

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6120 OF 2014**

Kamleshkumar S. Rajbhar

..Petitioner

Vs.

Mushtaq Ahmed Shah & Anr.

..Respondents

Mr. Mohan Jadhav for the Petitioner

Mrs. M. R. Bhoir for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 11th FEBRUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 30-4-2014 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Chamber Summons being No.1017 of 2013, filed by the Petitioner for his impleadment in the Suit in question being L.C. Suit No.3128 of 2013, came to be dismissed.

2 The Suit in question being L.C. Suit No.3128 of 2013 has been filed by the Plaintiff challenging the notice issued by the Competent Authority i.e. the Assistant Municipal Commissioner, "K" West Ward of the Municipal Corporation of Greater Mumbai, under section 3(Z) of the Slum Act, on the ground that the Plaintiff has carried out unauthorised construction in the area which is earmarked for a slum redevelopment scheme. The Petitioner claims to be the owner of the said structure and it is his case that the Plaintiff is not entitled for permanent alternate accommodation and it is the

Petitioner/Applicant who is so entitle. The Petitioner therefore sought his impleadment in the Suit on the said basis.

3 The Trial Court has rejected the said application on the ground that the Suit concerns the legality or otherwise of the notice issued under the Slum Act, the issue of ownership is therefore not an issue before the Trial Court. The Trial Court observed that though the Petitioner/Applicant was the complainant, his presence is not necessary for the adjudication of the Suit which has been filed essentially for challenging the notice issued under the Slum Act.

4 In my view, no fault can be found with the order passed by the Trial Court rejecting the application for impleadment filed by the Petitioner/Applicant. As indicated above, the Petitioner/Applicant lays claim to the said structure on the basis that he is the owner and that he is thereby entitled to allotment of permanent alternate accommodation and the Plaintiff is not so entitled. It is required to be noted that the Competent Authority has declared the Applicant as ineligible for rehabilitation by allotment of permanent alternate accommodation. Against the said ineligibility, the Applicant has filed an Appeal before the Slum Rehabilitation Authority, which is pending. Hence the right of the Applicant to be included in the Annexure-II, would be contingent upon the decision that would be rendered in the Appeal.

The Trial Court has therefore rightly observed that the two aspects are distinct, that is the challenge to the notice and the Applicant's grievance in respect of his ineligibility.

5 The refusal of the Trial Court to allow the impleadment of the Petitioner/Applicant hence cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

6 Needless to state that the Appeal filed by the Petitioner/Applicant before the Appellate Authority in respect of his eligibility would be tried on its own merits and in accordance with law, uninfluenced by the instant order.

[R.M.SAVANT, J]