IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

45 WRIT PETITION NO. 4050 OF 2024

Prakash Narayandas Rizwani
Age 44 Years, occu. Agri. & Business
R/o 37 Bhagyanagar, Nanded
Tq. and District : Nanded

VERSUS

Nanded Waghala City
Municipal Corporation, Nanded
District Nanded,
Through Its Commissioner

Mr. Arvind Sheshrao Deshmukh, Advocate for the Petitioner
Mr. Wasif Shaikh h/f. Mr. M. D. Narwadkar, Advocate for Respondent

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CORAM : AJIT B. KADETHANKAR, J.
DATE : 23.03.2026

JUDGMENT :-

. Rule. Rule made returnable forthwith. Considering the nature of controversy involved in the writ petition, the matter is taken up for final disposal with the consent of the parties.

Subject Matter:

In a suit for Perpetual Injunction filed by the Petitioner, he filed an application u/o I Rule 10 of the Civil Procedure Code 1908 for impleading Aurangabad Housing and Area Development Board as party defendant

('AHAD Board' for the sake of brevity). The suit is filed against the respondent Nanded Waghala Municipal Corporation. Impleadment of the Board is sought in order to bring on record the flow of title of the 'subject matter property' in the name of the Petitioner. The Trial Court however turned down the application. Hence the Petitioner/Plaintiff before this Court.

Submissions on behalf of the parties :-

2. Mr. Arvind Deshmukh, learned counsel for the petitioner/plaintiff submits that the petitioner/plaintiff is the owner of a municipal property No.1-10-738 (New) 1-6-134412 (Old), which is a part of city survey No.9228 out of survey No.12, situated at Jangamwadi, District Nanded.

3. That, the petitioner has purchased the suit property from his predecessor-in-title, Smt. Shantabai Devidasrao Perke. On the basis of the registered sale deed, the petitioner's name has been recorded in the city survey records. That, petitioner has constructed a house on the said plot.

4. That, the respondent – corporation has no concern with the 'subject matter property'. However, one of its employees obstructed the petitioner's peaceful possession on the pretext that the Corporation claims ownership over the property and that the Petitioner is an encroacher on the property of the Corporation. Consequently, the petitioner was constrained to file the Regular Civil Suit No. 167 of 2013 before the learned Civil Judge, Senior Division, Nanded seeking perpetual injunction against the respondent Corporation. The respondent–Corporation appeared in the suit and filed its written statement denying the petitioner's title, and contending that the suit is not maintainable as the petitioner is not the lawful owner.

5. Mr. Deshmukh, learned counsel further submits that in the meantime in order to prove his title, the petitioner sought records from the office of the Deputy Superintendent of Land Records (DSLR for the sake of brevity and convenience), but the same were not made available. It is further submitted that the petitioner learnt that the land originally belonged to the AHAD Board. He would submit that, if the records of the DSLR as well as of the AHAD Board are perused, the title of the petitioner could be established. According to the petitioner, records from the DSLR and AHAD Board would establish the flow of title. The Petitioner was unable to receive any record from those authorities. Therefore an application under Order I Rule 10 of the Code of Civil Procedure 1908 was filed before the Trial Court to bring these facts on record by adding AHAD Board as defendant. He submits that on erroneous reasons, the learned Trial Court rejected the petitioner's application and hence the present writ petition is filed.

6. It is urged by the Petitioner with supporting material on record that the petitioner may not be able to effectively establish his claim unless the record from the office of the DSLR as also from the AHAD Board is produced, and hence the petitioner was justified in filing this application. As such, Mr. Deshmukh, learned counsel prays to allow the writ petition and the application filed under Order I Rule 10 of Civil Procedure Code.

7. Mr. Wasif Shaikh h/f. Mr. M. D. Narwadkar, learned counsel representing the Nanded Municipal Corporation, strongly opposes the arguments advanced by Mr. Deshmukh. He submits that the suit is for perpetual injunction. That injunction is sought only against the Nanded Municipal Corporation. Under these circumstances, the application is apparently misconceived. He submits that from the recitals in the plaint as

also the written statement filed by the Corporation, it is apparent that the petitioner has purchased the suit property from his predecessor-in-title, who was in fact an encroacher upon the suit property. As such, Mr. Narwadkar, learned counsel, prays for rejection of the writ petition.

Discussion and findings :-

8. I have heard the parties at length. The suit is for perpetual injunction. The pleadings in the suit are placed on record in the compilation of the writ petition. I have cautiously gone through the said pleadings. The pleadings show that the Petitioner claims to be owner and possessor of the 'subject matter property'. An obstruction has been caused by the respondent–Corporation to Petitioner's peaceful possession over the 'subject matter property'. Admittedly, there is no reference as regards any obstruction by AHAD Board.

The purpose, as stated by Mr. Deshmukh learned counsel for filing the application under Order I Rule 10 of the Code of Civil Procedure is to bring on record the flow of title in the name of the petitioner in respect of the suit property. Apparently, the suit is not for declaration. The prayer in the application does not reflect the reason as has been stated in the application. Petitioner wants to establish the flow of title in his name. Learned Counsel for the Petitioner has fairly submitted that the petitioner has no grievance against the AHAD Board. Under these circumstances, the issue is that whether AHAD Board is necessary and proper party to the suit?

9. Decree for Perpetual Injunction is a right in *personam*, not a right *in rem*. In such suit, a defendant would be such a party against whom some relief is claimed or whose action/order is challenged. Order I Rule 3 of the

Civil Procedure Code 1908 provides as follows:

> " Who may be joined as defendants.—All persons may be joined in one suit as defendants where— (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and (b) if separate suits were brought against such persons, any common question of law or fact would arise.]
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> In furtherance, Order I Rule 10(2) provides that,
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> (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

10. In the case in hand, the Plaintiff wants to bring on record the flow of title in his name in respect of the 'subject matter property'. He submits that the title record of the 'subject matter property' would strengthen his case that the Defendant had no concern with the 'subject matter property'. The Plaintiff learnt from his predecessor in title that the 'subject matter property' was a part and a parcel of land held by the AHAD Board. The defendant Corporation has denied that the AHAD Board had ownership over the 'subject matter property' at any point of time. The Petitioner submits that his efforts to get record from the Deputy Superintendent of Land Records also went in vain, as the said office could not find any record of the old time.

11. The Petitioner thus contends that he was left with no other choice than to seek information from the AHAD Board. And for that purpose only, an application u/o I Rule 10(2) of the Civil Procedure Code 1908 was filed. Its his contention that once the AHAD Board step in the suit, the truth regarding flow of title of the 'subject matter property' would easily come on record.

12. I find that the facts are very clear. The petitioner does not seek any relief against the proposed defendant i.e. the AHAD Board. He wants to place on record his flow of title. Petitioner doesn't want to establish any right against the AHAD Board . Its not the case that AHAD Board's presence before the court is indispensable in order to settle the controversy. As observed above, the suit is not for declaration of title. The defendant has denied title of the Plaintiff over the 'subject matter property' in the written statement. It is for the plaintiff/petitioner to establish his possession over the 'subject matter property' and to demonstrate that the defendant Corporation has no right to interfere into his peaceful possession over there.

13. Whether the 'subject matter property' was a part and parcel of AHAD Board or not, is a matter of evidence. This exercise can be very well done by the Plaintiff/petitioner by even calling the AHAD Board official in the witness box, by making appropriate application to the Court at appropriate stage. For that neither it can be said that AHAD Board, in these peculiar facts of the case, qualifies Order I Rule 3 of the Civil Procedure Code 1908, nor necessitates the Court to exercise jurisdiction u/o 1 Rule 10(2) of the Civil Procedure Code 1908. AHAD Board, in the peculiar facts of the case, in my considered view is neither a necessary party nor a proper party.

14. In view of this, I find that the Trial Court didn't err in passing the impugned order. No case is made out for interference of this Court u/a 227 of

the Constitution. However its made clear that the petitioner/plaintiff, as observed supra, may file an appropriate application to the Court, if so advised, for issuing witness summons to the AHAD Board authorities as also such authority for the purpose of bringing on record the flow of title in respect of the 'subject matter property'. The Trial Court may pass appropriate order on such application to arrive at right conclusion.

15. It is clarified that this Court has not made any observation on merits of the suit.

16. Hence I pass following order:

O R D E R

a. Writ Petition is dismissed without any order as to the costs.

b. Rule stands discharged.

[AJIT B. KADETHANKAR, J.]

PRW