaid background, I pass the following order.

Petition is allowed. The impugned order dated 05-07-2016 passed by the learned Civil Judge, Senior Division, Buldhana, below Exhibit 27 in Special Civil Suit No.28/2015, is hereby quashed and set aside.

As a sequel of the above, the petitioner/plaintiff is directed to delete the names of the intervenors/applicants, Mr. D.H. Wankhede and Mr. P.L. Manmothe, from the array of defendants.

Inform the learned trial Court accordingly.

11. Rule is made absolute in the above terms.

(ABHAY J. MANTRI, J.)