

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8228 OF 2015
WITH
WRIT PETITION NO.8146 OF 2015
WITH
WRIT PETITION NO.8245 OF 2015

Karthik Govardhan Shetty ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai and anr. ... Respondents

Mr. Pradeep J. Thorat for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : 14TH AUGUST, 2015

P.C. :

Heard Mr. Thorat, learned Counsel for the petitioner at length.

2. By these Petitions under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and orders dated 31.07.2015 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai in Chamber Summons taken out by the Kumbharkala Co-op. Housing Society Limited (for short 'Society'). Since common questions of law and fact arises in these Petitions, the same can be conveniently disposed of by this common order. In order to appreciate the controversy between the parties, facts from Writ Petition No.8228 of 2015 are taken into consideration.

3. In support of this Petition, Mr. Thorat submitted that the petitioner, hereinafter referred to as plaintiff, has instituted Suit against respondent No.1, hereinafter referred to as defendant No.1, challenging the notice dated 31.03.2011 issued by the defendant No.1 under Section 351 of the Mumbai Municipal Corporations Act, 1888 (for short 'Act').

He submitted that the Suit is instituted in the year 2011. The Society took out Chamber Summons in 2015 inter alia contending that it is allottee of land bearing Survey No.41, CTS No.3-B (part) admeasuring 4.5 acres (18000 sq.mtrs.) or thereabout for housing purpose.

4. The said property was allotted by Collector MSD to the Society vide an agreement dated 29.01.2010, which is registered with the Sub-Registrar, Borivali.

5. By the impugned order, the learned trial Judge allowed the Chamber Summons. Mr. Thorat submitted that the Society is neither a necessary nor a proper party. The plaintiff has challenged the notice issued under Section 351 of the Act on various grounds. The Society does not claim any interest in the structures of the plaintiff. Society, therefore, cannot claim to be either a necessary or a proper party. In support of his submissions, he relied upon the decision of the Apex Court in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay*, (1992) 2 SCC 524 and in particular paragraphs 8, 9, 13 and 14 thereof. He also invited my attention to the decision of the Apex Court in the case of *Aliji Momonji & Co. Vs. Lalji Mavji*, (1996) 5 SCC 379. He submitted that the plaintiff is a dominus litis and in case the plaintiff does not implead party who is a necessary party, the Court can pass appropriate order including dismissal of the Suit. However, a party cannot be foisted upon the plaintiff. He submitted that Society has neither legal nor direct interest in the subject matter of the Suit namely the constructions carried out by the plaintiff. The constructions made by the plaintiff are authorized and accordingly, he has challenged notice issued by the Corporation under Section 351 of the Act.

6. I have considered the submissions advanced by Mr. Thorat. I have also perused the material on record. As noted earlier, the plaintiff has instituted Suit challenging notice issued by the Corporation under Section 351 of the Act. During the pendency of the Suit, Society filed Chamber Summons for impleadment. In support of the Chamber Summons, Society filed affidavit in support. The Society has claimed that it has been allotted land as per agreement dated 29.01.2010, where the structures are erected by the plaintiff. The said agreement is registered. The land is allotted by the State Government for housing purposes to the society. It is further contended that on 28.06.2010, Society approached the Collector as to when the possession will be handed over. On enquiry, the Society learnt that the plaintiff herein has instituted Suit No.393 of 2010 in the Bombay City Civil Court, Dindoshi. In that Suit, status-quo orders were passed by the Court against the defendant therein. The Society, therefore, took out Chamber Summons No.393 of 2010 for impleading it as party defendant. The said Chamber Summons was allowed. In paragraph 6, the Society gave reasons for impleading it as a party defendant. The learned trial Judge has considered this aspect in paragraph 11 of the impugned order. It was noted that the plaintiff does not claim ownership over the land. The land belongs to the State Government and the State Government has allotted the land to the Society. The Society, therefore, has direct interest in the litigation particularly when it contends that plaintiff has made unauthorized construction. The learned trial Judge, therefore, held that the principles laid down by the Apex court in the case of **Aliji Momonji & Co.** (*supra*) are applicable in the facts of the present case.

7. Mr. Thorat relied upon the decision of the Apex Court in the case of **Ramesh Hirachand Kundanmal** (*supra*). In paragraph 14, the Apex Court has observed thus,

“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 objectives. 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 questions involved and has thought or 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 wider construction of 10 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. 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.*, (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A v. Bank of England*, (1950) 2 All E.R. 611, that the 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 intervenor in the enjoyment of his legal rights.'"

8. Perusal of paragraph 14 extracted hereinabove shows that when person claims interest in the action, it is necessary for him to show that he is directly or legally interested in the action, that is, he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.

9. In the case of **Aliji Momonji & Co.** (*supra*), in paragraph 5, the Apex Court has observed thus,

"5. 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* [supra], 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 & Ors.* [(1994) 1 SCC 402] 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 lease-hold interest involved in the suit. In *Union of India & Anr. vs. District Judge, Udhampur & Ors.* [(1994) 4 SCC 737] 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 State Electricity Board vs. State of Bihar & Ors.* [(1999) 4 Supp. 3 SCC 743] 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* [(1995) 3 SCC 147] similar question was answered holding that the respondent was a necessary party.”

10. Mr. Thorat distinguished decision of **Aliji Momonji & Co.** (*supra*) on the ground that in that case, landlord who made application for impleadment was owner of the building. In respect of portion of the building, the Corporation had issued notice under Section 351 of the Act. In the present case, Society does not claim ownership or any interest over the structures and merely claims to be allottee of the suit land. In my opinion, that will hardly make any difference. The Society being allottee of the land is interested in protecting their land and cannot be expected to permit persons to carry out unauthorized construction. In my opinion, the decision of **Aliji Momonji & Co.** (*supra*) applies on all fours to the facts of the present case. Even considering the decision of the Apex Court in the case of **Ramesh Hirachand Kundanmal** (*supra*) and in particular paragraph 14 thereof, the person must have direct or legal interest 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**. In the present case, the learned trial Judge has held that the Society has direct interest in the litigation. I do not find that the learned trial Judge has committed any error in that regard. Having regard to the averments made in the affidavit in support of the Chamber Summons, it cannot be said that the Society is not a proper party. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. 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.)