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wp5457.23

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5457 OF 2023

Mohammad Khaleque Mohamad Isaq and Others
VS
Ayesha Begum Mohammad Yusuf Khan and others

Mr. B. A. Shinde, Advocate for the petitioner
Mr. Vishant Kadam, Advocate for the respondent Nos. 1 to 9
(through VC)
Mr. Karan V. Sarosiya, Advocate h/f Mr. S. S. Bora, Advocate for
the respondent Nos. 10

CORAM : KISHORE C. SANT, J.

RESERVED ON : 18th MARCH, 2025

PRONOUNCED ON : 09th MAY, 2025

P. C.

1. Heard the learned advocates for the parties.
2. The matter is taken up for final disposal by consent of the parties.
3. The petitioners have approached this court challenging an order rejecting their application to add them as

party respondent to the said suit. Respondent Nos. 1 to 9 are the original plaintiffs. Respondent No.10 is the original defendant-Parbhani City Municipal Corporation through its Commissioner, Parbhani established under the Bombay Provincial Municipal Corporation Act Body Corporate.

4. In short, the facts giving rise to the present petition are as below:

5. That the petitioners purchased property a plot bearing No. 39 from the City Survey No. 1116, Inayatnagar, under the layout. Said plot is having 9 mtrs vide road shown from plot Nos.18 & 19 towards Southern side till plot Nos. 32 & 33. There is another DP road having width of 12 mtrs. towards West side. On purchase of the land the names of the petitioners were taken in PR card by respondent Corporation. It is the case of the petitioners that they found some encroachment on the 12 mtrs DP road. The petitioners, therefore, made various representations to the Municipal Corporation for removal of

encroachments on the said road. However, the Corporation did not pay any heed. The petitioners, therefore were constrained to file writ petition in this court seeking direction to the Corporation for removal of obstruction/encroachment. This court by order dated 17-08-2021 disposed off the said writ petition bearing WP/8934/2021. It is observed that the petitioners may prosecute their application with the Municipal Corporation as may be permissible under the law.

6. It is thereafter, the petitioners again filed the complaint on 03-06-2021 on Democracy Day with the Deputy Collector (General Administration), Collector Office, Parbhani giving particulars of encroachment allegedly made by the present respondent Nos. 1 to 9. The petitioners thereafter again sent the reminders to the respondents-Corporation. The petitioners, even stated that they have no option than to go for hunger strike. It is only thereafter, as alleged, the Corporation issued notices to the respondent Nos. 1 to 9 for removal of encroachment.

7. On receiving notice Respondent Nos. 1 to 9, filed RCS No. 111/2022 against the Corporation. The plaintiffs in the suit prayed for perpetual injunction against the Corporation from causing any obstruction and interference into their peaceful possession over the property situated in Survey No. 626 and 627 of Inayatnagar, Parbhani.

8. On getting knowledge of filing of the suit, the petitioners approached the learned trial court by filing an application under order 1 Rule 10 for joining them as party defendants. It is stated in the application that action of the Corporation against the respondents is started on an application given by the petitioners to the Corporation. It is further stated that the petitioners had filed various representations to the Authorities and it is only thereafter the action is started and therefore, they are necessary parties to the suit.

9. The application came to be opposed by the

respondents stating that for decision of the suit presence of the petitioners is not necessary. The suit is necessarily for injunction against the Corporation only.

10. The learned trial judge held that petitioners are neither necessary party nor proper party. The suit is only for perpetual injunction against the Corporation and rejected the application making the petitioners to approach this court.

11. The learned advocate for the petitioners vehemently argued that action by the Corporation is initiated only after representations made by the petitioners. It is the petitioners who put the machinery in motion. It is basically a grievance of the petitioners against the encroachment. Since, it is for the Corporation to remove the encroachment, the petitioners had to move the Corporation. The petitioners, have interest in the suit. The learned trial court failed to appreciate this basic material fact and has passed the erroneous order. He, prays for setting aside the order by allowing the application Exh.24 before the

trial court.

12. The learned advocate for the respondents-original plaintiffs vehemently argued that no case is made out showing that the petitioners have any interest in the suit or in the outcome of the suit. There is nothing to show that in what manner the petitioner will be affected by the out come of the suit. There is no prayer made against the petitioners in the entire suit. The learned advocate thus, prays for dismissal of the writ petition.

13. Learned advocate for respondent No.10 prays for appropriate order.

14. For deciding a question as to whether a party is necessary party or not, it needs to be seen that the parties who is sought to be added as party is likely to be affected by outcome of the suit. Whether their presence is necessary to assist the court in coming to the proper conclusion.

15. In the present case it is true that the action by the Corporation is started because of the representations /complaints filed by the petitioners. The petitioners had even approached this court when the Corporation was not taking any action. This court has also disposed off the writ petition stating that the petitioners shall pursue the authorities for their grievance about the encroachment on the DP road. Merely because the action of the Corporation is started because of the complaint of the petitioners cannot be said to be giving right to the parties to join as necessary party is one whose presence in the suit is necessary for the purpose of effectively deciding the suit. In other words no conclusion can be drawn that in absence of such parties court cannot effectively decide the suit.

16. In the present suit, the court only has to consider as to whether the property of the respondent is an encroachment. If the court comes to a conclusion that there is encroachment on the road, the court has the power to refuse any relief. It is for

the Corporation to remove the encroachment on the public places and the roads. Therefore, Corporation issued notice to the respondents. It is these notices which are under challenge in the suit alongwith prayer seeking injunction. This court hardly finds that in the suit the petitioners presence is necessary to effectively decide the suit. It is also clearly seen that there is no any prayer against the present petitioners. The petitioners therefore, cannot be said to be persons likely to be affected by the outcome of the suit.

17. On going through the order passed by the learned trial court it is seen that the learned trial court has rightly considered that the presence of the petitioner is not necessary in the suit. The learned trial court also considered the judgments of the Hon'ble Apex Court while deciding the application. The petitioner had also approached this court. This court only directed them to pursue the authorities for removal of the encroachment except that no any other direction is given. Merely because High Court has directed to pursue the

authorities will not confer any right over the petitioner to be joined as a party.

18. Considering all these, this court finds that no case is made out calling for interference at the hands of this court. No perversity or illegality is made out. The petition, therefore, stands disposed off.

[KISHORE C. SANT, J.]

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