

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10512 OF 2014

Sanjeev M. Gorwadkar

.. Petitioner

vs.

Becharlal Jivraj Shah and Ors.

.. Respondents

WITH

WRIT PETITION NO.10513 OF 2014

WITH

WRIT PETITION NO.10514 OF 2014

WITH

WRIT PETITION NO.10515 OF 2014

WITH

WRIT PETITION (ST). NO.29173 OF 2014

WITH

WRIT PETITION (ST). NO.29197 OF 2014

WITH

WRIT PETITION (ST). NO.29198 OF 2014

WITH

WRIT PETITION (ST). NO.29200 OF 2014

Mr.Niranjan A. Mogre i/b Ms.Sana Yurus Baugwala for the petitioner in all Writ Petitions

Mr.M.L.Palan i/b Mr.J.P.Thakkar for the respondent no.1 in Writ Petition No.10512 of 2014, 10515 of 2014, Writ Petition (ST). No.29173 of 2014, 29197 of 2014, 29198 of 2014 and 29200 of 2014

Ms.Rupali Pandit i/b Ms.Eventa A. Gonsalves for the respondent no.1 in Writ Petition No.10513 of 2014

CORAM : K. K. TATED, J.
DATE : JULY 28, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 All these petitions can be disposed off by common order. The issue involved is “whether the petitioner landlord is necessary party in Suit filed by the occupant challenging the notice issued by the Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888?”

3 In the present proceeding, the Corporation issued notice to the respondent plaintiff under section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of unauthorised construction. Those notices were challenged by the respondent occupants before the Bombay City Civil Court, Mumbai by filing various Suits. In those Suits, the petitioner landlord preferred Chamber Summons for joining him as party defendant on the ground that landlord is a necessary party in such type of Suits.

4 Chamber Summons preferred by landlord were rejected by Trial

Court by order dated 5.3.2015. Hence, the present Writ Petitions.

5 The learned counsel for the petitioner landlord submits that the court below failed to consider the fact that if any order is passed in the Suits, in respect of unauthorised construction, same will affect the landlord's right. He submits that in several judgments, this Hon'ble Court as well as Apex Court held that the landlord is a necessary party in a Suit in which the occupants challenges the notice issued by the Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of unauthorised construction. In support of this contention, the learned counsel for the petitioner relies on following judgements:

- 1) *Adam A. Sorathia and another vs. Municipal Corporation of Greater Bombay and another*, 2001(3) Mh.L.J.288 paragraph 16, 17 and 18.
- 2) *Apex Court Judgment in the matter of Aliji Momonji & Co. vs. Lalji Mavji and others*, 1996(5) SCC 379 paragraph 5.
- 3) *Lodha Properties Development private notice either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect. Limited vs. Kedia Holdings private notice either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect. Limited*, 2015(5) BCR 231, paragraph 10, 11 and 12.
- 4) *M/s.Venus Housing Enterprises vs. Parmy Manufactory Co.Pvt.Ltd. & Anr.* 1997 Bom L.R.(Vol.100) 364, paragraph 11 and 12.
- 5) *Ranjitsingh Linga vs. Municipal Corporation of Greater Mumbai*, 2010(2) ALL MR 537, paragraph 12 and 13.
- 6) *The Apex Court judgment in the matter of Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar and anoter*, AIR 1963 SCC 786 paragraph 7.

6 The learned counsel for the petitioner landlord submits that in all these authorities, the Apex Court as well as our High Court held that

landlord is a necessary party in a Suit where the occupants/tenants challenges the notice issued by the Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888. He submits that if any order is passed by the Trial Court in the said Suit, that will affect the petitioner landlord's interest in his property.

7 On the basis of these submissions and the authorities the learned counsel for the petitioner submits that this Hon'ble Court be pleased to set aside the order passed by Trial Court in respect of Chamber Summons and direct the respondent plaintiff to join the petitioner landlord as defendant in Suit with liberty to file written statement and contest the matter on its own merits.

8 On the other hand the learned counsel for the respondents org.plaintiffs vehemently opposed the present Writ Petition. He submits that as per provisions of Code of Civil Procedure, 1908 plaintiff has to decide the parties in the Suit. He submits that on the basis of this principal, the applications filed by the landlord before the Trial Court for joining him as a party was correctly rejected. He submits that landlord is not a necessary party and or proper party in suits filed by plaintiff. He submits that plaintiff challenges the notice issued by the Corporation u/s 351 of the Mumbai Municipal Corporation Act, 1888 in respect of alleged unauthorised construction. He submits that plaintiff has to prove his case on its own merits. Therefore, landlord is not a necessary party. On the basis of these submissions, the learned counsel for the plaintiff submits that there is no substance in all these petitions and same are required to be dismissed with costs.

9 I have heard both the sides at length. It is to be noted that in all

these matters, the issue involved is whether the landlord is necessary / proper party in a suit filed by tenant occupant challenging the notice issued by the Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888.

10 The issue involved in all these matters are already covered in the authorities as stated by the learned counsel for the petitioner. In all these authorities, the Apex Court as well as this court categorically held that landlord is necessary party. Apart from that Apex Court in the matter of *Udit Narain Singh Malpaharia vs. Additional Member, Board of Revenue, Bihar* (Supra) held that necessary party is one without whom no order can be made effectively. In the present proceeding, the petitioner landlord can place relevant documents before the Trial Court to decide the suits filed by the respondent on its own merits.

11 Considering these facts and the authorities as cited hereinabove, I am of the opinion that the impugned orders passed by Trial Court are required to be set aside with direction to the plaintiff to join petitioner landlord as party defendant in their respective suits. Hence, following order is passed:

- a) All these petitions are allowed.
- b) Impugned orders passed by Trial Court rejecting petitioner's chamber Summons are set aside.
- c) Chamber Summons preferred by petitioner for joining them as party defendant in respective suits are allowed.
- d) Respondent plaintiff are directed to carry out appropriate amendment in their respective suits and pending

proceeding by joining petitioner landlord as party defendant within six weeks from today.

e) After carrying out amendment, plaintiff to serve amended copy of plaint as well as other proceeding either on petitioner and/or petitioner's advocate immediately thereafter within two weeks.

f) If amendment is not carried out by the plaintiff within stipulated time as stated hereinabove, liberty granted to the petitioner landlord to carryout appropriate amendment in plaint and other proceedings.

g) If amended copy of plaint is served on petitioner immediately, then they have to file their written statement within four weeks thereafter.

h) Hearing of all these Suits are expedited.

i) All the Writ Petitions stand disposed off accordingly.
Parties to act on authenticated copy of this order.

JUDGE