

Santosh/Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16637 OF 2025

Manohar Sadashiv Limaye

...Petitioner

Versus

1. Jeshtha Nagarik Sangh Panvel, Through
Jaywant Parshuram Gurjar

2. Panvel Municipal Corporation, Panvel,

...Respondents

WITH

WRIT PETITION NO. 5825 OF 2025

Jeshtha Nagarik Sangh Panvel, Through
Jaywant Parshuram Gurjar

...Petitioner

Versus

1. Panvel Municipal Corporation, Panvel,

2. Manohar Sadashiv Limaye

...Respondents

Mr. Saurabh D. Butala, a/w Manvi Sharma, for the Petitioner in
WP/16637/2025 and for Respondent No.2 in
WP/5825/2025.

Mr. Uzair Kazi, i/b YMK Legal, for the Petitioner in WP/5825/2025
and for Respondent No.1 in WP/16637/2025.

Mr. S. V. Gavand, for Respondent No.2 in WP/16637/2025 and for
Respondent No.1 in WP/5825/2025.

CORAM: N. J. JAMADAR, J.

DATED: 16th DECEMBER, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of
the learned Counsel for the parties, heard finally.

2. These petitions under Article 227 of the Constitution of India
assail the legality, propriety and correctness of one and the same
order passed by the learned District Judge, Panvel, on an application

(Exhibit-15) preferred by Mr. Manohar Limaye - petitioner in WP/16637/2025.

3. Shorn of superfluities, the background facts leading to these petitions can be summarized as under:

3.1 Jestha Nagrik Sangh, Panvel, the petitioner in WP/5825/2025, is a senior citizens forum, registered under the provisions of the Maharashtra Public Trust Act, 1950 (“the Act, 1950”) (the Trust). The Panvel Municipal Corporation (PMC) allotted a plot of land admeasuring 1377.50 sq. mtrs. bearing Plot No.50/15-30 of Taluka Panvel, District Raigad, to the Trust. A community hall admeasuring 3500 sq. ft. has been constructed on the said plot of land (“the subject premises”). Pursuant to the approval granted by the State Government to lease the subject premises for a term of 30 years, a registered Lease Deed came to be executed between PMC and the Trust.

3.2 Mr. Manohar Limaye (the Complainant), the Petitioner in Writ Petition No. 16637 of 2025, lodged complaints initially with the PMC and, later on, with the Urban Development Department, Government of Maharashtra, alleging that, the Trust had committed breach of the conditions on which the subject premises was granted on lease. It was, *inter alia*, alleged that, the Trust had carried out unauthorized construction and started commercial exploitation of the subject

premises. There were malpractices in allotting the subject premises for marriage and other ceremonies/functions.

3.3 As no action was taken by the authorities, the complainant filed a complaint before the Lokayukta and, pursuant to the directions of the Lokayukta, PMC initiated action against the Trust. Eventually, by an order dated 13th March, 2024, PMC cancelled the lease in favour of the Trust and directed the Trust to hand over possession of the subject premises to PMC.

3.4 Being aggrieved, the Trust preferred an appeal against the said order before the District Court under Section 81-F of the Maharashtra Municipal Corporation Act, 1949 (“the Act, 1949”). The complainant was not impleaded as party respondent to the said appeal.

3.5 Thus, the complainant preferred an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908 seeking a direction to the Trust to implead him as a party respondent in the said appeal. It was asserted that, action was initiated on the strength of the complaints made by complainant, and he was genuinely interested in the subject matter of the dispute in RCA/37/2024.

3.6 By the impugned order, the learned District Judge was persuaded to dismiss the application opining that the complainant

was neither a necessary nor a proper party to the appeal. The learned District Judge, however, permitted the complainant to place on record written notes of arguments.

4. Being aggrieved by the rejection of the application to implead the complainant as a party respondent, the complainant has preferred WP/16637/2025. Whereas, being aggrieved by the leave granted to the complainant to place on record written notes of arguments, the Trust has preferred WP/5825/2025.

5. I have heard Mr. Saurabh Bhutala, the learned Counsel for the complainant, Mr. Uzair Kazi, the learned Counsel for the Trust and Mr. S. V. Gavand, the learned Counsel for Panvel Municipal Corporation, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record, in both the petitions.

6. Mr Butala, the learned Counsel for the complainant, submitted that the complainant has a direct interest in the Appeal filed by the Trust before the District Judge. It was on the basis of the complaints filed by the complainant initially with PMC (R2) and, subsequently, with the Lokayukta that action was initiated by the PMC. The complainant has the relevant record with him which justifies the cancellation of lease. It was, therefore, necessary to permit the complainant to participate in the proceeding before the learned

District Judge. The presence of the complainant before the learned District Judge would facilitate an effective and complete adjudication of the dispute.

7. As against this, Mr. Uzair Z Kazi, the learned Counsel for the Trust would submit that the complainant was neither a necessary nor a proper party. The complainant had been filing various complaints against the Trust to wreck vengeance. As the Trust had preferred a statutory Appeal before the District Judge, the presence of the complainant was not at all warranted. If allowed to intervene, the complainant would rake up irrelevant issues and embarrass the hearing in the Appeal.

8. Mr. Kazi would urge that even the order permitting the complainant to file the written notes of arguments, after rejecting the prayer for impleadment, was wholly unwarranted. The legality and validity of the order of cancellation of the lease would be required to be determined on the basis of the material which was considered by the Competent Authority.

9. Under Section 81B of the Act, 1949, the Commissioner is empowered to evict persons from the Corporation premises after following the procedure delineated therein. Any person aggrieved by the said order has the remedy of appeal before the District Judge under Section 81F of the Act, 1949.

10. In the case at hand, the Commissioner has passed the order of cancellation of the lease in respect of the subject premises for the alleged breach of the conditions of lease as incorporated in the Lease Deed dated 16th February 2009. Indeed, the said proceeding was initiated on the complaints made by the complainant to the Municipal Corporation and the authorities of the State Government and finally before the Lokayukta. Whether the fact that the action was initiated on the complaints of the complainant is sufficient to cloth the status of a necessary or proper party to Manohar Limaye in a statutory appeal under Section 81(f) of the Act, 1949, is the moot question.

11. Mr. Butala would urge that the complainant cannot be said to be a stranger. The complainant has sufficient interest in the subject matter of Appeal before the District Judge. To lend support to this submission, Mr. Butala placed reliance on a judgment of a learned Single Judge of this Court in the case of **Laxman Candolkar (Dec) Through His LRs Vs Village Panchayat of Candolim Through Its Secretary and Anr.**¹ In the said case, the Plaintiff therein had challenged the action initiated by Village Panchayat directing the occupants to demolish alleged illegal construction. The original complainant had filed an Application for intervention. In this context

1 2016 SCC OnLine Bom 5430.

the learned Single Judge held that where the personal interest and right of the intervenor would be affected, he would be a necessary party.

12. It is trite the impleadment of a party to the proceeding is not a matter of initial jurisdiction but that of judicial discretion. The difference between a necessary and proper party has been illuminatingly postulated by the Supreme Court in the case of **Mumbai International Airport Private Limited Vs Regency Convention Centre and Hotels Private Limited and Ors.**² Observation in paragraph 15 and 22 read as under:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

2 (2010) 7 SCC 417.

... ..

22. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.”

13. To become a necessary party the person seeking impleadment must have a direct, in contradistinction to commercial interest, in the subject matter of the proceeding (**Ramesh Hirachand Kundanmal Vs Municipal Corporation of Greater Bombay**).³ The nature of the proceeding also has a significant bearing on the question of impleadment of a party.

14. If it is a statutory Appeal, where the legality, propriety and correctness of the order passed by the Court/Tribunal at the first

3 (1992) 2 SCC 524.

instance is assailed, ordinarily, impleadment of a third party, does not seem necessary as the Court would be testing the legality and correctness of the order.

15. In the instant case, on the complaints lodged by the complainant, the Municipal Commissioner has already cancelled the lease. The legality, propriety and correctness of the said action is under challenge before the learned District Judge. The said order passed by PMC (R2) to will have to stand or fall by the reasons assigned in the said order. The presence of the complainant is neither necessary nor proper for a complete and effectual adjudication of the said controversy.

16. The submission on behalf of complainant that the complainant would be in a position to assist the learned District Judge in the determination of the Appeal as the complainant has the material which can be placed on record of the District Judge loses sight of the fact that the justifiability of the order of cancellation of lease would be required to be tested on the basis of the reasons ascribed in the said order and the supporting documents. It is wholly impermissible to support the impugned order by filing Additional Affidavit or otherwise. A useful reference in this context can be made to the decision of the Supreme Court in the case of **Mohinder Singh**

Gill & Anr Vs The Chief Election Commissioner, New Delhi & Ors,⁴

wherein the law was enunciated as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in **Commissioner of Police, Bombay Vs Gordhandas Bhanji (AIR 1952 SC 16)**.

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

17. The presence of the complainant before the learned District Judge, therefore, does not seem to be warranted. The learned District Judge was thus justified in rejecting the Application for impleadment.

⁴ (1978) 1 SCC 405.

18. I find substance in the submission of Mr. Kazi that once the District Judge found that the complainant was not a necessary or proper party to the Appeal, he could not have been granted liberty to submit written notes of arguments.

19. To put it in other words, the PMC would be required to support the order of cancellation of the Lease Deed, on the basis of material which was considered at the time of passing the said order.

20. Mr. Gavand, the learned Counsel for the Panvel Municipal Corporation, assures the Court that the Municipal Corporation would place the entire relevant material before the learned District Judge.

21. The conspectus of the aforesaid consideration is that, the Writ Petition No. 16637 of 2025 deserves to be dismissed and Writ Petition No. 5825 of 2025 deserves to be party allowed.

22. Hence, the following order:

: O R D E R :

- (i) Writ Petition No. 16637 of 2025 stands dismissed.
- (ii) Writ Petition No. 5825 of 2025 stands party allowed and the impugned order to the extent, the learned District Judge permitted Mr. Manohar Limaye, the complainant, to file written notes of arguments in the

Appeal stands quashed and set aside.

(iii) In Writ Petition No. 16637 of 2025, Rule stands discharged.

(iv) In Writ Petition No. 5825 of 2025, Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]