

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9697 OF 2026

Raj Garden Co-Operative Housing Society
Limited

...Petitioner

Versus

1. Mahendra Arjun Shinde
2. Municipal Corporation of Greater
Mumbai

...Respondents

Mr. Ruchir Tolat, i/b Vishal Acharya, for the Petitioner.

Ms. Purva Basrur, i/b D. M. Legal Asso., for Respondent No.1.

Mr. Santosh Mali, for Respondent No.2 – BMC.

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CORAM: N. J. JAMADAR, J.

DATED: 7th SEPTEMBER, 2026

JUDGMENT:-

1. In view of the limited nature of the controversy, Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. Heard Mr. Ruchir Tolat, the learned Counsel for the Petitioner, Ms. Purva Basrur, the learned Counsel for Respondent No.1, and Mr. Santosh Mali, the learned Counsel for the BMC – Respondent No.2.

3. The challenge in this petition is to an order dated 28th April, 2026, whereby the learned Judge, City Civil Court, Borivali Division, was persuaded to dismiss the Chamber Summons No. 288 of 2026 taken out by the petitioner for

impleadment in LC Suit No. 451 of 2026, instituted by respondent No. 1 against respondent No. 2 - Municipal Corporation.

4. The background facts can be stated as under:

4.1 The petitioner is a Cooperative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 ('the Act, 1960'). The petitioner claims to be the owner of the lands bearing CTS Nos. 128A/40, 128A/40/1, and 128A/40/2 situated at Kandivali.

4.2 Respondent No. 1 claims to be in use, occupation, and possession of the godown and residential premises admeasuring 253 and 1050 sq. ft. respectively, situated at Survey No.163 Kandivali (West), Mumbai, (the suit premises).

4.3 Respondent No. 2 - Municipal Corporation had issued notices dated 17th November, 2025, purportedly under Section 351 (1A) of the Mumbai Municipal Corporation Act, 1888 ('MMC Act, 1888'), calling upon respondent No. 1 to remove the purported unauthorized development over the suit premises. Eventually, speaking orders were passed by the designated officer on 20th February, 2026 directing respondent No. 1 to discontinue the use of the notice structures and remove the unauthorized structures within 15 days, lest action would be

initiated qua the said structures and respondent No.1.

4.4 Assailing the legality and validity of the said notices and speaking order, respondent No. 1 instituted LC Suit No. 451 of 2026 against respondent No.2 Municipal Corporation seeking a declaration that the notices and the speaking orders were illegal, bad in law, *mala fide* and void, and the consequential relief of injunction.

5. The petitioner took out the Chamber Summons seeking impleadment in the said suit asserting, *inter alia*, that respondent No. 1 - plaintiff has committed encroachment over the properties which are owned by the petitioner Society. The respondent No. 1 had instituted the suit by deliberately suppressing material facts and without impleading the petitioner as a party defendant.

6. By the impugned order, the learned Judge, City Civil Court, was persuaded to dismiss the Chamber Summons, observing, *inter alia*, that there was no nexus between the suit properties and the properties over which title was asserted by the petitioner, as the survey number of the properties appeared to be different. Moreover, the legality and validity of the impugned notices and speaking order could be decided without impleading the petitioner, and, thus, the latter was not a

necessary party.

7. Being aggrieved, the petitioner has preferred this petition.

8. Mr. Tolat, the learned Counsel for the petitioner, invited the attention of the Court to the notice under Section 351(1A) of the MMC Act, 1888, especially the description of the alleged unauthorized structure. In the said notice, the structure is stated to be situated at the premises of Raj Garden Society - the petitioner. Attention of the Court was also invited to the speaking order dated 20th February, 2026, wherein the designated officer has recorded that all the structures/buildings were demolished during the construction of Raj Garden Society. The notice structure was situated on CTS No. 128A/40/2; the Property Card of which shows Raj Garden CHSL - the petitioner to be the holder thereof.

9. Yet, Mr. Tolat would urge, while instituting the suit, the subject structures were stated to be situated at Survey No. 163 and CTS No. 128/40/1/2 instead of CTS No. 128A/40/1/2. On account of the difference in the CTS numbers, the learned Judge, City Civil Court, dismissed the Chamber Summons without properly examining the issue of the necessity of the impleadment of the petitioner as a party defendant to the suit. Mr. Tolat further submitted that by an order dated 1st

September, 2026, the Competent Authority has corrected the survey number from 162 to 163 in the deemed conveyance order and certificate dated 29th March, 2019.

10. In opposition to this, Ms. Basrur, the learned Counsel for respondent No. 1 - plaintiff, would submit that the learned Judge, City Civil Court, correctly exercised the discretion not to direct the impleadment of the petitioner as a party defendant to the suit. Indeed, there is no nexus between the property over which the petitioner asserts title and the property over which the subject structures are situated. At any rate, the survey number came to be corrected by an order dated 1st September, 2026, after the impugned order came to be passed. Therefore, at this juncture, the petitioner cannot draw any mileage from the said correction in the survey number of the property in the order and certificate of deemed conveyance in favour of the Society, submitted Ms. Basrur.

11. It is trite, the matter of addition or deletion of a party to the suit is not one of the initial jurisdiction but that of judicial discretion. Like in other matters, where such discretion is required to be exercised, the discretion to add or delete a party to the suit is required to be exercised keeping in view the object of the enabling provision. If the Court finds that a party is a

necessary party, then the impleadment of such a party becomes imperative, lest the court cannot pass an effective decree. In a case where the impleadment of a party is sought as a proper party, then the Court has to pose unto itself a question, as to whether the presence of such person is warranted for an effectual and complete adjudication of the dispute, though such person is not a necessary party.

12. The distinction between a necessary and a proper party is well marked. In the case of *Kasturi Vs. Iyyamperumal & ors.*¹ a three-Judge Bench of the Supreme Court enunciated that necessary parties are those persons in whose absence no decree can be passed by the Court and there must be a right to some relief against such party in respect of the controversies involved in the proceedings, and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief was claimed against such person.

13. In the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & ors.*², which arose out of a suit assailing the legality and validity of the action

1 (2005) 6 SCC 733

2 (1992) 2 SCC 524

initiated by the Municipal Corporation in respect of the suit premises therein, the Supreme Court enunciated that, the expression, “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” indicates that, the Court is empowered to join a person whose presence is necessary for the specified 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 the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

14. The Supreme Court further clarified that, 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 objective. The observations in Paragraph No. 14 read as under:

“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 objective. 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 given 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."

(emphasis supplied)

15. It is well-recognized that where the owner or landlord of the premises over which the offending structure is stated to be situated approaches the Court seeking impleadment, ordinarily the Court shall exercise the discretion to implead such owner/landlord as a party defendant to the suit wherein the legality and validity of the action of the Municipal Corporation in regard to the offending structure is questioned. In such a situation, the landlord/owner can be said to have a direct interest in the subject matter of the suit, and not a commercial interest. The order that may be passed by the Civil Court in regard to the legality and validity of the notices issued by the Municipal Corporation and the action sought to be initiated by the Municipal Corporation qua the purported offending

structure would affect the rights of the owners/landlord.

16. A profitable reference, in this context, can be made to a judgment of a Division Bench of this Court, in the case of *Ashok Babulal Avasthi vs. Munna Nizamuddin Khan and anr.*³, wherein, on a reference, the Division Bench has held that in a suit challenging the legality and validity of a notice issued by the Municipal Corporation instituted by the tenant, the exercise of discretion by the Court to implead the owners/landlord would be in consonance with law. It was enunciated that, where a landlord applies to become a party to a suit wherein the legality and validity of a notice issued by the Municipal Corporation is called in question, the aspect of exercise of discretion under Order I Rule 10(2) of the Code of Civil Procedure, 1973 crops up for consideration. This Court has consistently exercised its discretion for last five decades to allow such a joinder. This exercise of discretion has become a well established practice. The Division Bench concluded as under:

“32. Answering the question, we hold that in a suit filed by the occupier/ tenant/ licensee seeking to restrain the local authority from taking action of demolition against the property, where the landlord/ owner of the property seeks impleadment, the Court is empowered to permit the same exercising the power under Order I Rule 10(2) of Code of Civil Procedure on the premise that the landlord/ owner is a proper party. Such a direction by the court in this fact situation would be a sound exercise of discretion consistent with the long-standing use of

3 2024(2) Mh.L.J. 322.

discretion in this manner. Refusal to permit such a joinder by not accepting the landlord/owner as a proper party would be an improper use of discretion and be liable to be set aside.”

(emphasis supplied)

17. In the case at hand, the description of the property given in the impugned notices issued by the Municipal Corporation, as well as the speaking order, clearly reveals that the alleged offending structure is situated on the property bearing CTS No. 128A/40 now further subdivided into CTS Nos. 128A/40/1 and 128A/40/2. And those properties belong to Raj Garden Co-operative Housing Society Limited, the petitioner.

18. Secondly, the extract of the Property Card of CTS No. 128A/40/2 shows that Raj Garden Co-operative Housing Society Limited is the holder of the said property. Thirdly, by an order dated 1st September, 2026, the Competent Authority has corrected the survey number of the property in respect of the deemed conveyance order and certificate issued in favour of the petitioner from 162 to 163. Even the Assistant Registrar of Co-operative Societies has issued a corrigendum on 22nd May, 2026 correcting the address of the petitioner Society from Survey No. 162 to 163 in the registration certificate.

19. In the face of the aforesaid material, the learned Civil Judge could not have rejected the application for impleadment

by taking a hyper-technical view of the matter by observing that the CTS number of the properties over which the petitioner asserted title and the description of the suit property given in the plaint appeared to be different. In fact, the very impugned notices and the speaking order refer to the fact that, the petitioner Society was the holder of CTS Nos. 128A/40/1 and 128A/40/2 over which the offending structures are allegedly situated. The impleadment of the petitioner in the circumstances of the case appears to be essential for a complete and effectual adjudication of the disputes between the parties. Hence, the petition deserves to be allowed.

20. Thus, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The Chamber Summons stands allowed.
- (iv) Respondent No. 1 - plaintiff is directed to implead the petitioner as a party defendant to the suit.
- (v) Necessary amendment in the plaint be carried out within a period of three weeks, and the amended copy of the plaint be served on the petitioner within two weeks thereafter.

(vi) Rule made absolute in the aforesaid terms.

No order as to costs.

[N. J. JAMADAR, J.]