

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL APPLICATION NO. 1 of 2018
IN R/SPECIAL CIVIL APPLICATION NO. 7551 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE J.B.PARDIWALA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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BHALABHAI HIRABHAI RAVAL**Versus****AHMEDABAD PANJRAPOL SANSTHA**

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Appearance:**MR MC BHATT, ADVOCATE WITH MR VIKRAM J THAKOR for the PETITIONER(s) No.****MR RONAK RAVAL, AGP GOVERNMENT PLEADER for the RESPONDENT(s) No.****MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR TATTVAM K PATEL for the RESPONDENT(s) No.**

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA**Date : 21/12/2018****IA JUDGMENT**

1. Rule returnable forthwith. Mr. Ronak B. Raval, the learned AGP waives service of notice of rule for and on behalf of the opponents Nos.2,

3 and 4 – original respondents. Mr. Tattvam Patel, the learned advocate waives service of notice of rule for and on behalf of the opponent No.1-original petitioner.

2. This is an application at the instance of the two applicants, who propose to get themselves impleaded as the party respondents in the main matter i.e. the Special Civil Application No.7551 of 2009.

3. It appears from the materials on record that the opponent No.1 herein is the original petitioner. The original petitioner has preferred the Special Civil Application No.7551 of 2009 questioning the legality and validity of the order passed by the Mamlatdar & ALT, Kalol dated 10/07/2009 in the Ceiling Case No.1 of 2009, by which, the Mamlatdar & ALT declared the land admeasuring 33 Hectare 54 Acre and 10 Sq. Meter as the excess vacant land under the Provisions of the Gujarat Agricultural Land Ceiling Act, 1961. The Mamlatdar & ALT has also passed an order to vest the subject land in the Government.

4. I take notice of the fact that the main matter is of the year 2009 and the same has been admitted. The main matter is now awaiting for final hearing.

5. This application has been filed in the following set of the circumstances.

5.1 It is submitted that the Opponent No.1 (Ori. petitioner) submitted application dated 28.6.1976 for obtaining the exemption from the provisions of Gujarat Agricultural Lands Ceiling Act in respect of the land admeasuring 4589.07 acre land situated in the sim of Village Nasmed, Racharda, Vayna, Unali, Vansajada, Vansajada Dedia and Mulsana. It is

pertinent to note that in the said application itself, various lands are mentioned to have been cultivated and in actual physical possession of various farmers. Even survey no.552 being cultivated by the applicant no.2 and survey no. 448 and 452 and 453 being cultivated by the applicant no.1 are also specifically shown to have been cultivated and in actual physical possession of the farmers.

5.2 It is pertinent to note that applicant No.2 Shakrabhai Senma has been occupying the part of survey No.552 of village Nasmed. The applicant No.1 is in actual possession and has been personally cultivating the land bearing survey No.448, 452 and 453. All these lands are mentioned in the application dated 28.6.1976. The lands of other farmers are also mentioned in the said application. The said application also specifically mentions that the petitioner-trust is holding three type of land (A) of personal cultivation, (B) lands cultivated by the farmers and (C) pasture land (Chariyana). The Opponent No.1 also specifically stated in the said application that 2161 acres lands out of total 4589 acre land are being cultivated by tenants. The Opponent no.1 also along with said application produced certificate of exemption under Section 88B of the tenancy Act. It is pertinent to note that the certificate of exemption under Section 88B was granted without the hearing and behind back of the applicants and other farmers. Same way the certificate of exemption as per Section 3(1)(C) of the Gujarat Agricultural Lands Ceiling Act,1960 was also granted without hearing the applicant and other farmers. It is pertinent to note that the said exemption certificate include survey No.452 but does not include survey No.448 and 453 occupied by the applicant No.1. Similarly said certificate does not include survey No.552 occupied by applicant no.2.

5.3 It is submitted that as such obtaining of both the exemptions, that is,

exemption under sec.88B of the Bombay Tenancy and Agricultural Land Act and Sec.3(1)C of the Gujarat Agricultural Lands Ceiling Act are fraudulent and nothing but a huge fraud on the beneficial legislations like Bombay Tenancy and Agricultural Lands Act, 1948 and Gujarat Agricultural Lands Ceiling Act, 1960. In humble submission of the applicants both the certificates are obtained behind back of the farmers only with a view to deprive the farmers – tillers of the land under the guise of running a Panjrapole. It is very unfortunate that even after 60 years of beneficial legislation i.e. Bombay Tenancy Act came into force with effect from 1.4.1957 and the Gujarat Lands Ceiling Act, 1960 came into force with effect from 1.9.1961, the farmers – tillers of the lands are kept away or deprived of benefits of statutes which are meant for upliftment of the farmers. It is submitted that by obtaining the fraudulent certificates, the laudable object of the Tenancy Act and Gujarat Land Ceiling Act is frustrated by Opponent no.1 – Institute under the favorable treatment of the State authorities. It is submitted that the Opponent no.1 under the favourable treatment of the authorities has frustrated the laudable object of the Agricultural Ceiling Act by concentrating huge chunks of land under the Pretext of running Panjarapol. Human Rights of the farmers are Violated under pretext of so-called rights of the animals.

5.4 However, in the year of 2009, authority initiated proceedings under the Agricultural Land Ceiling Act to declare the land excess vacant in respect of which the exemption was granted and also the land in respect of which exemption was not granted and still the Opponent no.1 was enjoying the ownership of the land (which is the subject lands in the petition). The authority by order dated 10.7.2009 (page 69 of the petition) held that so far as the subject land, i.e. land admeasuring 33 Hectares 54 Are 10 Sq.mter is concerned there no exemption is granted and the opponent No.1

is not entitled to hold the said land and therefore the said land is declared excess vacant and is further ordered to be vested in State Government. The above numbered petition is filed against the said order dated 10.7.2009 directing to vest the lands mentioned in the impugned order dated 10.7.2009 in the State Government.

5.5 The said order dated 10.7.2009 is passed in Ceiling Case No.1 of 2009. By another case, Ceiling Case No.2 of 2009 the authority by order dated 12.6.2009 cancelled the certificate of exemption granted under Sec.3(1-C) of the Gujarat Agricultural Ceiling Act and ordered to initiate further proceeding for declaring those lands and mentioned in the exemption certificate to be excess vacant. So far as the said case is concerned the Opponent No.1 has filed a Revision Application before the learned Gujarat Revenue Tribunal in which on behalf of all the farmers two farmers have filed application for being joined as a party but the said application was rejected by Gujarat Revenue Tribunal by order dated 8.9.2009 and therefore the applicants – farmers of the said application have filed SCA No.3078 of 2010 before this Hon'ble Court. The said petition has been admitted and the interim relief staying further proceedings before the Gujarat Revenue Tribunal is granted. The said petition is also pending for final hearing before this Hon'ble court. It is further submitted that in pursuance of the order dated 12.6.2009 passed in Ceiling case No.2 of 2009 the authority issued the show cause notice dated 17.6.2009 inviting the objections for declaring 1176 Hectare 39 Are and 80 sq. meters and also lands covered by Ceiling Case No.1 of 2009 to be excess vacant land. A copy of the said notice dated 17.6.2009 is annexed hereto and marked as Annexure-F as to why the lands covered by the Ceiling Case No.1 of 2009 and Ceiling Case No.2 of 2009 should not be declared as excess vacant and to be vested in the State Government.

5.6 The applicants and other farmers have submitted their objections against the show cause notice issued by the authority. In the objections, the applicants and other farmers have specifically contended that in view of Sec.2(15) of the Gujarat Agricultural Lands Ceiling Act, 1960, the lands mentioned in the show cause notice and in the actual physical possession of the respective farmers cannot be said to be excess vacant land in the hands of Opponent no.1-institute as the said lands are held by the applicants and other farmers and the applicants and other farmers are entitled to hold the said land as owner. By another representation dated 15.7.2009 the applicants and other farmers have also requested the authority to stay further proceedings initiated pursuance of the orders passed in Ceiling Case No.1 of 2009 and No.2 of 2009. It is pertinent to note that after the objections and representations dated 15.7.2009 submitted by the applicants and other farmers, the authority does not appear to have proceeded further in the matter and proceedings have remained pending.

5.7 So far as the order dated 10.7.2009 passed in Ceiling Case No.1 of 2009 the subject matter of the above numbered petition is concerned, the Opponent No.1 ori. petitioner has filed above numbered petition challenging the said. order. The applicants and other farmers have also filed appeal under Section 35 of the Gujarat Agricultural Lands Ceiling Act before the learned Dy. Collector, Gandhinagar to challenge the order dated 10.7.2009 so far as it relates to and to the extent of directing to vest the lands mentioned in the said order to the State Government. In the said appeal, one of the contention of the applicants and other farmers is that the land mentioned in the order dated 10.7.2009 are in actual physical possession of and held by the applicants and other farmers and they are personally cultivating the subject lands of order dated 10.7.2009. Since the

subject lands are occupied and personally cultivated by the different farmers in view of Sec.2(15) read with other provisions of the Gujarat Agricultural Lands Ceiling Act, the lands in occupation and possession of the farmers cannot be considered to be held by the Panjrapole Institute and therefore such land is not excess vacant land and the farmers are entitled to own, occupy and hold the subject lands. Ultimately it is prayed to quash and set aside the order dated 10.7.2009. Though the said appeal is filed in 2009, authority thereafter has neither issued any notice nor has ever informed the applicants about the status of the appeal. Even the applicants and other farmers (the appellants of that appeal) have not been thereafter intimated about the hearing of the appeal and even the number of the appeal. It appears that since the Opponent No.1 has filed the above numbered petition against the very same order dated 10.7.2009, because of the pendency of the petition before this Hon'ble Court, the authority has postponed all the proceedings.

5.8 The applicants and other farmers have also fled the Tenancy Cases before the learned Mamlatdar and ALT. The learned Mamlatdar & ALT has accepted the cases filed by the applicants and other farmers and thereafter has kept all the cases pending in view of the other litigations pending in respect of the subject land and other lands. It is submitted that even the State Government has confirmed in the proceedings of Revision pending in the Gujarat Revenue Tribunal about pendency of the tenancy cases filed by different farmers. The applicants crave leave to produce the copy of reply dated 18.8.2009 submitted by the Prant Officer to the Govt. Pleader of the Gujarat Revenue Tribunal which is on the record of the Revision pending before the Gujarat Revenue Tribunal. The applicant no.1 and four other farmers have also made representations dated 3.5.2013 to the State Government requesting to cancel the certificate of exemption under Section

88(B) of the Tenancy Act. Thus, the applicants and other farmers are vitally affected by any order which might be passed in above numbered petition. It is submitted that the lands in respect of which the impugned order of the petition is passed and the petition is filed before this Hon'ble Court are in the actual physical possession of the applicants and other farmers. The applicants and other farmers are personally cultivating the said lands. Therefore the valuable right of the applicants and other farmers is attached with the subject lands of the petition and many other lands illegally controlled under the guise of running Panjrapole Institute. As stated earlier in the above numbered petition the opponent No.1 (ori. Petitioner) intentionally and purposefully has not stated anything or disclosed anything in respect of the right of the applicants and the fact regarding actual physical possession of the subject land. The opponent no.1 – original petitioner purposefully has not produced the relevant documents produced by the opponent no.1 before the authority to obtain the exemption. Said documents are not produced with a view of suppress the facts that the subject lands and other lands are being cultivated and in actual physical possession of various farmers. Surprisingly even authority has kept silence in respect of the actual possession of the land and the rights of the farmers who have been cultivating the lands as tenants. In this view of the matter, the presence of the applicants is required in the proceeding of the above numbered petition. The applicants being vitally affected party is necessary party to the petition.

5.9 In view of the fact that any order which might be passed in the above numbered petition, only the applicants and other farmers are going to be adversely and really affected, the presence of the applicants on their own behalf and on behalf of other farmers to protect interest of the farmers is necessary. In view of the conduct of the original petitioner and original

respondents also, the presence of the applicants is required. The applicants are necessary party. The applicants are proper party and the applicants are vitally affected party of the above numbered petition.

6. Thus, the original petitioner claims to be the owner of the subject land and is dissatisfied and aggrieved by the order passed by the Mamlatdar & ALT declaring some portion of the land as excess vacant land under the provisions of the Act, 1961. The applicants herein claim to be cultivating the subject land in their capacity as the tenants. According to them, they have a direct interest in the main litigation i.e. the main matter. In such circumstances, they have prayed that they may be permitted to be impleaded as the party respondents in the main matter.

7. Mr. M.C. Bhatt, the learned counsel appearing for the applicants submitted that as his clients have a direct interest in the litigation and they being the proper parties, if not necessary parties, they may be permitted to join the litigation initiated by the original petitioner. Mr. M.C. Bhatt laid much emphasis on the fact that the two applicants herein and other farmers have preferred an Appeal under Section-35 of the Act, 1961 before the Deputy Collector, Gandhinagar, questioning the legality and validity of the order passed by the Mamlatdar & ALT dated 10/07/2009, which has been made the subject matter of challenge in the main matter i.e. Special Civil Application No.7551 of 2009. Mr. Bhatt also pointed out that the applicant no.1 herein alongwith four other farmers have preferred a representation dated 03/05/2013 addressed to the State Government with a request to cancel the certificate of exemption issued in favour of the original petitioner under Section-88(B) of the Act, 1961. According to Mr. Bhatt, the two applicants herein and other farmers are likely to be affected one way or the other

by the order, that may be passed by this Court in the main matter.

8. Mr. M.C. Bhatt also laid much emphasis on the fact that his clients and other farmers are in actual physical possession and are cultivating the said land.

9. According to Mr. Bhatt, all these facts have been deliberately suppressed by the original petitioner in the main matter. Mr. Bhatt, in the last, invited the attention of this Court to Page-125 of the paper-book. Page-125 is a part of Annexure-B. Annexure-B is an application filed by the original petitioner under Section-27 of the Act, 1961 for the purpose of certificate. In the said application, there is an admission on the part of the original petitioner that some portion of the land is in possession of the tenants and the tenants are cultivating the land.

10. In such circumstances referred to above, Mr. Bhatt, the learned counsel prays that there being merit in this application, the same may be allowed and the two applicants may be permitted to be impleaded as the party respondents in the main matter.

11. On the other hand, this application has been vehemently opposed by Mr. Mihir Joshi, the learned senior counsel assisted by Mr. Tattvam K. Patel, the learned counsel appearing for the original petitioner i.e. the opponent no.1 herein. According to Mr. Joshi, the applicants are neither necessary parties nor proper parties. Mr. Joshi would submit that the applicants have nothing to do with the subject matter of the original petition. In the original petition, the subject matter of challenge is the order passed by the Mamlatdar & ALT in the Ceiling Case declaring the land admeasuring 33 Hectare and odd as excess vacant land. Mr. Joshi would submit that if the applicants have any right, title and interest over

the subject land, then they need to initiate appropriate proceedings before the appropriate authority in accordance with law. According to Mr. Joshi, the applicants cannot claim any tenancy right over the subject land in view of the certificate of exemption issued by the State Government under Section-88(B) of the Act, 1961. Mr. Joshi further pointed out that the applicants and others have already preferred an appeal questioning the very same order, which is the subject matter of challenge in the main petition. According to Mr. Joshi, the two applicants herein should pursue the remedy of appeal, which they have already availed. According to Mr. Joshi, as on date, there is no declaration by any authority of any nature that the two applicants herein and others have any tenancy rights in the subject land.

12. Mr. Joshi also placed strong reliance on few averments made in the affidavit-in-reply filed on behalf of the opponent no.1 herein. I may quote the relevant averments made in the affidavit-in-reply.

5. *Apart from the fact that no person can claim tenancy over the lands in question in view of certificate u/s.88B granted with regard to lands in question, perusal of revenue record establish beyond doubt that present applicants have nothing to do with the lands in question. Perusal of revenue record goes to show that nowhere names of present applicants are stated as tenants either in village form No.7 or in village form No.12 of lands in question. Not only that even where names of some persons were mentioned as ordinary tenants, an entry is posted pursuant to order passed by Competent Tenancy Authority clearly stating that named of said persons be removed as tenants. In view of exemption certificate and in view of orders passed by Competent Tenancy Authority, no person much less present applicants can claim any tenancy over the lands in question. Deliberately, said revenue record and said order passed by Competent Authority is suppressed from this Hon'ble Court with a view to mislead this Hon'ble Court in believing present applicants to be tenants of lands in question. Hence, without going into merits of the matter, on the ground of material suppression and misrepresentation above captioned civil application is required to be rejected. Even otherwise also above captioned civil application is required to be rejected.*

6. *Perusal of entire civil application along with all documents annexed with it goes to show that present applicants have miserably failed to prove their so called tenancy. It is further submitted that not a single document speaks about established tenancy of present applicants. On the contrary, apart from the fact that Section 88B certificate is granted for the lands in question, the fact that even as per present applicants, they have filed Tenancy cases before Competent Tenancy Authority praying inter alia to declare them to be tenants of the lands in question goes to show that unless and until such so called cases are conducted by Competent Tenancy Authority and unless and until those cases are held in favour of present applicants and such orders attain finality, present applicants cannot claim themselves to be tenants of the lands in question. It is submitted that from perusal of annexure J attached with above captioned Civil Application, it transpires that the so called Tenancy Cases are filed by the applicants in the year 2009. Nine years have elapsed since so called filing of said cases. It is specifically stated by answering respondent that it has not received even a single notice from the office of Mamlatdar & Agriculture Land Tribunal, Kalol about so called Tenancy Cases. This goes to show that either such cases are not at all filed by the applicants or that the applicants have filed such Tenancy cases only for sake of filing it and they are not at all serious about conducting them. Had applicants been serious about their so called tenancy rights, they would have pursued the matter before Agriculture Land Tribunal and they would not have set tight for nine years over the said so called tenancy cases. On this count also above captioned Civil Application is required to be rejected.*

7. *So far as above captioned Special Civil Application is concerned, it is with regard to declaration of excess vacant land under the provision of Agriculture Lands Ceiling Act by the State Authority. So far as present applicants are concerned, they have miserably failed to prove their locus for the subject matter involved in above captioned Special Civil Application. Hence, without there being any locus, applicants cannot claim any right to be impleaded as party respondent and, hence, in that view also, above captioned Civil Application is required to be rejected.*

8. *It is denied that original petitioners have not placed complete picture and all the facts on record of the case before this Hon'ble court. It is denied that present applicants are in occupation and possession of the lands in question and that they have been personally cultivating the subject lands as tenants of petitioner Trust. In paragraph 3 of above captioned Civil Application, applicants have stated that they are filing Application to protect their interest and interest of other farmers. So far as so called interest of other farmers is concerned, it is submitted that the application filed in present form is not*

maintainable and that it is thoroughly misconceived and it lacks information about details of so called other farmers whose interest applicants are seeking to secure. On this count also above captioned Civil Application is required to be rejected.

9. *It is denied that applicant No.2 is cultivating S.No.552 whereas applicant No.1 is cultivating lands bearing S.No.448, 452 and 453 of village Nasmed. It is to be noted here that on one hand in paragraph 4, it is the claim of applicant No.2 that he is cultivating land bearing S.No.552 and on the other hand in paragraph 5 of above captioned Civil Application it is stated that land bearing S.No.552 is being cultivated by one Shakrabhai Senma. So far as said Shakrabhai Senma is concerned, he is not applicant in above captioned civil application. Hence, on the ground of absolute contradiction in pleading, above captioned civil application is required to be rejected. Even otherwise also whether the applicants are actually in possession of lands in question or not and whether the applicants are actually tenants of the lands in question or not? disputed questions of fact and, hence, when such disputed question of facts are involved, above captioned civil application cannot be entertained and the same is required to be rejected.*

10. *The applicants have made contention about so called illegality of certificate u/s.88B granted under Bombay Tenancy Act. In reply of said contention, it is submitted by answering respondent that said certificate granted is legally valid certificate granted after following due procedure of law. Even otherwise legality of said certificate cannot be gone into in present proceedings as present proceedings are not proceedings arising out of Tenancy Act but the proceedings arising out of Agriculture Lands Ceiling Act. Hence, the so called illegality of said certificate cannot be gone into in present proceedings. On this count also above captioned civil application is required to be rejected.*

11. *So far as not giving opportunity to present applicants while granting certificate u/s.88B is concerned, it is said and submitted that present applicants could not have been given opportunity of hearing as they were/are not affected party at all. Likewise, so far as certificate of exemption under the Provision of Gujarat Agriculture Lands Ceiling Act, 1960 is concerned, as present applicants are not at all concerned with the lands in question, they could not have asked for any hearing. It is denied that the certificate of exemption u/s.88B of Tenancy Act and u/s.3(1)(c) of Gujarat Agriculture Lands Ceiling Act is fraudulent and it is fraud upon beneficial legislation like Tenancy Act and Agriculture Lands Ceiling Act. It is denied that by both the said certificate, farmers are kept away from deriving benefits of said statute. In fact, as stated herein above, present applicants are not at all concerned with the lands in question and hence, no benefit is*

attached with the lands in question. So far as answering respondent is concerned, it is running Panjrapole for sick and disabled cattle. Such Panjrapole is not for individual benefit of any person but it is for all cattle in general. It is disgusting on part of the applicants to raise questions about the object and activity of Panjrapole (present petitioner). No human right much less any right of applicants is violated so as to invoke jurisdiction vested in this Hon'ble Court. On this count also above captioned Civil Application is required to be rejected.

12. It is denied that the applicants would be vitally affected by any other which may be passed in above captioned petition. It is said and submitted that the applicants have no locus in the subject matter of above captioned petition and, hence, above captioned civil application is required to be rejected. It is denied that valuable rights of applicants and other farmers are attached with the subject land of the petition. It is denied that the petitioner Sanstha is illegally controlling the lands under the guise of running Panjrapole. It is denied that material facts are suppressed from this Hon'ble Court and, hence, presence of applicants is necessary for proper adjudication of above captioned Special Civil Application. It is denied that in the interest of justice, applicants are required to be joined as party respondents in above captioned Special Civil Application. On this count also above captioned Civil Application is required to be rejected.

13. In such circumstances referred to above, Mr. Joshi, the learned senior counsel prays that there being no merit in this application, the same be rejected.

ANALYSIS:-

14. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the applicants should be impleaded as the party respondents in the main matter.

15. Basically, it is for the petitioner in a writ-petition, to identify the parties against whom he has any grievance and to implead them as the respondents in the writ-petition filed for the necessary relief. He cannot

be compelled to face litigation with the persons against whom he has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the writ-petition, he shall be entitled to get himself impleaded. The question as to whether an individual is a proper or necessary party to a writ-petition, would depend upon the nature of the relief claimed in the writ-petition and the right or interest projected by the persons, who propose to get themselves impleaded. No hard and fast rule can be weighed, that would cover a possible situation in this regard.

16. A Four-judge Bench of the Supreme Court in ***Udit Narain Singh Malpaharia Vs. Additional Member Board of Revenue, Bihar and another [1963 AIR (SC) 786]*** has observed thus:-

“7.....it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in this proceeding.”

17. In the case of ***Kasturi Vs. Iyyamperumal reported in 2005 AIR (SC) 2813***, the Supreme Court was dealing with an application filed under Order 1 Rule 10 C.P.C., in the suit filed for the relief of specific performance of an agreement of sale. It was held that unless the proposed parties have any subsisting rights, their application to get themselves impleaded cannot be entertained. It was also clarified that, if they specify or indicate any subsisting right, they can certainly be impleaded. In a subsequent decision rendered by the Supreme Court in Subtibai's case [2007 AIR (SC) 3166], the purport of the judgment in Kasturi's case, [2005 AIR (SC) 2813] was explained. It was mentioned that mere likelihood of persons acquiring right or interest in the subject-

matter of a suit would be sufficient for the concerned individual to get himself impleaded.

18. In the decision reported as ***Razia Begum v Anwar Begum AIR 1958 SC 886***, the Supreme Court had laid down the following principles regarding the power of the Court to implead parties by virtue of Rule 10(2) of the Code of Civil Procedure:-

"20. As a result of these considerations, we have arrived at the following conclusions :-

(1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in section 115 of the Code;

(2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject- matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy;

(4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of sections 42 and 43 of the Specific Relief Act;"

19. A reference may also be made to the decision of the Supreme Court reported as ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay 1992 (2) SCC 224***. In the said case, the plaintiff was a dealer on the land held by the Hindustan Petroleum Corporation and was in possession of a service station. The Municipal Corporation issued a notice to the plaintiff for demolition of a certain construction alleging that it was unauthorized. The plaintiff filed a suit

for permanent injunction against the Municipal Corporation. Hindustan Petroleum applied for being impleaded as a defendant on the ground that it had material to show that the structure was unauthorized. The prayer was granted by the Courts below. The plaintiff approached the Supreme Court. Allowing the appeal and setting aside the order, the Supreme Court held that the Hindustan Petroleum Corporation was neither necessary nor proper party to the proceedings. It was held that the person to be joined must be one whose presence is necessary as a party. The test is not whether his presence is necessary for the correct solution of the dispute before the Court but whether the order would affect him or his interest would be prejudiced. Relevant discussion is being noted herein below:-

"6. Sub-rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

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8. The case really turns on the true construction of the Rule in particular the meaning of the words "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." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

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14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect.

*But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. , he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England* (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:*

The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.'

20. The test, which is to be applied, while considering an application under Order I Rule 10(2) of the Code of Civil Procedure for impleadment of a party has been summarised in the decision of the Madhya Pradesh High Court reported as ***Sampatbai v Madhusingh Gambhirji***, AIR 1960 MP 84 as under:-

"The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his rights. It is not enough that the plaintiff's rights, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject-

matter. The intervener must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally -- that is by curtailing his legal rights. This is the test which has been applied in Amon v. Raphael Tuck and Sons Ltd., 1956-1 All ER 273, in connection with R.S.C. Order 16, Rule 11 which is similar to Order 1, Rule 10, C. P. C. Again as pointed out in Dollfus Mieg et Compagnie S.A.V. Bank of England, 1950-2 All ER 605 at p. 611, in determining whether or not an applicant has a proprietary right in the subject matter of an action sufficient to entitle him to be joined as a defendant the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established".

21. It is apparent that a party claiming impleadment must have an interest in the pending litigation if the party has to be impleaded, but the interest must be of a kind that the presence of the party is necessary to settle all the questions involved in the suit.

22. The decision reported as ***Dollfus Mieg et Compagnie S.A.V. Bank of England, 1950-2 All ER 605*** cited in the aforesaid decision of the Madhya Pradesh High Court, illuminates this Court a lot on the subject of impleadment of a third party in a pending legal proceedings on the subject as to what kind of precise nature of the interest of the party sought to be impleaded in the property in dispute needs to be identified.

23. The said decision was dealing with Order 16 Rule 11 RSC corresponding to Order 1 Rule 10 in India.

24. In the said case 64 identifiable gold bars belonging to a French company were looted by the Germans during the war on their occupation of France and were later seized by the allied armies. The custody of the gold bars was acquired by a tripartite commission, consisting of the representatives of the Government of UK, USA and

France for the purposes of eventually distributing, in accordance with the provisions of the Treaty, the gold and treasure looted by the Germans. The gold bars were conveyed to England and deposited by the Commission with the Bank of England. The French company instituted an action against the bank claiming delivery of the gold bars. The bank applied for an order to set aside the writ on the ground that the two foreign Government, USA and France had declined to submit to the jurisdiction of the English Courts. The claim of the company was upheld and leave was given to the bank to appeal to the House of Lords. At that stage the two governments, USA and France applied to be added as defendant to the action.

25. It is significant to note that in the application the applicants did not assert a title to the bars but they urged that if they should establish that they have possession of control of the bars through the bank the French company would fail to obtain an order from the Court in its favour by reason of the doctrine of immunity applicable to foreign sovereign states and therefore the applicants, the Government of USA and France would be entitled to retain the possession and control over the bars and thus be able to dispose them of.

26. It was held that whether or not the applicants had a proprietary right in the subject matter of the action sufficient to entitle them to be joined as defendants, the true test lay not so much on an analysis of what were the constituents of the rights, but rather in what would be the result on the subject matter of the action if their rights could be established. It was held that the applicants had a direct interest in the subject matter of the action which was similar to a proprietary right and was of such a nature as would entitle them to be joined as defendants as in their absence their claim could not be eventually put forward.

27. After referring to the decision in *Moser Vs. Marsden, 1892-1 Ch 487*, in which, it was held that the fact that the person's interest would be commercially affected by a judgment would be insufficient to make the person a party and that that person should be directly interested in the subject matter in dispute, Wynn Parry, J. observed as follows at pages 611-612:-

"On the other side of the line in Vavassur vs. K.Krupp, (1878) 9 Ch D 351 to which I had already referred, which established that a proprietary right of the proposed defendant in the subject matter of the action is sufficient. The question here is; on which side of the line does this case fall? For the purposes of this application, the applicants do not assert a title to the property in question, and, therefore it cannot be asserted that they have a proprietary right as the phrase is used in (1878) 9 Ch D 351. What they assert is that if they can establish that they have possession or control of the property in question through the defendant bank, then, by virtue of the doctrine of immunity which apply to foreign sovereign states, 2 results might well follow (i) the plaintiffs must fail to obtain any order from this Court in their favour and (ii) the applicants will retain the possession and control over the remaining bars of gold and will be able to dispose of them. In other words, although the applicants do not assert title to the bars of the gold, the result of a successful intervention by them would be that as between the plaintiffs and themselves, they would for all practical purposes, be the owners. It seems to me that true test lies not so much in an analysis of what are the constituents of the applicant's rights but rather in what would be the result on the subject matter of the action if those rights could be established. That is the approach which I have made. Viewing the matter in this way, it is impossible, in my judgment, to say that the applicant have only an indirect interest of the nature which fell to be considered in 1892 – 1 Ch 487. They appear to me to have something more namely, a right which although may arise indirectly, viz. by the invocation of the doctrine of immunity and through the defendant bank as bailee nevertheless results in a direct interest in the subject matter of this action and is a right merely akin to the proprietary right which was under consideration in (1878) 9 Ch D

351. There is no authority directly bearing on the point but, on the analysis which I have made of the nature of the applicant's interest in the matter, I have come to the conclusion that I ought not to say that I have no jurisdiction to entertain the application on the short ground

which counsel for the plaintiff puts forward, viz. that the applicants could not show a proprietary right, and, therefore did not come within the second of the three classes of cases to which I have referred but that I am dealing with right of such a nature as, on an application by the applicants in the position of the present applicants should result in an order that they be joined as defendants, provided it can be shown that in their absence the claim to the right will not effectually be put forward."

28. The decision brings out that the true test lies not so much in an analysis of what are the constituents of the applicant's rights but rather in what would be the result on the subject matter of the action if those rights could be established.

29. In the decision reported as **1956-1 All ER 273 Amon Vs. Raphael Tuck & Sons Ltd.**, the aforesaid view was followed. In the said case the plaintiff filed an action against the defendants for damages and injunction on the ground that the plaintiff was the first inventor of a new design of adhesive dispenser in the shape of a pen, that the plaintiff disclosed to the defendant the details of the invention in the course of negotiations with the defendant for marketing the pen and that the defendant had wrongfully made use of the information by manufacturing an adhesive dispenser of the same design as invented by the plaintiff. The defendant, while resisting the claim applied under Order XVI Rule 11 R S C to join as defendant a third party, urging amongst other things that the third party was the first inventor of the adhesive dispenser. It was held that the presence of the third party was necessary to enable the court to adjudicate completely the subject matter in dispute as the enjoyment of the legal right of the third party would be curtailed by the relief asked for by the plaintiff in the action.

30. Delvin, J. explained the scope of the rule in these terms at page 279.

"It is not I think disputed that 'the cause or matter' is the action as it stands between the existing parties. If it were otherwise then anybody who showed a cause of action against either a plaintiff or defendant could of course say that the question involved in his cause of action could not be settled unless he was made a party. Counsel for the defendant does not contend for so wide a construction as that: but he submits that, if the intervener has a cause of action against the plaintiff relating to the subject matter of existing action the Court has power to join the intervener so as to give effect to the primary object of the order, which is to avoid multiplicity of actions. In the present case he submits that the subject matter of the dispute between the existing parties is the "ownership". If I may so put it, of an invention: the plaintiff claims that he is the owner of it and the intervener alleges that he is, and both disputes ought to be determined at the same time. This construction stresses the amplitude of the closing words of the passage which I have just cited from Order 16 Rule 11 'all the questions involved in the cause or matter.' The alternative construction treats the opening words as dominant. 'All the questions involved' is a phrase that unless it is cut down would be impossibly wide. It is cut down, the plaintiff submits by the opening words of the passage which I have cited. The intervener must be a party whose presence is necessary to enable all questions in the action to be adjudicated on and settled, but the question must be one which has to be adjudicated on in the issue between the existing parties and not in any new issue raised by an intervener. The criticism that at once suggests itself of this construction is that it is impossible narrow. If the adjudication is limited to something that lies between the plaintiff and the defendant what parties can be necessary to it except the plaintiff and the defendant? The court is for this purpose concerned only with action "in person and in such actions either the necessary defendant is sued or the action fails. If all the parties who ought to have been joined, under the first limb of the rule are joined, who are the necessary parties contemplated by the second limb"

31. Answering the question, Delvin, J. further observed as follows at pages 289-290:-

"Counsel for the plaintiff next submits that the intervener's interests cannot be affected anyway because if the plaintiff is wrong, there will be no injunction: and if he is right, the injunction can be granted only on the basis that the duty of confidence was owed to the plaintiff and not to the intervener. This argument in my opinion, misconceives the point. Whenever a plaintiff seeks to restrain a defendant from dealing with his property and an intervener claims that the property is his, the

plaintiff can say 'If I am wrong I shall not get an injunction and the intervener's right will not be affected: if I am right the intervener has no rights to be affected anyway.' The point is that the intervener is entitled to be heard on the issue whether the plaintiff is right or wrong so that he may be bound by the order made.

The final submission of counsel for the plaintiff is more far-reaching than the others. He submits that the action on the intervener's claim are concerned with rights in contract and not rights of property and therefore the case does not come within the term "proprietary right" as set out in the note in Annual Practice 1995 at page 232. I am not of course required to construe the phrase as if it were contained in a statute. If I were I should see no reason why rights under a contract should not be called proprietary rights just as much as rights to physical property. The phrase, however, is not used definitely. The three categories formulated in the note are not exhaustive. Indeed, I do not think that they should be treated as having been formulated independently. There is one common principle running through them all, and, for my part, I should prefer to apply a test based on that principle rather than to enquire whether the case to be determined falls into one or other of the three classes. There is not, for example any real distinction between the cases which related to specific performance and those which related to proprietary rights. As Wynn Parry, J. said in 1950- 2 All ER 605 at page 611.

It seems to me that the true test lies not so much in any analysis of what are the constituents of the appellant's rights, but rather in what would be the result on the subject matter of the action if those rights could be established.

I respectfully agree with that. I think that the test is May the Order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?

It may be true as counsel for the plaintiff submits that the authorities so far have been dealing with rights to physical property, but in my judgment the principle applies equally to contractual rights. I think that in this case the test is satisfied that I have jurisdiction to make the Order and that is one which having regard to the question involved in the action, it is proper that in the exercise of my discretion I should make."

32. The aforesaid decision brings out that the principle relating to impleadment in the decisions involving rights to physical properties are equally capable of being applied to contractual rights.

33. The decisions illustrate a wide spectrum of instances when intervention was allowed and when refused. From the decisions, regrettably no discernible principle governing the discretionary power of the Court emerges, for the simple reason, the spectrum of claims is fairly wide and therefore it would be inadvisable to cast the discretionary power in a straitjacket of an inflexible formula. However, one principle emerges, that the language employed in the rule vests a very wide discretion. [*vide V.N.Verma vs Smt.Veena Mahajan on 18 January, 2012; RFA(OS) 86 OF 1998; dated 18th January, 2012.*]

34. But, every judicial discretion needs to be informed by reason and guided by some legal principle even if it may be stated very widely for the reason an unguided discretion is an anathema to law.

35. I may also refer to a decision of the Supreme Court in the case of *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. Ors., 2010 5 ALD 24 (SC)*. It was held that as long as the addition of a third party as a defendant does not widen the scope of the suit, the application can be ordered. The principle was explained as under:-

"Para-12.4: If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides etc., the Court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and Court finds him to be a proper party, the Court may direct his addition as a defendant; but if the Court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the Court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P'

representing that he is the co- owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the Court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the Court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the Court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the Court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party."

36. Most of the decisions, I have referred to and discussed are under the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Although a writ-petition under Article 226 of the Constitution cannot be said to be a regular suit, yet the general principles applicable to the civil proceedings will apply to the proceedings under Article 226 of the Constitution also. [See: **Udit Narain Singh Malpaharia Vs. Board of Revenue; AIR 1963 SC 786**].

37. I may quote an extract from **V.G. Ramachandran's Law of Writs** revised by **Justice C.K. Thakker & M.C. Thakker; Sixth Edition** from Chapter 1 as under:-

"There is an essential distinction between a necessary party and a proper party. A necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no order can be passed. A proper party is one in whose absence an effective order can be passed, but whose presence is

necessary for complete and final decision on the question involved in the proceedings. In other words, in the absence of a necessary party no decree can be passed, while in the absence of a proper party, a decree can be passed so far as it relates to the parties before the court. His presence, however, enables the court to adjudicate the lis more "effectually and completely".

Though a petition under Article 32 or Article 226 of the Constitution cannot be said to be a regular suit, the general principles applicable to civil proceedings will apply to proceedings under Article 32 and 226 of the Constitution also. Therefore, a writ cannot be issued against a person who is not impleaded as a party respondent in the petition or in an appeal. Similarly, when an order of an inferior tribunal or other authority is challenged and sought to be set aside, not only the person in whose favour the order was passed should be joined as an opposite party but even the tribunal must be joined as a respondent. Again, all persons who would be adversely affected or prejudiced and also those persons who would be bound by that order and would be required to comply with it must be joined as parties.

38. I may also quote the *General Principles* laid down in the aforesaid chapter as under:-

(e) General Principles:-

There are no specific rules regarding parties to a writ proceeding. But the usual procedure followed is as under:-

(1) All persons must be made parties who are likely to be affected by the issue of a writ, order or direction. All those who are required to obey the directions of the writ or whose presence is necessary to make such directions effective should, therefore, be joined as parties.

(2) Rules under the English practice wherein certain writs can be issued ex parte at the first instance do not apply in India.

(3) Any party likely to be affected by a writ, direction or order may appear at the hearing (or make an application) and ask for leave to join in the proceedings or to have the rule served upon him.

(4) The Court may order that a petition for the issue of a rule nisi be amended and/or a rule nisi be amended by the addition of parties.

(5) If a necessary party or a party likely to be affected by the writ or order, or a party whose presence may be necessary to make the writ effective, is not before the Court, the Court may either upon an

application made for that purpose or suo motu (on its own motion), direct that such party be added and the rule nisi be served upon him, or simply that the rule nisi be served upon him or even that he may be allowed to be present at the hearing without being served with a rule nisi. In such a case, the person served with the rule nisi or permitted to attend the hearing would be deemed to be a party and be entitled to show cause or support or oppose a cause already shown.

(6) Such amendments should ordinarily be made upon notice to the party proposed to be added or served. There is, however, no rule of law which prevents an ex parte order being made in appropriate cases.

(7) Upon such an amendment being effected, directions can be given for filing of affidavits and additional affidavits.

39. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer. i.e., he can say that the litigation may lead to a result, which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck and Sons Ltd.*, (1956) 1 All ER 273 = (1956) 1 QB 357, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England*, (1950) 2 All ER

605, 611, that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J, has stated:

"The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights'."

40. It is clear that in order that a person is added as a party to the proceeding, it must be shown that the person is directly or legally interested in the action and that the relief sought in the proceeding will directly affect the intervenor in the enjoyment of his legal rights, if he is not added as a party. However, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding the party it would be in a better position to effectually and completely adjudicate upon the controversy. Such a person is called a proper party, whose presence is necessary for complete and final adjudication of questions involved in the proceeding. Such person is distinguished from a necessary party. Thus a person may not be necessary party yet he may be a proper party.

41. While considering the case at hand, it is of paramount importance to note that there is a marked, though subtle, distinction between the concepts of necessary party in a civil suit and the concept of necessary party in a writ petition. This distinction has become a little more pronounced with the passage of time, for the writ Courts under Article 226 have been required, as the time passed by to interfere on numerous occasions, when, during the discharge of public duty, the State or an authority established by the State, its instrumentalities and even individuals, both natural as well as juristic persons, infringe fundamental

or legal rights of a citizen or even of a foreigner, in an appropriate case.

42. It is Order I of the Code of Civil Procedure, which deals with parties, in general, as well as necessary parties. In a civil suit or proceeding, the Court considers the question of necessary party keeping in view the litigation before it and the litigants appearing before it or available on the record, whereas a writ Court takes a birds eye view of the whole matter and, in such a process, its vision embraces not only those, who are litigating before it, but also those, who are likely to be affected by the decision in the litigation. In a civil suit, so long as the question of granting of relief, sought for, can be decided in the presence of the parties appearing before the Court, the Civil Court will not consider anyone other than such a litigant as a necessary party, but a decision emanating from a writ Court reverberates, at times, far beyond the litigants and affects a large section of the people. Hence, the writ Court cannot keep itself confined merely to the litigants appearing before it or on the record nor will it keep itself confined only to the Us before it, but will also take into account the consequences or the effect, which the decision will have or is likely to have on the interest of others, who may not be wholly necessary for decision of the issue at hand, but whose interest would be vitally affected in consequence of the decision rendered in the writ petition. Viewed from this angle, the concept of necessary party in a purely civil suit and a writ petition cannot be one and the same. Far from this, the scope of necessary party in a writ petition will be much wider than in the civil suits.

43. While considering the case of Rama Krishna Narain, (AIR 1953 SC 521) (supra) and the law laid down therein, it is of utmost importance to note that this is a decision, which rests on a civil suit. The law laid down in Rama Krishna Narain (supra) is, undoubtedly, binding on all

the Courts, in India, yet the fact remains that the law enumerated therein was in respect of civil suits. In *Rama Krishna Narain* (AIR 1953 SCC 521) (*supra*), the Apex Court has observed thus, ... "The majority judgment was delivered by Pathak J. He enunciated two tests for deciding whether certain person was a necessary party in a proceeding (1) that there must be a right to some relief against such a party in respect of the matter involved in the proceedings, in question; and (2) that it should not be possible to pass an effective decree in the absence of such a party and proceed to observe that the creditors of a landlord who have claimed relief under the Encumbered Estates Act are necessary parties to the object of the Act is to compel the landlord to surrender his entire property for the benefit of his creditors and to liquidate the debts for all the creditors in accordance with and to the extent permitted by the Act.

There can be no question that these are the true tests for determining whether a person is a necessary party to certain proceeding."

44. In *Rama Krishna Narain* (AIR 1953 SC 521) (*supra*), two tests have really been laid down for determining the question as to who can be regarded as necessary party in a civil suit, the tests being (1) that there must be a right to some relief against such a party in respect of the matter involved in the proceedings, in question, and (2) that it should not be possible to pass an effective decree in the absence of such a party.

45. When the scope of necessary party was taken up for consideration in *Udit Narain Singh Malpaharia*, (AIR 1963 SC 786) (*supra*), the Apex Court was really dealing with the scope of necessary party in a writ petition under Article 226. In this case, the Apex Court observed,--

"7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled, it is enough if we state the principle. A necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

8.

9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen a tribunal or authority performs a judicial or quasi judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari, the defeated party seeks for the quashing of the order issued by the tribunal, in favour of the successful party. How can the High Court vacate the said order without the successful party being before it : Without the presence of the successful party, the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the Court, would certainly be incompetent. A party whose interests are directly affected, is, therefore, a necessary party."

(Emphasis is added)

46. The above observations clearly show that leaving the narrow confines of determining the question of necessary parties from the standpoint of giving of reliefs to the parties concerned in a civil litigation, as had been considered in *Rama Krishna Narain*, (AIR 1953 SC 521) (supra), the Apex Court considered even those persons as necessary parties, whose rights were to be directly affected by the order that would be passed in the writ petition. The apex Court made it clear that behind the back of such a party, no order shall be passed by a writ Court.

47. A new dimension was, thus, added to the concept of necessary party by laying down, in effect, in *Udit Narain Singh Malpaharia* (AIR

1963 SC 786) (*supra*) that while considering the question of necessary party in a Writ application, the principles of natural justice are required to be maintained. The High Court, fundamentally speaking, seeks to "preserve", "protect" and "defend" the Constitution. The Constitution enjoins upon the High Court the duty to interfere whenever the fundamental or legal rights of a citizen are sought to be infringed. For the purpose of civil suit, it is enough for the civil Court to bring on record only those persons or parties, whose presence is necessary for effective disposal of the dispute or for granting of the decree as sought for. But the High Court, sitting as a writ Court, looks beyond the parties appearing before them and must ensure that not only the persons, who are essential for the purpose of the disposal of the case, but also those, who will be vitally affected by the order to be passed, are made parties so that nothing is decided behind their back.

48. When the question of necessary party was considered in ***Prabodh Verma (AIR 1985 SC 167)***(*supra*), the Apex Court broadened the scope of the necessary party by further laying down as follows:-

"28.....A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Singhs writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non joinder of necessary party."

(Emphasis supplied).

49. The observations of the Court in Udit Narain Singh Malpaharia

(AIR 1963 SC 786) (supra), read with what has been observed and laid down in Prabodh Verma (AIR 1985 SC 167) (supra), it clearly follows that it would be against the principles of natural justice to make an adverse remark behind the back of the persons, who are to be directly affected by the decision, sought for, in the writ petition. In other words, if the decision of a writ Court is likely to adversely affect even the reputation of a person, such a person must be regarded as a necessary party. This, in turn, indicates that a writ Court, while considering the question of necessary party, the Court has to bear in mind the principles of natural justice and should be conscious of the fact that no decision be reached behind the back of the party, whose interest will be vitally affected by the decision that may be pronounced in the writ petition, though in the writ petition, no relief has been sought for against such persons and though they may not be necessary for deciding the question of relief. In short, in view of the fact that such persons are likely to be affected by the decision that may be taken, principles of natural justice demand that they be heard before the decision is taken and in such a context, such a party will be regarded as a necessary party for disposal of an application under Article 226. ***[See: Tractor And Farm Equipment Ltd. Vs. Secretary To The Government Of Assam; Writ Appeal No.458 of 2003; dated 22nd January, 2004]***

50. In the case on hand, one thing is very clear. Both the sides i.e. the applicants, who propose themselves to be impleaded in the main matter as well as the original petitioner wants this Court to quash and set aside the impugned order passed by the Mamlatdar & ALT. To this extent, the parties are at one. The problem has cropped up because the original petitioner has declined to recognize any rights of the applicants and other farmers of any nature in the subject land. I take notice of the fact that the original petitioner i.e. the trust did try to take shelter of the

applicants herein and other farmers by submitting before the Mamlatdar & ALT that certain parcels of land are in possession of the tenants and those tenants are cultivating the land. Such a stance at the end of the original petitioner obviously would be for the purpose of ensuring that the land is not declared as excess vacant land under the provisions of the Act, 1961. It is also true that the very same order impugned in the main petition has been made a subject matter of challenge by the applicants and other farmers by preferring a statutory appeal before the appellate authority. However, the applicants are worried about the final outcome of the petition. If the petition is ultimately rejected then, probably, it may have its own implications so far as the rights as asserted by the applicants are concerned. In such circumstances, they would also like to join in the litigation and try to convince the Court that the impugned order passed by the Mamlatdar & ALT deserves to be quashed. I have looked into the matter from a different angle too, i.e. if ultimately the main petition is rejected, probably, the appeal preferred by the applicants herein before the appellate authority may become infructuous. In such circumstances, the final outcome of the petition may have some bearing so far as the applicants are concerned, because they would be bound by the final result of the petition.

51. In the overall view of the matter, having regard to the averments made in the application seeking impleadment and also, having considered the stance of the original petitioner as well as the State Government, I am persuaded to exercise my discretion in favour of the applicants. I am of the view that the applicants should be permitted to be impleaded as the party respondents.

52. In the result, this application is allowed. The applicants herein are permitted to be impleaded as the party respondents nos.4 and 5

respectively in the Special Civil Application No.7551 of 2009. The cause-title shall be amended accordingly forthwith. Mr. Vikram J. Thakor, the learned counsel waives for and on behalf of the newly impleaded respondents nos.4 and 5 i.e.the applicants herein.

53. At this stage, the learned AGP appearing for the State Government submitted that the main matter may be ordered to be heard at the earliest as the interest of the State Government is vitally affected.

In such circumstances, let the main matter i.e.Special Civil Application No.7551 of 2009 be notified for final hearing at the earliest. Rule is made absolute. Direct service is permitted.

(J.B.PARDIWALA, J)

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