

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 9698 OF 2016

M/s.United Housing Corporation,
Office at Tilak Road,
Santacruz (W), Mumbai – 54. ... Petitioner

v/s

1. Shri Nishit Jayvardan Tikawala alias Patel
2. Municipal Corpn. Of Gr. Mumbai
3. State of Maharashtra ... Respondents

Mr.J.N.Jayale for the petitioner.
Mr.P.J.Thorat for Respondent No.1.
Mr.Vinod Mahadik for Resp. No.2 B.M.C.
Mr.S.D.Rayrikar, A.G.P. for Resp. No.3.

Coram: N.M. Jamdar, J.

Dated: 29 August 2016

ORAL ORDER:

The Petitioner challenges the order dated 4 August 2016 allowing the chamber summons filed by the Respondent/Plaintiff for amendment of the plaint. The Respondent/Plaintiff has filed the suit for a declaration and seeking certain injunctive relief against the Municipal Corporation. The application for amendment was moved on the premises that, after institution of the suit the premises stand demolished and, therefore, necessary pleadings to that effect and a

prayer will have to be incorporated. This amendment has been allowed by the impugned order. Learned counsel for the Petitioner submitted that the premises themselves are not in existence and the amendment is only to prolong the litigation. He submitted that the redevelopment work is in progress and such amendment will affect the petition.

2 The Respondent/Plaintiff has moved the amendment on the ground that demolition of the suit premises have taken place. Merely because the amendment is allowed, does not mean that the averments made in the amended portion also stand admitted or accepted. The observations made by the learned City Civil Court Judge in granting the amendment are not to be construed as reflection on merits of the amended portion. It is open to the Petitioner to file written statement/additional written statement to oppose any relief sought on the amended portion on its own merits. Therefore, by way of this amendment, it cannot be said that there is any failure of justice has occasioned. The jurisdiction under Article 227 of the Constitution of India, is not to be exercised to correct every error.

3 Keeping all contentions of the parties as regard the amended portion open, the writ petition is disposed of.

(N. M. Jamdar, J.)