

Sequeira

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

WRIT PETITION NO. 10668 OF 2016

Shreedharan Thallyaparambil.

.. Petitioner

Vs

Municipal Corporation of Greater
Mumbai & ors.

.. Respondents

Mr.P.D.Dalvi a/w P.C.Kansra i/b Kansara & Thanekar, for the
Petitioner.

Mr.Vinod Mahadik, for Respondent Nos.1 to 5-BMC.

Mr.J.S.Kini i/b Suresh Dubey, for Respondent No.6.

***CORAM : N.M.Jamdar, J.
Saturday, 15 October 2016.***

P.C. :

In view of the short point involved the Writ Petition is taken
up for disposal forthwith by consent.

2. The Petitioner is aggrieved by the order dated 30 June 2016
passed by the learned Additional Chief Judge, Small Causes Court
Mumbai, allowing the application filed by Respondent No.6 in
Municipal Appeal No.12 of 2016 arising from the renewal of license
under section 394 of the Mumbai Municipal Corporation Act, 1888.

3. Heard learned counsel for the parties.

4. The learned counsel for the Petitioner relying upon the decision of the learned Single Judge in the case of *M.G.Sarasappa Kurup Vs Municipal Corporation of Greater Bombay & others – 2001(3) Bom.C.R.425* submitted that the order passed by the learned Chief Judge is erroneous as question of title is not relevant while deciding the Appeal under section 394 of the Corporation Act. He submitted that what was under consideration is only a question whether all licenses should be renewed. He submitted that merely because complaints have been filed by Respondent No.6 she does not become necessary or proper party. He submitted that the application is filed invoking the provisions of Code of Civil Procedure and therefore, learned Judge ought to have considered the parameters for joining party against whom no relief is sought. The learned counsel for Respondents relied upon the order passed by the Division bench of this Court in Writ Petition Lodging No.1888 of 2014 which was filed by the Petitioner in respect of orders / communications dated 11 June 2014 and 12 June 2014. These communications were withdrawn by the Municipal Corporation with liberty to issue show cause notice and pass the orders. After hearing the parties the Division bench specified that it would include the Respondent No.6 as well. Pursuant to this order proceedings took place before Deputy Municipal Commissioner Zone V. In the order dated 10 February 2016 it is stated by the

Commissioner that as per the order passed by the Division bench, the proceedings were conducted the matter was discussed on 30 January 2016, when the son of Respondent No.6 was present. It is stated that Assistant Municipal Commissioner was directed to give hearing to Respondent No.6 and obtain factual report. Thereafter the hearing was arranged on 10 February 2016 and intimation letter was sent to Respondent No.6. Respondent No.6 submitted parawise remarks. The contentions of Respondent No.6 were considered and when the order was passed copy of the order was marked to the Petitioner as well as Respondent No.6. It is in these circumstances that the learned Judge has found it necessary to join Respondent No.6. Though the provisions of the Code have been referred to, the proceedings are not a regular civil suit. Though it may be that the scope of the proceeding is limited but since in the original proceedings Respondent No.6 has been allowed to be participated, the order which permits the Respondent No.6 to participate in the appeal proceedings cannot be stated to be erroneous exercise of power. The facts in *M.G.Sarasappa's* case, were not as are in the present case. In *M.G.Sarasappa's* case, there was no earlier order of this Court or participation of the complainant in the original proceedings.

5. As far as the contention of the learned counsel for the Petitioner regarding the scope of the proceedings is concerned, merely because the Respondent No.6 is joined as a party it cannot be

assumed that the learned Additional Chief Judge, Small Causes Court Mumbai will exceed the jurisdiction and pass orders beyond the scope of the proceedings as contemplated in law. The appeal will have to be decided within the parameters laid down and even assuming Respondent No.6 advances various contentions ultimately, learned Additional Chief Judge, Small Causes Court Mumbai, will decide the appeal within the parameters.

6. In these circumstances, in the facts of the present case, no interference is warranted in the impugned order. Writ petition is rejected.

(N.M.Jamdar, J.)