

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2377 OF 2006

**WITH
CHAMBER SUMMONS NO. 83 OF 2007
AND
CHAMBER SUMMONS NO. 183 OF 2010**

Haji Munir Ahmad Mansoori	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

**WITH
CHAMBER SUMMONS NO. 117 OF 2007
WITH
CHAMBER SUMMONS NO. 174 OF 2007
WITH
NOTICE OF MOTION NO. 370 OF 2007
WITH
NOTICE OF MOTION NO. 375 OF 3007
WITH
NOTICE OF MOTION NO. 386 OF 2007
WITH
NOTICE OF MOTION NO. 506 OF 2007
WITH
NOTICE OF MOTION NO. 328 OF 2008
WITH
CHAMBER SUMMONS NO. 239 OF 2008
WITH
NOTICE OF MOTION NO. 403 OF 2009
WITH
CHAMBER SUMMONS NO. 75 OF 2009
WITH
CHAMBER SUMMONS NO. 59 OF 2011
WITH
NOTICE OF MOTION NO. 84 OF 2012
WITH
NOTICE OF MOTION NO. 234 OF 2012
ALL IN
WRIT PETITION NO. 2377 OF 2006**

Mr. P. K. Dhakephalkar – Senior Advocate with Mr. Karl F. Tamboly i/b. M/s. Anup Khaitan and Co. for the Petitioner.

Mr. I. K. Calcuttawala – AGP for Respondent Nos. 1 to 3.

Mr. Girish D. Utangale with Mr. Chetan Mhatre i/b. M/s. Utangale and Co. for Respondent Nos. 4 to 7.

Mr. S. U. Kamdar – Senior Advocate with Mr. Vicky Pahuja i/b. M/s. Naik Naik and Co. for Respondent No. 8.

Mr. Venkatesh Dhond – Senior Advocate i/b. Mr. Munir Merchant for Respondent No. 10.

Ms. Usha Gadagkar with Ms. Huda Diamondwala i/b. M/s. Diamondwala and Co. for the Applicant in CHSW/183/2010.

Mr. Karupasvami Raja Devendra – Chairman of Applicant Society present in person.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- OCTOBER 29, 2015

P.C. :-

Writ Petition No. 2377 of 2006 was placed along with another Writ Petition before us. Writ Petition 2377 was not admitted by this Court though from time to time some orders have been passed. These orders are fairly detailed and some of them have even been questioned and challenged in the Hon'ble Supreme Court of India.

2) Today, when this Writ Petition was placed before us, Mr.Dhakephalkar, learned Senior Counsel appearing for Petitioner Haji

Munir Ahmed Mansoori states, on instructions, that leave be granted to withdraw this Writ Petition. Mr. Dhakephalkar would submit that this leave is sought on account of certain subsequent events and developments.

3) This request of Mr. Dhakephalkar to grant leave to withdraw this Writ Petition is firstly opposed by V. P. Nagar Samanvay Samiti. They state that they have moved Chamber Summons No. 83 of 2007 in this Writ Petition. That Chamber Summons filed on 9th March, 2007 seeks leave to intervene in the Writ Petition and to be added as a party Respondent thereto.

4) Mr. K. R. Devendra, who has filed this Chamber Summons has stated on oath that an agreement for development was executed on 9th October, 1995 in respect of the slums situated at Worli. One M/s.Topworth Properties Private Limited agreed to develop this property and further pay a sum of Rs.250 lacs towards corpus fund. A sum of Rs.10 lacs was to be paid on execution of this agreement. Thus, there is a grievance made that there is no progress subsequent to this agreement. Therefore, through out, it is stated that a meeting of the Society was held and the members unanimously passed a resolution terminating the agreement with M/s. Topworth Properties Private Limited. Thereafter, further events have been narrated. In para 8, it is

stated that there is an existing body of V. P. Nagar residents. It is stated that this association is registered under the Societies Registration Act, 1860 and our attention is invited to the copy of registration certificate at page 176 of the paper book.

5) It is stated that Petitioner Haji Munir Ahmad Mansoori did not file the Petition as an individual, but for and on behalf of this Samiti/Association. In these circumstances, if leave to withdraw the Writ Petition is granted, that would prejudicially affect the rights of the parties seeking to intervene in the Writ Petition. The plight of slum dwellers is highlighted and it is stated that it would not be possible for them to institute any fresh or further litigation. In any event, it is stated that the application seeking leave to withdraw the Petition is not bonafide.

6) Similar request is made by the Applicants in Chamber Summons No. 183 of 2010.

7) We have heard Ms. Usha Gadagkar appearing in support of that Chamber Summons. There also, we find that the prayer is identical. The prayer in Chamber Summons No. 183 of 2010 is also of intervention at the hearing of the Petition and one Trilok K. Singh has filed an affidavit in support of this Chamber Summons. Though the

Chamber Summons contains a prayer seeking amendment of the Writ Petition, what we find is that the request for amendment comes in the wake of the same set of allegations, namely, Haji Munir Ahmad Mansoori is now not the Chief Coordinator of the V. P. Nagar Samanvay Samiti. He has shifted his loyalty and is supporting the Builder M/s.Topworth Properties Private Limited, whose agreement has been terminated. In these circumstances, Haji Munir Ahmad Mansoori will have no locus to represent the Society. However, the association was originally formed by Haji Munir Ahmad Mansoori and he approached the Court for and on behalf of the Samanvay Samiti. Therefore, leave to withdraw the Writ Petition should not be granted. More so when the conduct of the said Petitioner is lacking in bonafides. Reliance is placed upon a Division Bench Judgment of this Court in the case of *Vijay Kumar Gupta vs. State of Maharashtra* reported in **(2008) 3 BCR 593**.

8) We have heard all parties in support and against the prayers in the Chamber Summonses. Since the opposition comes from persons claiming to be slum dwellers, we have given our anxious and serious consideration to these submissions and objections.

9) However, we find that leave to withdraw the Writ Petition in the present facts and circumstances deserves to be granted. Petitioner Haji Munir Ahmad Mansoori may have his own reasons in

seeking leave to withdraw the Writ Petition, however, he is the sole Petitioner. The Petition as originally filed by him may be in the capacity of Chief Coordinator of V. P. Nagar Samanvay Samiti, however, we do not find that this was the only entity claiming to be espousing the cause of the slum dwellers. Respondent No. 10 to the Petition is one Bashir Khan and he is impleaded in his capacity as Chief Promoter of V. P. Nagar Residents Co-operative Housing Society (Proposed). We are informed that later on this Society has been registered. In such circumstances, we do not know in what capacity the said Haji Munir Ahmad Mansoori and Applicants in the Chamber Summons seek to represent the case of the occupants and slum dwellers. Be that as it may, we do not find that the withdrawal of the Writ Petition would cause prejudice to the above Applicants in any manner. Both the Applicants are essentially seeking leave to intervene at the hearing of the Writ Petition. If the sole Petitioner does not wish to proceed with the Writ Petition, we cannot compel him to do so. This is not a case where larger public interest is involved or that the withdrawal will affect the interest of such parties and entities who are being represented by the original Petitioner. In the circumstances, the Judgment of the Division Bench in the case of *Vijay Kumar Gupta* (supra) will not apply.

10) As a result of the above discussion, we grant leave to withdraw this Writ Petition. The Writ Petition is dismissed as withdrawn. Needless to clarify that the withdrawal of this Writ Petition after it is pending in this Court for a considerable length of time would not prejudice the case of the interveners seeking to intervene at the hearing of the Writ Petition by filing Chamber Summonses and applications in that behalf. The Chamber Summonses will not survive once the Writ Petition itself stand disposed of. Hence, they are also disposed of as such. However, the Applicants to the Chamber Summonses can file their own independent proceedings. We clarify that all contentions in such fresh proceedings are kept open. The withdrawal of the present Petition shall not prevent these applicants from filing their own proceedings in accordance with law. However, we clarify that our orders and any opinion expressed therein will not preclude and prevent all parties from raising appropriate contentions. Each one of them are thus kept open. The Chamber Summonses are also disposed of accordingly. All applications, either by way of Chamber Summonses or Notice of Motions are disposed of.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)