

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

WRIT PETITION NO. 6538 OF 2014

Mrs. Preeti Rajendrasingh Pawar
Vs
1. The Municipal Corporation of
Gr.Mumbai .. and Anr.
Petitioner
.. Respondents

Mr. J.S.Kini i/b suresh Dubey, Advocate for Petitioner.
Ms. Pallavi Thakar, Advocate for Respondent no.1.
Mr. S.S. Dubey, learned counsel for Respondent no.2.

CORAM : R.G.KETKAR,J.
DATE : 24/06/2015

PC:

1. Heard Mr. J.S.Kini, learned counsel for the petitioner, Ms Pallavi Thakar, learned counsel for respondent no.1 and Mr. S.S.Dubey, learned counsel for respondent no.2 at length.
2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 19.10.1993 passed by the learned Judge of City Civil Court Bombay in Chamber Summons No.1754 of 2013 in Long Cause Suit No.2659 of 2013. By that order, the learned trial Judge allowed the Chamber Summons and directed the petitioner-plaintiff to implead respondent no.2 herein as party defendant no.2 in the suit.
3. In support of this Petition, Mr. Kini strenuously contended that the learned trial Judge committed serious error in observing that respondent no.2 is the owner of the suit premises. He

submitted that respondent no.2 is A blackmailer and is in the habit of making complaints against several persons. Respondent no.2 had demanded Rs.25,000/- as protection money from husband of the petitioner which was refused. In view thereof, respondent no.2 complained to the Corporation. He submits that merely producing assessment in respect of the disputed property does not mean that respondent no.2 is owner of the suit premises. In fact, the petitioner is separately assessed and is paying assessment from assessment year 2013-2014. He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Dubey supported the impugned order. He submitted that the learned trial Judge has, prima facie recorded a finding that the document produced by respondent no.2 shows that he is owner of the suit premises. The learned trial Judge also recorded finding that on the basis of complaints made by respondent no.2 to the Corporation, the impugned notice is issued to the plaintiff.

5. Ms. Thakur submitted that the assessment record maintained by the Corporation in respect of the suit premises shows that the suit premises was assessed for the first time on 1.4.2008 and property tax bill is in the name of respondent no.2. That apart, Assessment Bill at page 60 records Account No. NX1210327750000 and the assessment bill produced by Mr. Kini

for the petitioner shows Property Account No.NX1210327830000.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. The learned trial Judge, after considering the material on record, has recorded two prima facie findings in paragraph 8 viz. that respondent no.2 is the owner of the suit premises. In paragraph 9, the learned trial Judge has recorded finding that on the basis of the complaints made by respondent no.2, the Corporation has issued notice under section 354-A of the Act. Perusal of the property tax Bill dated 16.6.2013, prima facie, indicates that the property was for the first time assessed on 1.4.2008 and it stands in the name of respondent no.2. I have also perused complaints made by respondent no.2 on 8.6.2013 and 4.7.2013 to the Corporation. I, therefore, do not find that the learned trial Judge has committed any error in allowing the Chamber Summons. It cannot be said that the learned trial Judge has exercised the discretion arbitrarily or capriciously or perversely. Reliance placed by Mr. Kini on the Assessment prima facie does not advance the case of the petitioner as the Assessment is on 25.11.2014, that is to say, after institution of the suit. Hence, no case is made out for exercising powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

7. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)