



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

WRIT PETITION NO.5616 OF 2024

District : Ahmednagar

Shivaji Yadava Phopse
and others

..Petitioners

Vs.

The Gampanchayat Karyalaya,
Gondegaon, Through Sarpanch,
Gondegaon, Tq. Shrirampur,
Dist.Ahmednagar and others

..Respondents

Mr.Shaikh Ashraf Patel, Advocate for petitioners
Mr.P.G.Tambade, Advocate for respondent no.1
Mr.A.B.Jagtap, Advocate for respondent no.3

CORAM : AJIT B. KADETHANKAR, J.
DATE : MARCH 27, 2026

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith. Heard for final disposal by consent of learned counsel for the parties.

2. Subject-matter:

As against the rejection of an application filed under Order 1 Rule 10 of the Code of Civil Procedure 1908 for getting impleaded as party defendants in a suit, the petitioners - third party is before this court. The Petitioners contend to be a necessary party to the suit proceedings, and is afraid of any collusion between the parties to the suit.

The application filed by the Petitioners u/o 1 Rule 10 of the Code of Civil Procedure 1908 in Special Civil Suit No. 9 of 2023 came to be turned down by the Ld. Jt. Civil Judge (J.D.), Shrirampur vide order dated 12-01-2024.

3. Facts in brief:

(a) The respondent no.3 sought permission from the respondent Village Panchayat to start a poultry-farm in gut no.324, located in Mauje Gundegaon.

(b) Respondent Village Panchayat by due process granted such permission and the poultry business was started by the Respondent No.3.

(c) The petitioners and some other persons filed complaint to the Village Panchayat thereby protesting the business and nuisance caused by the respondent no.3.

(d) Pursuant to the complaint, the Village Panchayat Gundegaon, issued a notice to the respondent no.3 thereby canceling the 'no-objection' given by the Village Panchayat to the respondent no.3 to operate the poultry-farm in the Gut No.324 of village Gundegaon. In fact, although styled as a notice, it was the order of cancellation of the no-objection certificate.

(e) The respondent no.3 challenged the said notice before the Trial Court vide Special Civil Suit No.9 of 2023 seeking declaration that the notice dated 21.07.2022 may be held as null and void. Injunction was also sought against the defendants- Sarpanch of Grampanchayat from causing any disturbance to the poultry-farm business of the plaintiff.

(f) In the suit, the petitioners filed an application seeking their impleadment as party defendant. This application was obviously under Order 1 Rule 10 of the Code of Civil Procedure. The petitioners sought to submit that the cancellation notice was issued at the behest of them and therefore, they were necessary party to the litigation.

(g) The plaintiff objected the application and submitted that the applicants/present petitioners were neither necessary party nor proper party to the litigation. After hearing the parties, vide impugned order dated 12.01.2024, the learned Jt. Civil Judge, Senior Division, Shrirampur, rejected the application and also imposed exemplary costs of Rs.10,000/- on the petitioners. As against the impugned order, the petitioners are before this court.

4. SUBMISSIONS

(a) Mr.Patel, learned counsel for the petitioners, raises three points: (i) The notice impugned in the Civil Suit was at the behest of

the petitioners/complainant; (ii)The business conducted by the respondent no.3 is causing nuisance to them; and (iii) The findings recorded by the trial court are irrelevant for the purpose of deciding their right under Order 1 Rule 10 of C.P.C. For these three reasons, the petitioners pray to allow the petition.

(b) Learned counsel for the respondent no.3 – plaintiff opposed the Writ Petition and would support the findings rendered by the trial court.

5. Consideration and findings:

5.1 I have heard the learned counsels for the parties extensively. It is true that a complaint was filed by the petitioners with the respondent Village Panchayat complaining of the nuisance being caused by the respondent no.3.

5.2 The Village Panchayat initiated action against the respondent no.3 and consequently, issued cancellation notice dated 21.07.2022.

5.3 The respondent no.3 challenged the said notice before the Trial court vide Special Civil Suit No.9 of 2023 seeking declaration that the notice dated 21.07.2022 may be held to be null and void.

5.4 The plaintiff is the carrier of his litigation and master of his suit. Failure to add any necessary party as defendant to the suit may result adverse to the plaintiff's interest. The plaintiff incurs risk of non-joining of the necessary and proper parties to the suit, if he does not add such party.

5.5 In the present suit, the plaintiff disputes the impugned order on the point of authority of Village Panchayat to issue such notice as also with the responsibility to prove that no nuisance is caused by him.

5.6 It is for the Village Panchayat who has issued the order/notice impugned in the suit, to justify how the cancellation of the no-objection certificate issued was justifiable. If needed, the Village Panchayat may pray to the Civil Court to issue witness summons to the petitioners, if so advised, to prove the nuisance caused by the respondent no.3. In any case, by addition of the petitioners as party defendant to the suit will not serve any purpose in the suit.

5.7 Petitioners' apprehension that if the suit is decreed on account of collusion between the Respondent No. 3 and the Village Panchayat, they shall be at absolute irreparable loss is misconceived. The Petitioners have their independent right against the Respondent

No.3, if they could prove nuisance from the Respondent No.3. Declaration as to the legality and validity of the notice impugned in the present suit won't come in their way. Petitioner's case would be governed by the principles governing right to injunction. Its not that if the notice issued by the Village Panchayat is held illegal and invalid, the Petitioner loose their right to claim injunction against the Respondent No.3 on the point of nuisance.

5.8 The relief sought by the Respondent No. 3 in the suit is the *right in personem*, not *right in re*. Not every declaratory relief is always declaration *in re*. The decree in present suit doesn't take away Petitioner's right to seek injunction or any other relief independently against the Respondent No.3.

6. For the reasons recorded above, I am of the considered view that the petitioners are neither necessary party nor a proper party to the suit in the capacity as defendants. In view of this, no case is made for interference. The Writ Petition stands dismissed. Rule stands discharged.

[AJIT B. KADETHANKAR, J.]

.....

KBP