



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 2032 of 2024

Sau. Yamuna W/o Narendra Jetha through POA Shri Narendra S/o
Govindlalji Jetha

Versus

Shri Ajay S/o Balkrishna Petkar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.G.Bhagwani, Advocate for the petitioner.

Shri K.R.Gour, Advocate for the respondent no.1.

Shri A.M.Kukday, Advocate for the respondent nos. 2
and 3.

CORAM : N.R.BORKAR, J.

DATED : 30th SEPTEMBER, 2024.

This petition takes exception to the order dated 31st January, 2024 passed by the Joint Civil Judge, Senior Division, Nagpur below Exhibit 19 in Special Civil Suit No. 868 of 2023.

2. The respondent no.1 herein has filed a suit challenging the notice issued by the respondent No.1 under Section 53(1) of the Maharashtra Regional Town Planning Act, 1966.

3. By the order impugned the learned trial Court has rejected the application filed by the petitioner under Order I Rule 10 of the Code of Civil Procedure.

4. I have heard learned counsel for the petitioner and the learned counsel for the contesting respondent.

5. According to the petitioner, he is the owner of the suit premises. Whereas according to respondent No.1, he is in possession of the suit premises pursuant to agreement of sale executed by the original owner in favour of his brother. Admittedly, as on today there is no decree of specific performance of contract against the original owner or the petitioner. According to the petitioner, the respondent no.1 is occupying the suit premises as a tenant.

6. The Division Bench of this Court in the case of *Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan and another reported in 2024(2) Mh.L.J.322* has held:

32. Answering the question, we hold that in a suit filed by the occupier/ tenant/ licensee seeking to restrain the local authority from taking action of demolition against the property, where the landlord/ owner of the property seeks impleadment, the Court is empowered to permit the same exercising the power under Order I, Rule 10(2) of Code of Civil Procedure on the premise that the landlord/ owner is a proper party. Such a direction by the court in this fact situation would be a sound exercise of discretion consistent with the long-standing use of discretion in this manner. Refusal to permit such a joinder by not accepting the

landlord/owner as a proper party would be an improper use of discretion and be liable to be set aside.

7. In view of the above, the order impugned cannot be allowed to stand. In the result, the following order is passed.

- i. The writ petition is allowed.
- ii. The impugned order dated 31st January, 2024 passed by the 8th Joint Civil Judge, Senior Division, Nagpur below Exhibit 19 in Special Civil Suit No. 868 of 2023 is hereby quashed and set aside.
- iii. The petitioner shall be impleaded as a party (defendant) to the suit.

[N.R.BORKAR, J.]