

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1529 OF 2001

Khialram Co-op. Housing Society Ltd. .. Petitioner
vs.
Ulhasnagar Municipal Corporation & Anr. .. Respondents

None for Petitioner.
Mr. Vijay Patil for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 18 APRIL 2015

P.C. :-

1] By order dated 8 February 2002, Rule was issued in this matter and further proceedings in Regular Civil Suit No. 213 of 1999 pending before the Civil Judge, Junior Division, Ulhasnagar were stayed.

2] The suit, wherein the impugned order came to be made was instituted by Khialram Co-operative Housing Society, through its Chairman Shri Gopichand Rohra against the Ulhasnagar Municipal Corporation. The reliefs in the plaint, read thus :-

“(a) for injunction restraining the defendant corporation from obstructing the plaintiff - society from constructing the compound wall.

(b) in alternative order the defendant to issue letter of permission for construction of the protective compound wall,

(c) by order of injunction the defendant be restrained from allowing any person to change the user of the flats or convert

it in commercial user/ shops,
(d) Pending the hearing and disposal of the suit ad interim
injunction in terms of clauses (a) and (c),
(e) provide costs of the suit,
(f) grant other relief as may be just in the circumstances of
the case.”

3] By application dated 8 February 2000, one Shri Deepak Sawlani, claiming to be the Secretary of the society applied under Order 1 Rule 10 (2) of the CPC that he be joined as a party in the suit, since, the Chairman Shri Gopichand Rohra had since been expelled from the society and despite said expulsion, the Chairman without any authority from the society, has preferred the suit in the name of the society.

4] The learned Civil Judge on hearing the parties, has allowed the application under Order 1 Rule 10 (2) of the CPC but directed that the applicant be impleaded as plaintiff no. 2 in the suit, on the ground that the applicant was a necessary party and further, the presence of the applicant would assist in the effective adjudication of the issues involved in the suit.

5] In so far as, the finding that the applicant being a necessary party to the suit, there is no necessity to interfere with the same. This is because, as observed by the learned Civil Judge, there was

prima facie evidence brought on record by the applicant with regard to his status qua the society as also the status of Gopichand Rohra qua the society. However, the Civil Judge, could not have directed the joinder of the applicant as plaintiff no. 2 in the suit. This would virtually create a situation, whereby the original plaintiff no. 1 and the applicant, who has been directed to be impleaded as plaintiff no. 2, would have opposing view points to present. The appropriate order therefore should have been to implead the applicant as defendant no. 2 in the suit. Accordingly, the impugned order is modified and it is directed that the applicant in application at Exhibit '18' i.e. Shri Deepak C. Sawlani shall be impleaded as defendant no. 2 in the suit.

6] Further, substantial time has elapsed since institution of the suit. It appears that an Administrator was appointed to manage the affairs of the society and the said Administrator also came to be impleaded as a respondent in the present petition. It is also possible that fresh elections have been made and new office bearers have taken charge of the society.

7] Accordingly, it would be appropriate if the learned Civil Judge frames a preliminary issue as to whether the suit as it stands, can be said to have been properly instituted as of today. Opportunity

can always be given to the society to bring on record, its present office bearers, if any. Such preliminary issue should be decided within a period of three months from today.

8] In case, there is occasion to proceed further with the suit, the learned Civil Judge is directed to dispose of the suit finally, within an outer limit of nine months from today. This is because the suit is of the year 1998 and further the reliefs in the said suit seek a restraint against a Municipal Corporation, from taking action against certain constructions or proposed constructions, which in the opinion of the Municipal Corporation may not be legal and proper.

9] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

10] The respondent no. 1 i.e. the Municipal Corporation to appear before the learned Civil Judge on 30 April 2015 and produce authenticated copy of this order.

11] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)