



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

WRIT PETITION NO. 5128 OF 2020

The Agriculture Produce Market Committee Georai Athrough Its Secretary
VERSUS
Vitthal Gitaram Gaikwad And Others

Mr. D. J. Choudhary, Advocate for Petitioner
Mr. M. S. Indani, Advocate for Respondent No. 1
Mr. R. R. Tandale, AGP for Respondent Nos. 2 and 3/State

CORAM : R. M. JOSHI, J.

DATE : 07th August, 2025

PER COURT :-

1. Learned counsel for respondents filed reply. Reply taken on record. Copies made to other side.
2. This petition takes exception to the impugned order passed below Exhibit 247 in Regular Civil Suit No. 223/2005, essentially on the ground that bar created by the principle of Res Judicata in the Trial Court to pass order in view of rejection of Application Exhibit 58.
3. There is no dispute about the fact that plaintiff filed Application Exhibit 58 under order VI Rule 17 for adding District Collector, Beed and Tahsildar, Georai as a party defendant. Similarly, subsequent events were sought to be placed on record through the said application. Application was

rejected by the Trial Court by order dated 20.11.2010. Further, admittedly, the order passed vide Exhibit 58 was not challenged and the said order has attained finality.

4. In a writ petition bearing No. 6926/2008, a grievance was made in respect of mutation entry by the plaintiff. While deciding this petition, by order dated 23.01.2015, said petition came to be disposed of with observation that the Mutation Entry No. 2956 shall be subject to the result of Regular Civil Suit No. 223/2005. A review application came to be filed by petitioner therein. This review application came to be allowed by order dated 28.03.2016 with clarification that the impugned Mutation Entry No. 2956 and impugned order of District Collector bearing No. RB/2/LND/1/2996 dated 19.02.2008 shall be subject to the result of Regular Civil Suit No. 223/2005. Though such review application must file, no other correction was sought in the said order.

5. Thereafter, a suo motto order came to be passed by the Trial Court on 15.12.2018 by framing additional issues. The plaintiff took exception to the said order by filing Writ Petition No. 5194/2019. While dismissing the petition partly, this Court has granted leave to the petitioner to add District Collector, Beed and Tahsildar, Georai as a party defendant. The said portion of the order is reproduced herein below :-

In view of the above, this petition is partly allowed to

the extent of permitting the petitioner to prefer an application for adding the District Collector, Beed and the Tahsildar, Georai as defendants. Such application shall be filed within 15 days. The defendants shall not oppose and the trial Court would pass a formal order forthwith permitting the plaintiff to array the defendants and notices be issued. On these premises, the additional issue No.2, framed on 5.1.2019, would be discarded by the trial Court.

After this order came to be passed, Application Exhibit 247 was moved by the plaintiff. This application is identical to the Application Exhibit 58. The learned Trial Court allowed the said application in toto by impugned order dated 03.09.2019. Hence, this petition.

6. Learned counsel for the petitioner has drawn attention of the Court to the fact that the Application Exhibit 58 and 247 are identical with pleadings and prayers made therein. It is his submission that since the order of rejection of Exhibit 58 was not challenged by the plaintiff, it is not open for the plaintiff to seek the same relief by making application at subsequent stage of proceeding. He further concedes to the fact that in view of the order passed by the High Court in Writ Petition No. 5194/2019, there cannot be any difficulty in permitting the plaintiff to join District Collector, Beed and Tahsildar, Georai as a party defendant, however second part of order cannot sustain.

7. Learned counsel for palintiff submits that petition has become infructuous as the plaintiff has already carried out amendment as per the

impugned orders and joined both Collector and Tahsildar as a party defendant and they have caused their appearance and also have filed the reply. It is his further contention that when this Court has permitted the plaintiff to array the Collector and Tahsildar Georai as a party defendant, it means that the averments in connection to them are also allowed to be taken. Hence, according to him order impugned deserves no interference.

8. There cannot be any dispute with regard to the position of law that the principle of Res Judicata would have application to all stages of the suit. Admittedly, in earlier application was filed with same pleadings are for the same relief. Application Exhibit 58 be filed which came to be rejected by the Trial Court by order dated 20.11.2010. Admittedly, this order has not been challenged by plaintiff. Thus, it would not be open for the Trial Court at any subsequent stage to allow the application on the same pleadings with same prayer.

9. In this regard, it is pertinent to note that in so far as joining District Collector, Beed and Tahsildar, Georai as a party defendant is concerned, the order passed by this Court dated 04.07.2019 in Writ Petition No. 5194/2019 being not challenged before the Supreme Court has attained finality. As such, it was open for the Trial Court to join the Collector, Beed and

Tahsildar Georai as a party defendant.

10. Now question arises as to whether it was open for Trial Court to draw inference of grant of such permission to add pleadings, in absence of specific order to that effect. As noted earlier, Exhibit 58 was rejected on merit. Non challenge to the said order has resulted in applying the principle of Res Judicata for any subsequent application filed for the same purpose. Thus unless specific order was passed by this Court in previous petition, permitting amendment to the pleadings, plaintiff cannot assume so nor Court has power to direct so. In the light of this fact, when this Court has not permitted specifically to the plaintiff to amend the pleadings, he cannot be permitted to do so, nor Trial Court had jurisdiction to pass any such order.

11. The contention of the learned counsel for the petitioner that the petition has become infructuous also sans merit for the reason that when the Trial Court had no jurisdiction to pass order of amendment to the pleadings as sought to be done, question of implementation of the said order does not arise. The consequence of setting aside of such order therefore would follow.

12. Hence, petition stands partly allowed. The impugned order is maintained to the extent of joining District Collector, Beed and Tahsildar, Georai as a party defendant. The order allowing amendment to the pleadings

stands set aside. Needless to say that the consequences of the setting aside order of amendment to the pleading shall follow and any amendment done or any act done by parties, pursuant to the same, shall be ignored.

(R. M. JOSHI, J.)

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