

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11587 OF 2015

Mrs. Khursheed Ebrahim Malkani .. Petitioner
vs.
Mushtaq Usman Haji Mohammed
s/o. deceased Usman H. Mohammed and ors. .. Respondents

WITH
WRIT PETITION NO. 11589 OF 2015

Mrs. Khursheed Ebrahim Malkani .. Petitioner
vs.
Mohammed Aslam Haji Usman and ors. .. Respondents

WITH
WRIT PETITION NO. 11590 OF 2015

Mrs. Khursheed Ebrahim Malkani .. Petitioner
vs.
Mohammed Shakil Gulam Mustafa and ors. .. Respondents

WITH
WRIT PETITION NO. 11591 OF 2015

Mrs. Khursheed Ebrahim Malkani .. Petitioner
vs.
Mohammed Sardar Haji Usman and ors. .. Respondents

WITH
WRIT PETITION NO. 11592 OF 2015

Mrs. Khursheed Ebrahim Malkani .. Petitioner
vs.
Mohammed Sayyed H. Zahooruddin and ors. .. Respondents

WITH
WRIT PETITION NO. 11593 OF 2015

Mrs. Khursheed Ebrahim Malkani .. Petitioner
vs.
Rasool Ali Ahmed and ors. .. Respondents

Mr. Anand H. Singh for the Petitioner.
Mr. S. Nagvadaria i/b Mr. Pankaj Bafna for Respondent No.1.
Mr. Vinod Mahadik for BMC.

CORAM : M. S. SONAK, J.
DATE : 12 JANUARY 2016.

P.C. :-

1] Rule in each of the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] Learned counsel appearing for the parties agree that the orders impugned in these petition are virtually identical in material contents and therefore, these petitions can be disposed of with common judgment and order.

3] By the impugned orders, the Small Causes Court at Mumbai has rejected the Petitioners' applications seeking intervention in the municipal appeals instituted by the Appellants therein, questioning certain notices issued by the Municipal Corporation of Greater Mumbai (MCGM), in the matter of activities undertaken by the said Appellants in their respective suit premises.

4] The Petitioner claim to be the owner of the suit premises. It is the case of the Petitioner that the notices, which have been

impugned in the appeals, were issued on the basis of the complaint made by the Petitioner. If the impugned orders are perused, including more particularly paragraph '7' thereof, it is revealed that it is also the case of the Appellants in the said appeals that the Petitioner has joined the hands with the MCGM, in the matter of issuance of notices impugned in the appeals.

5] In a matter of this nature and particularly considering the allegations made by the Appellants that the Petitioner has joined hands with the MCGM, in the matter of issuance of impugned notices, it cannot be said that the presence of the Petitioner is not necessary for the purposes of full and effective adjudication of the issues raised in the appeals. In fact, the presence of the Petitioner would facilitate the adjudication of all the issues which arise in the matter. In absence of the Petitioner, it will not be proper to permit the Appellants in the appeals to make allegations against the Petitioner, in the matter of issuance of notices which have been impugned in the appeals. On this ground, the impugned orders are liable to be set aside.

6] In similar circumstances, this Court in case of *Lodha*

Properties Development Pvt. Ltd., Mumbai Vs. Kedia Holdings Pvt. Ltd., Mumbai and ors – 2015(3) Mh.L.J. 61, permitted the impleadment. In the facts and circumstances of the said case, the party seeking impleadment had claimed ownership of the suit premises. Further, the notices had been issued by the Municipal Authorities on the basis of complaints made by the said party. The said party had also filed a civil suit seeking eviction of the Plaintiff in the suit in which impleadment was applied for. In the proceedings in which impleadment was applied for, the Plaintiff had made allegations of collusion with the Municipal Authorities. Considering all these facts, this Court has taken the view that presence of such party was necessary and therefore, impleadment was allowed.

7] In the present case, as well apart from the aforesaid similarity, it is to be noted that the Appellants have already filed R.A.D. Suit before the Small Causes Court, Mumbai, wherein the Petitioner has already been impleaded as a Defendant. Thus, the Petitioner is by no means a stranger to the disputes relating to suit premises. That apart, for the reasons referred to hereinabove, presence of the Petitioner is necessary for full and effective adjudication of the issues, which arise in the appeals. The impugned orders are

therefore, set aside and the Petitioner's application seeking intervention in the said appeals stand allowed.

8] Rule is made absolute to the aforesaid extent. There shall however, be no order as to costs.

9] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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