



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

**WRIT PETITION NO.4764/2024**

Hemang Kaushik Vadera .Vs. State of Maharashtra thr. Collector Gondia & Ors.

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

Mr. V. R. Borkar, Advocate for petitioner.  
Mr. A. M. Kadukar, A.G.P for respondent Nos. 1 to 3.  
Mr. M. I. Dhattrak, Advocate for respondent No.4

**CORAM : ANIL L. PANSARE, J.**

**DATE : OCTOBER 21, 2024**

Challenges is to the order dated 03.07.2023 passed below Exh.-21 in Regular Civil Suit No.55/2023 by Civil Judge Senior Division, Gondia. The petitioner filed an application for intervention, which has been rejected by the Trial Court on the ground that the petitioner is neither necessary nor proper party to the suit.

Having heard both the sides and having gone through the material placed before me, it appears that upon complaint lodged by the petitioner's father, Tahsildar issued notices dated 03.02.2023 and 13.02.2023, calling upon respondent No.4 to remove the encroachment. Respondent No.4 filed a suit seeking declaration that the said notices are illegal, null and void.

Thus, the petitioner's intervention application will have to be considered on the touchstone of the reliefs sought by respondent No.4, which has been sought only against respondent Nos.1 to 3 herein i.e. original defendant Nos.1 to 3.

The petitioner will have to therefore show as to how in his absence the suit cannot be decided. The answer given is

that the petitioner's right to use his property got restricted because of the alleged encroachments.

I have gone through the application filed by the petitioner to find that except for a bare statement, there is absolutely nothing to show as to how the alleged encroachment is causing obstruction to the use of petitioner's property nor could counsel for the petitioner show any evidence in this regard. The only argument is that the impugned notices were issued to respondent No.4 at the instance of the petitioner.

In my view, merely because notices were issued at the instance of the petitioner that by itself cannot be the ground to claim oneself to be the necessary party to the suit. It is well settled that necessary party is the one, in whose absence the suit cannot be decided and the proper party is the one whose presence is required to effectively decide the controversy.

In the present case, the controversy is issuance of impugned notices calling upon respondent No.4 to remove the encroachment. The *lis* lies between respondent No.4 and other 3 respondents. Presence of petitioner appears to be neither necessary nor proper. The Trial Court has rightly rejected the application. In any case, if during pendency of the suit it is found that presence of the petitioner is necessary, the Trial Court will take recourse to the appropriate provisions and order accordingly.

There is no merit in the petition. The writ petition is dismissed. No order as to costs.

**(Anil L. Pansare, J.)**