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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1340 OF 2015

Kamlesh Jayantilal Patadia	...	Petitioner
Vs.		
Municipal Corporation of Greater		
Mumbai and others	...	Respondents

ALONG WITH**WRIT PETITION NO. 1341 OF 2015**

Tushar Mengar and another	...	Petitioners
Vs.		
Municipal Corporation of Greater		
Mumbai and others	...	Respondents

ALONG WITH**WRIT PETITION NO. 1342 OF 2015**

Kalpana Kamlesah Patadia	...	Petitioner
Vs.		
Municipal Corporation of Greater		
Mumbai and others	...	Respondents

ALONG WITH**WRIT PETITION NO. 1343 OF 2015**

Heena Viren Seth	...	Petitioner
Vs.		
Municipal Corporation of Greater		
Mumbai and others	...	Respondents

ALONG WITH**WRIT PETITION NO. 1344 OF 2015**

Parag V.Shah and another	...	Petitioners
Vs.		
Municipal Corporation of Greater		
Mumbai and others	...	Respondents

**ALONG WITH
WRIT PETITION NO. 1345 OF 2015**

Shri Bhanubhai Vyas ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1346 OF 2015**

Smt.Mrudulaben Bhagat ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1347 OF 2015**

Shri Prakash Chandra ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1348 OF 2015**

Smt.Savitaben Sompura ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1349 OF 2015**

Pushpaben R.Mehta ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1350 OF 2015**

Jasuben Shah ... Petitioner
Vs.

Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1352 OF 2015**

Shri Naginbhai Bhagat ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1353 OF 2015**

smt.Dhanlaxmi Jasani ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1354 OF 2015**

Shri Vijay Udani ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1355 OF 2015**

Smt.Surajben Pipariya ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1356 OF 2015**

Shm.Motiben Nagda ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1357 OF 2015**

Shri Jigar R.Kamdar and anr. ... Petitioners
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1358 OF 2015**

Smt.Leelavati N.Joshi ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1359 OF 2015**

Smt.Shantaben Chheda ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1360 OF 2015**

Shri Yogendra Modi ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

**ALONG WITH
WRIT PETITION NO. 1361 OF 2015**

Smt.Shakuntala Vyas ... Petitioner
Vs.
Municipal Corporation of Greater
Mumbai and others ... Respondents

Mr.Rajesh Kachare a/w Ms.Savita Sawalkar a/w Mr.Rohan Tamhane
i/b M/s.Tamhane & Co., Advocates for Petitioners.

Ms.Pallavi Thakar, Advocate for Respondent No.1 to 3 -B.M.C.

Mr. Kishore Tembe i/b Mr.Rupesh Sohoni, Advocate for Respondent
No.4.

CORAM : R. G. KETKAR, J.

DATE : 24th JULY, 2015

P.C. :

. Heard Mr.Rajesh Kachare, learned Counsel for the
petitioners, Ms.Pallavi Thakar, learned Counsel for respondents No.1
to 3 and Mr. Kishore Tembe, learned Counsel for respondent No.4 at
length.

2. By these Petitions under Article 227 of the Constitution
of India, original plaintiffs have challenged the judgment and order
dated 28/11/2014 passed by the learned Judge, City Civil Court,
Bombay in Chamber Summons taken out in various Suits. By these
orders, the learned trial Judge allowed the Chamber Summons and
directed the petitioners, hereinafter referred to as plaintiffs, to add
respondent No.4 as defendant.

3. Since common questions of law and facts arise in these
Petitions, the same can conveniently be disposed of by this common
order. For the purpose of appreciating the controversy raised
between the parties, facts from Writ Petition No. 1340 of 2015 are
taken into consideration.

4. In support of this Petition, Mr.Kachare strenuously contended that the plaintiff is occupying the flat No. 6 in 'A' building of New Chandroday Co-operative Hosing Society Ltd. (for short 'Society'), 152, Bhanushali Lane, Ghatkopar (East), Mumbai 400 077 (for short 'suit flat'). Respondent No.4, hereinafter referred to as applicant, is occupier of flat No. C-502 on 5th floor of the 'C' building of the Society. He submitted that by order dated 23/04/2013, defendant No.2 directed demolition of unauthorised work carried out by the plaintiff in the suit premises. He submitted that applicant has no direct or indirect interest in respect of the suit flat situate in 'A' building. He submitted that Writ Petition No. 775 of 2010 was instituted by the plaintiff and others in this Court praying for writ of mandamus against the Authorities under the provisions of Maharashtra Regional and Town Planning Act, 1966 (for short 'Act') to demolish illegal construction carried out in extended 'C' building of the Society as recorded in the notices issued under Section 53 (1) of the said Act on 12/11/2008 & 01/01/2009 and for other reliefs. On 23/07/2012, the Division Bench of this Court directed the Corporation to consider the application dated 10/01/2012 made by respondents No 7 to 11 for regularization of Niche area under the circular dated January 2012. The Corporation was directed to take decision on the application for regularization within a period of 4 weeks after hearing representatives of all concerned in accordance

with law. The Corporation was directed to take inspect of the premises occupied by the plaintiff and others as well as the respondents and remove any structure which was not regularised and which is found to be illegal within a period of 4 weeks thereafter. He submitted that in pursuance thereof, the Corporation passed order dated 23/04/2013. As far as the plaintiff is concerned, the Corporation directed demolition of unauthorised covering of terraces of building 'A' and building 'B' belonging to the petitioners in that Petition. He submitted that the order dated 23/04/2013 and in particular, the clause No.2 of the operative part of the order directing demolition of covering of terraces of building 'A' is challenged by the plaintiff in the Suit.

5. Mr.Kachare submitted that applicant and others also instituted Suits challenging order dated 23/04/2013. The plaintiff made application for impleadment in the said Suits and that was allowed. The applicant did not challenge that order. Merely because, the Chamber Summons taken out by the plaintiff is allowed and the said order is not challenged by the applicant herein, will not ifso facto make applicant either a necessary party or a proper party. The applicant has no direct or indirect interest in the suit premises which is situate in 'A' building and the applicant is occupying flat in 'C' building. In support of his submission, he relied upon the decision of this Court in the case of *Ramesh Hirachand Kundanmal Vs.*

Municipal Corporation of Greater Bombay (1992) 2 Supreme Court Cases 524 and in particular paragraphs 13 & 14 thereof.

6. On the other hand, Mr. Tembe supported the impugned order. He submitted that plaintiff herein had instituted Writ Petition No. 775 of 2010 in this Court. In paragraph 15 of the plaint, the plaintiff asserted that for the first time, respondents in the Petition through applicant herein informed this Court about illegal construction carried out in buildings 'A' & 'B' of the Society. He submitted that at the instance of the applicant herein, this Court directed the Corporation to inspect the premises occupied by the plaintiff as also applicant and others in buildings 'A', 'B' & 'C'. The Corporation was also directed to consider the application made for regularization of Niche area under the circular issued in January 2012 and take decision after hearing representatives of all concerned in accordance with law. If the Corporation finds that unauthorised construction cannot be regularized as it is illegal, it was directed to take appropriate action in that regard.

7. In pursuance thereof, the Corporation had passed order on 23/04/2013. The applicant and others have challenged the said order by instituting 10 suits. In that Suits, plaintiff herein made application for impleadment and that was allowed and plaintiff is joined as defendant No.4 in those 10 Suits. He, therefore, submitted that for the reasons stated in that order, the applicant ought to have

been impleaded party in the Suit originally instituted. Since applicant was not impleaded party, he took out Chamber Summons for his impleadment as at the instance of the applicant, this Court had issued direction to the Corporation on 23/07/2012. He, therefore, submitted that it cannot be said that applicant is not a proper party.

8. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that plaintiff had instituted Writ Petition No. 775 of 2010 in this Court against the Corporation alleging unauthorised construction in building 'C' of the Society. It is not in dispute that applicant is occupier of one of the flats in 'C' building of the Society. During the course of hearing of that Petition, it is the applicant who informed the Court that occupiers of buildings 'A' & 'B' have carried out unauthorised construction. This fact is evident from paragraph 15 of the plaint. It is because of applicant herein, this Court directed Corporation to take inspection of buildings 'A', 'B' & 'C'. Paragraph 2 of that order reads as under

“Having regard to the circumstances of the case, we consider it appropriate to direct that the respondent-Corporation shall consider the application dated 10/01/2012 made by respondent nos.7 to 11 for regularization of the Niche area under the Circular issued in January, 2012. The Corporation shall take a decision on the application for regularization within a period of four weeks from today after hearing representatives of all concerned in accordance with law. Thereafter, the Corporation will take an inspection of the premises

occupied by the petitioners as well as the respondents and remove any structure which has not been regularized and which is found to be illegal within a period of four weeks thereafter.”

9. In pursuance of that order, the Corporation has passed order on 23/04/2013. The order is addressed to advocate on behalf of plaintiff herein as also to the applicant who is shown at serial No.

7. Thus, by common order, the Corporation had directed demolition of unauthorised work in building 'C' belonging to respondents in Writ Petition as also demolition on unauthorised covering of terraces on buildings 'A' & 'B' belonging to the plaintiff and others in the Writ Petition.

10. It is not in dispute that order dated 23/04/2013 is challenged by the applicant and others by instituting 10 Suits. It is also not disputed that plaintiff made application in those 10 Suits for impleadment as defendant and the said Chamber Summons is allowed. Having regard to the fact that action is taken by the Corporation against plaintiff at the instance of the applicant, in my opinion, he is a property party. Mr.Kachare relied upon the decision of the Apex Court in the case of **Ramesh Hirachand Kundanmal** (*supra*) and in particular, paragraphs 13 & 14 thereof which read as under :

13. A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the Commercial

interest is required to be shown before a person may be added as a party.

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 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 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.*, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A v. Bank of England*, 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 intervener in the enjoyment of his legal rights.'"

11. The said decision is considered by the Apex Court in the case of *Aliji Momonji Vs. Lalji Mavji (1996) 5 Supreme Court Cases*

379. In paragraph 5, the Apex Court observed thus :

"The controversy is no longer res integra. It is settled law by catena of decisions of this Court that where the

presence of the respondent is necessary for complete and effectual adjudication of the disputes, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licences would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances, the question of the commercial interest would not arise. In *Ramesh Hirachand Kundanmal's case*, this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances, it was held that the second respondent has no direct interest in the subject matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled. It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that 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 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 not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in *New Redbank Tea Co. Pvt. Ltd. vs. Kumkum Mittal* has pointed out that Respondent 11 who filed a suit for specific performance in the High Court was sought to come on record in the suit in which he had no direct interest in the pending matter. Under those circumstances, this Court had held that Respondent 11 was neither necessary nor proper party in the leasehold interest involved in the suit. In *Union of India vs. Distt. Judge, the Union of India* who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10, CPC for determination of the compensation in respect of the acquired land. In *Bihar SEB vs. State of Bihar*, the same question was also reiterated and it was held that the Electricity Board was a person interested and also a necessary party. In *Anil Kr. Singh vs. Shivnath Mishra* similar question was answered holding that the respondent was a necessary party.”

12. Mr.Kachare submitted that merely because plaintiff is impleaded as defendant No.4 in the Suit instituted by applicant and others in 10 Suits that by itself will not make applicant a proper party in the Suit instituted by the plaintiff. I do not find any merit in this submission. In the first place, though plaintiff is occupying flat in 'A' building and admittedly, applicant is occupying flat in 'C' building, he filed application for impleadment on the ground that he is a proper party in the Suits instituted by the applicant and others and that Chamber Summons is allowed. When the applicant makes application in the Suit instituted by the plaintiff, it is contended that applicant is not a proper party. In my opinion, having regard to the fact that the impugned order dated 23/04/2013 is common to all the

petitioners including the plaintiff and also respondents which includes applicant, it is not open to the plaintiff to contend that he is not a proper party, more so when his Chamber Summons is allowed. Secondly, as noted earlier, order is passed by this Court at the behest of the applicant and pursuance thereof, Corporation has passed common order dated 23/04/2013.

13. In the light of above discussion, I do not find that the learned trial Judge committed any error in holding that applicant is a proper party in a Suit instituted by the plaintiff herein. In the impugned order, the learned trial Judge has held that presence of the applicant herein is necessary to enable the Court to decide the Suit completely and effectually. The applicant is one of the flat holders in the Society. He has substantial interest in the subject matter of the Suit. No case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

(R. G. KETKAR, J.)