



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5913 of 2025
IN WRIT PETITION NO. 2059 OF 2025

JAI VISHWA BHARTI SAHAKARI GRUHNIRMAN SANSTHA LIMITED
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

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Mr. R.N. Dhorde, Senior Advocate a/w. Mr. P.S. Dighe i/b. Mr. Vikram R. Dhorde - Advocate for Applicant
Mr. S.P. Sonpawale - AGP for Respondent No.1, State
Mr. S.B. Deshpande, Senior Advocate i/b. Mr. S.P. Urgunde a/w. Ms. Priyanka A. Deshpande - Advocate for Respondent No.2
Mr. S.V. Adwant - Advocate for Respondent No.3

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CORAM : SHAILESH P. BRAHME
AND NEERAJ P. DHOTE, JJ.
DATE : 19.06.2025

ORDER :

1. Heard both sides.
2. Applicant is seeking amendment to memo of Writ Petition to incorporate the pleadings and prayers. Writ Petition is pending for admission hearing. On the last date learned Senior Counsel - Mr. R.N. Dhorde appearing for the applicant requested time to file certain documents on record which were to be received from respondent No.2 - Municipal Corporation. Accordingly, time was granted and leave was also granted to file rejoinder. Applicant is seeking leave to

incorporate paragraph Nos.15-A to 15-F, ground Nos. X to XIX and prayer clauses BB and DD.

3. Learned Senior Counsel - Mr. R.N. Dhorde submits that, proposed amendment is necessary to decide real controversy involved in the matter. He would submit that, when suit filed by the applicant bearing R.C.S. No.37 of 2024 was pending, mischievously respondent No.3 filed Writ Petition No.8517 of 2024 and collusively obtained order dated 23.01.2025. It is submitted that, respondent No.2 - Municipal Corporation which is public body has acted in utter disregard to rule of law in allotting land to respondent No.3 vide resolution dated 28.02.2024. It is submitted that, no procedure was followed under Section 79 of the Bombay Provincial Municipal Corporation Act, 1949 in allotting land. There was no sanction of the Competent Authority for the same. It is contended that, felling of the trees undertaken by the respondent was also illegal. It is vehemently contended that, applicant was necessary party and fraudulently it was not impleaded in earlier Writ Petition.

4. Learned Counsel further submits that, respondent No.2 - Municipal Corporation was not expected to provide road to the respondent No.3 but surreptitiously in the lease deed clause No.10(f)

was incorporated for providing road to the land allotted to respondent No.3. He would further submit that, all the misdeeds and high handedness of the public body are necessary to be brought on record and therefore, amendment is necessary. It is submitted that, a garden was developed on site No.149 which was originally part of layout and the respondents are dishonestly felling the trees and providing road from site No.149. It is contended that, all causes need to be clubbed together and there is no impediment in dealing with the pleadings and the prayers proposed to be amended in the present petition only.

5. The respondents have vehemently opposed the application. Learned Senior Counsel - Mr. S.B. Deshpande appearing for respondent No.2 submits that considering the original pleadings and the prayers of the present petition, proposed amendment would amount to enlarging the scope. It is changing the nature of proceedings. The prayers in the petition pertain to review of the order dated 23.01.2025 passed in Writ Petition No.8517 of 2024. He would further submit that, matter is entrusted to this Special Bench specifically and restrictively as one of the members of the Bench was party to earlier order which is sought to be recalled in the petition. It is contended that, application for amendment is not *bonafide* and it

is an attempt to protract the proceedings. The personal allegations against the officer of Municipal Corporation cannot be fathomed.

6. Learned Counsel - Mr. S.V. Adwant appearing for respondent No.3 submits that, applicant is adopting dilatory tactics in proceeding with the matter. Despite orders passed on 08.05.2025, copies were not supplied to respondent No.3 in time. A copy of rejoinder was served on 10.06.2025, deliberately before a day. It is submitted that, a grave prejudice and hardship is caused to respondent No.3 as it has parted with huge amount and it is unable to use the land for want of access. It is further pointed out that, applicant did not collect the copies given by the Municipal Corporation under Right to Information Act in time. It is submitted that, the pleadings and prayers of proposed amendment would be fresh cause of action and can be agitated independently.

7. We have considered rival submissions of the parties. Normally, if application for amendment to the Writ Petition is filed during pendency of admission hearing, it would be allowed. In the present matter we have to be sceptical because matter is entrusted to us as Special Bench and not by regular manner. One of us (Mr. Shailesh P. Brahme, J.) was party to order dated 23.01.2025 passed in Writ

Petition No.8517 of 2024. It is relevant to refer the order dated 11.02.2025 passed by coordinate Bench of this Court which is as follows :

" **CORAM : MANGESH S. PATIL AND**
PRAFULLA S. KHUBALKAR, JJ.
DATE : FEBRUARY 11, 2025

PER COURT :

1. We have heard the learned Senior Advocate Mr.Dhorde for a considerable time on merits.
2. It transpires that though the petitioner was not a party to WP No.8517/2024 pending before a coordinate division bench, as per prayer clause B, on the ground that it was not a party before a coordinate division bench, the order passed therein on 23.01.2025 has been sought to be quashed, set aside and / or recalled. Since it would be the relief in the nature of the powers of the Court to undertake modification, review in the peculiar facts and circumstances, in our considered view, it would be appropriate that this writ petition is tagged, heard and disposed of with WP No.8517/2024.
3. Either of the parties shall immediately move a preceipe or simultaneously, the Registrar (Judicial) may solicit the order on the administrative side for clubbing and placing both the matters before the coordinate division bench.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.) "

8. It is necessary to reproduce the prayers in the main petition which are as follows :

- A) *Call for record and proceedings of the case;*
- B) *Quash and set aside and/or recall the impugned order dated 23.01.2025 passed in Writ Petition No. 8517 of 2024 and for that purpose issue necessary orders.*
- C) *Issue writ of prohibition or any other appropriate writ or order or directions in the nature of writ of prohibition thereby prohibiting the respondent no. 2 and 3, its officers and subordinates from constructing 9 mtr. wide road from the garden/open space on site No. 149 of the layout of the petitioner society and for that purpose issue necessary orders.*
- D) *Issue writ of mandamus or any other appropriate writ or order or direction in the nature of writ of mandamus directing the respondent no. 2 Municipal Corporation to give approach road to the respondent no. 3 Education Society from the adjacent open space as per the map at Exhibit "K" shown in blue colour and for that purpose issue necessary orders.*
- E) *Pending hearing and final disposal of the present Writ Petition grant stay to the execution and implementation of the impugned order dated 23.01.2025 passed in Writ Petition No. 8517 of 2024 and for that purpose issue necessary orders.*

- F) Pending hearing and final disposal of the present Writ Petition grant an injunction restraining the respondent no.2 and 3, its officers and subordinates from constructing 9 mtr wide road from the garden/open space on Site No.149 from the layout of the petitioner society and for that purpose issue necessary orders.*
- G) Grant ad-interim relief in terms of prayer clause "E" and "F".*
- H) Pass such other further orders as this Hon'ble Court may deem, fit and proper.*

9. This Bench is supposed to deal with the grievance pertaining to order dated 23.01.2025 passed in Writ Petition No. 8517 of 2024 and prohibitory and mandatory directions of providing road. We cannot be oblivious of the fact that, present petition is filed on 10.02.2025. The applicant is aware of the transactions between respondent No.2 - Municipal Corporation and respondent No.3 - Education Society for allotment of land. The procedure undertaken by respondent No.2 - Municipal Corporation to allot the land could have been challenged. It cannot be said that, for the first time or as subsequent developments the petitioner learnt about the allotment of land and the procedure undertaken for that. It's a matter of record that applicant has filed R.C.S. No. 37 of 2024 for perpetual injunction

against respondent No.2 which is still pending before competent Civil Court at Aurangabad. The applicant was having inkling of felling of trees and creating of road.

10. The minutes of order dated 08.05.2025 shows that, applicant was to receive certain documents from the Municipal Corporation and those were to be placed on record. The respondents cannot object for bringing on record subsequent events or the documents. The proposed pleadings of paragraph No.15-A can be permitted because those pertain to the subsequent events and the documents under Right to Information Act.

11. We are of the considered view that, proposed pleadings of paragraph Nos. 15-B to 15-F, grounds of objections and prayer clauses "BB" and "DD" pertain to allotment of land to respondent No.3. By way of such amendment altogether new cause of action is sought to be introduced in the present petition and that too before Special Bench. Considering the purport of assigning matter to us we find that above proposed amendment would be beyond the scope of our assignment.

12. We cannot countenance the submissions of applicant that proposed amendment is necessary to decide controversy involved in

the petition. To entertain the proposed amendment would be travelling beyond scope of our assignment and jurisdiction. Hence, we hold that amendment is not necessary to decide the core issue and the prayers made in original petition. The grievance of the respondents that, the proposed amendment changes nature of the suit is well founded.

13. The right of applicant to agitate the grievance against illegal allotment of the land to respondent No.3 is not foreclosed. The proposed amendment and specially prayer clauses "BB" and "DD" could be agitated independently. Those cannot be said to be subsequent developments requiring scrutiny in the present matter. The applicant has chosen to restrict the petition to the extent of validity of order dated 23.01.2025 and the directions as spelt out in prayer clauses 'B' to 'D' of the main petition. Under the garb of amendment or subsequent events or alleged high handedness/perversity in allotting land to respondent No.3, we cannot permit the applicant to introduce fresh cause of action.

14. Most of the submissions made by learned Senior Counsel - Mr. R.N. Dhorde namely, dishonest and fraudulent act of the respondents in allotting land, ignoring rule of law, etc. are not within

purview of our jurisdiction. Those need to be addressed independently and cannot be gone into present petition. For the reasons assigned above, we cannot accept the submissions of applicant and permit it to amend the petition. It would be open for the parties to agitate their grievance regarding order passed on 23.01.2005 and the manner in which earlier petition was filed or prosecuted.

15. For the reasons stated above, we find no difficulty to permit the applicant to incorporate paragraph No.15-A only. The proposed grounds of objections and prayer clauses "BB" and "DD" are not permitted to be incorporated.

16. Civil Application is allowed partly by permitting the applicant to incorporate proposed paragraph No.15-A annexed to the application and rest of amendment is rejected.

17. Amendment shall be carried out within one week.

[NEERAJ P. DHOTE, J.]

[SHAILESH P. BRAHME, J.]

Pooja Kale