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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4438 OF 2015

Mr.Ashit P.Kothari and another .. Petitioners
Vs.
Mira Bhayander Municipal Corporation and others .. Respondents

ALONG WITH

WRIT PETITION NO. 4439 OF 2015

Shri Sitaram J.Sharma and another .. Petitioners
Vs.
Mira Bhayander Municipal Corporation and others .. Respondents

Mr.Ashutosh R.Gole, Advocate for the Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 10th AUGUST, 2015

P.C. :

. Not on board. At the request Mr.Ashutosh R.Gole, taken up for admission.

2. Heard Mr.Ashutosh R.Gole, learned Counsel for the petitioners.

3. By this Petitions under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and orders dated 21/02/2015 passed by the learned Joint Civil Judge, Junior Division, Thane below Exhibit 11 in Regular Civil Suit No. 51 of 2015 as also below Exhibit 11 in Regular Civil Suit No.52 of 2015. By these orders, the learned trial Judge allowed the applications filed

by the third party applicants under Order 1 Rule 10 of Code of Civil Procedure, 1908 (for short 'C.P.C.') for impleading them as party defendants to the Suits. As the common questions of law and facts arise in these Writ Petitions, the same can conveniently be disposed of by this common order. For appreciating controversy raised between the parties, facts from Writ Petition No.4438 of 2015 are taken into consideration.

4. The petitioners, hereinafter referred to as plaintiffs instituted Suit against respondent No.1 - Mira Bhayander Municipal Corporation (for short 'Corporation') challenging the notice dated 13/11/2014 issued under Section 260 of the Maharashtra Provincial Municipal Corporations Act (for short 'Act') as also order dated 21/11/2014 in respect of Row House No.3 admeasuring about 1720 sq.ft, Shri Laxmi Palace, Laxmi Park a Bungalow Scheme, Kanakia Road, Mira Road (East), Taluka and District Thane (for short 'suit property'); for perpetual injunction restraining the Corporation from acting upon the notice and order and/or demolishing the suit property or any part thereof and/or dispossessing the plaintiffs from the suit property and/or from doing any acts prejudicial to the interest of the plaintiff qua the suit property without following due process of law.

5. During the pendency of the Suit, respondents No. 2 & 3, hereinafter referred to as third party applicants filed application

under Order 1 Rule 10 of C.P.C. for impleading them as party defendants. By the impugned order, the learned trial Judge allowed the application. It is against this decision, plaintiffs have instituted present Petition.

6. In support of these Petitions, Mr.Gole strenuously contended that third party applicants are neither a necessary or a proper party. In the suit property, the third party applicants have no rights whatsoever. Their rights will not be affected in any manner. Their presence is also not necessary to enable the Court for effectually and completely adjudicate the dispute. In support of his submission, he relied upon decision of the Apex Court in the case of ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay***, (1992) 2 Supreme Court Cases 524.

7. I have considered the submissions made by Mr.Gole. I have also perused the material on record. The third party applicants have filed application under Order 1 Rule 10 for impleading them as defendants. The plaintiffs are owners of row house No. 3 (Writ Petition No. 4438 of 2015) and row house No.2 (Writ Petition No. 4439 of 2015). Applicant No.1 has acquired row house No. 4 and applicant No.2 has acquired row house No. 1. The row houses have been constructed as per the plans approved by the Corporation. As per approved plans, the drainage, W.C. safety tank of approximately 12x12 sq.ft and harvest water storage tank admeasuring 8x10 sq.ft

are constructed on the open space area which is nearby the plaintiff's row house No. 2 (Petitioner in WP/4439/15) and harvest water storage tank of approximately 12x12 sq.ft constructed on open space nearby plaintiff's row house No.3 (Petitioner in WP/4438/15). The W.C tank and harvest water storage tanks are for common use and are common facility of all four row house owners residing therein.

8. The third party applicants further contended that open space area where there is construction of drainages, W.C. safety tank, rain water harvest facility are required to be kept open for utilization/inspection of owners of all row houses. The recreation of ground is also required to be kept open. The said open space is for the beneficial enjoyment of the owners of the row houses and nobody can obstruct other owners of row houses by constructing wall, putting air tight tiles and iron grills. It is the case of the third party applicants that Sitaram (petitioner in Writ Petition No. 4439 of 2015) who is owner of row house No. 2 has illegally and unauthorisedly constructed kitchen and dining room on and above W.C.safety tank and water storage tank and also illegally covered nearly 900 sq. feet by constructing wall, iron grill along with roof. He has covered W.C.safety tank and water storage tank floor with air tight tiles. There is no way to pass/purge the W.C. tank gas outside and there is possibility of explosion of W.C.safety tank at any point of time. The W.C. storage dumped inside the safety tank is to be

removed manually. There is no space to take out the W.C.dumped manually.

9. The third party applicants further asserted that there is no exit kept open to inspect the harvest water storage tank. The only approach to the harvest water storage tank is from inside the premises of the plaintiff. There is no space kept open for movement of fire brigade vehicle in the premises in the common area of the row houses when occasion arises. The third party applicants contended that they have made complaint to the Corporation whereupon notice under Section 260(1) of the Act was issued on 13/11/2014. Even the demolition order was passed on 21/11/2014. The applicants alleged that there is collusion between Ward Officer and the plaintiffs. They have, therefore, applied for impleadment in the Suit.

10. The plaintiffs filed reply opposing the application. It was submitted that applicants are neither a necessary nor a proper party. It is contended that plaintiffs have challenged order dated 21/11/2014 passed by the Corporation. The third party applicants have no role to play in the Suit. They have no locus and also they have no rights pertaining to the suit property. By the impugned order, the learned trial Judge allowed the applications.

11. In support of these Petitions, Mr.Gole reiterated the submissions that were advanced before the trial Court. He submitted that applicants have no right, title and interest in the subject matter

of the Suits. The plaintiffs are owners of row house No.3 and row house No. 2. Applicant No.1 is the owner of row house No.4. Applicant No. 2 is the owner of row house No. 1. Thus, they are not affected parties. They have no locus to intervene in the Suit.

12. I have considered the submissions advanced by Mr.Gole. I have also perused the material on record. It is apparent from material on record that the applicants made complaint to the Corporation whereupon Corporation issued notice under Section 260 of the Act on 13/11/2014. The third party applicants are alleging that plaintiffs have carried out illegal and unauthorised construction over the common open space. It is not in dispute that applicant No.1 is the owner of row house No. 4 and applicant No.2 is the owner of row house No.1. The plaintiffs are the owners of row house No.3 and 2. The row houses have been constructed as per plans approved by the Corporation. Row houses are constructed by M/s.Shubham Enterprises and they have been sold to respective owners. Perusal of the applications filed by third party applicants clearly shows that they have grievance about illegal and unauthorised construction made by the plaintiffs in the compulsory open space. It, therefore, cannot be said that rights of the applicants will not be adversely affected by outcome of the Suits. In fact, they have direct and legal interest in the subject matter of the Suits. The learned trial Judge has noted in paragraph 10 that row houses of the applicants are

adjacent to the properties of the plaintiffs and any illegal construction made by the plaintiffs will cause harm to them. They are affected by the illegal construction which is required to be demolished.

13. In paragraph 11, the learned trial Judge held that their presence will be necessary to effectively decide the Suits on merits. Their presence is necessary for determining real controversy between the parties.

14. Mr.Gole relied upon the decision of the Apex Court in the case of *Ramesh Hirachand Kundanmal Vs.Municipal Corporation of Greater Bombay*, **(1992) 2 Supreme Court Cases 524**. In that case, the case, the Apex Court observed that the person to be joined must be one whose presence is necessary as a party. 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.

15. Applying the tests laid down by the Apex Court, in my opinion, the learned trial Judge has rightly held that applicants have vital interest in the outcome of the Suits and they are affected parties. Their presence is absolutely necessary for effectually and completely adjudicating upon and settling the dispute between the parties. It is also relevant to note that the Corporation has issued notice at the instance of the applicants. For all these reasons, I do not find that the learned trial Judge has committed any error in passing the impugned order. 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. 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.)