

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1047 OF 2016**

1. Mr. Keval Kumar Bedi and Ors.	Petitioners
Vs	
1. The Municipal Commissioner, Municipal Corporation of Gr.Mumbai and Ors.	.. Respondents

Mr. Akhilesh Dubey a/w V.Mishra i/b M/s. Law Counsellors,
Advocate for Petitioners.

Mr.Vinod Mahadik, Advocate for Respondents no.1 and 2.

Mr. Harish R. Pawar i/b Kuldeep Patil, Advocate for Respondent
no.3.

CORAM : R.G.KETKAR,J.

DATE : 16/02/2016

PC:

1. Heard Mr. Akhilesh Dubey, learned counsel for the petitioners, Mr. Vinod Mahadik, learned counsel for respondents no.1 and 2 and Mr. Harish Pawar, learned counsel for respondent no.3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 4.12.2015 passed by the learned Judge presiding over Court Room no.8 of City Civil Court, Greater Bombay in Chamber Summons No.1582 of 2015 in L.C. Suit No.622 of 2015. By that order, the learned trial Judge allowed the Chamber Summons in terms of prayers clause (a) to (c) taken out by respondent no.3.

3. In support of this petition, Mr. Dubey submitted that the petitioners, hereinafter referred to as 'plaintiffs' have instituted

suit, inter-alia, praying for declaration that Notice/Order dated 13.2.2015 passed by respondent no.2- Assistant Commissioner and inspection letter dated 15.1.2015 are perverse, illegal, void and bad-in-law; for perpetual injunction restraining the respondents no.1 and 2 from demolishing the suit premises ad-measuring around 206.2 sq. meters, situate at shop no.2,3,4&5, Ground floor, Plot no.46-B, Chembur Santosh CHS, C.T.S No.393, C.S.T.Road, Sindhi Society, Chembur, Mumbai-400071 (for short suit premises).

4. In that suit, the applicant took out Chamber Summons for impleadment of it as a party defendant no.3 on the ground that by registered Deed of Conveyance dated 9.4.1990 the plot of land bearing Survey No.46-B, being a portion of larger plot of land admeasuring 7225 sq.yards, equivalent to 6041.39 sq. meters, part of Town Planning Scheme No.III, Municipal "M" Ward, situate at CST Road, Chembur, Mumbai, was conveyed in favour of the applicant. It is further contended that the applicant is the absolute owner of the said plot of land on which the society's building is constructed and wherein the suit premises are situate at the basement area of the society's building which is meant for open parking.

5. Mr. Dubey states that the applicant is neither a necessary nor a proper party as essentially the dispute is between the plaintiffs and respondents no.1 and 2 as to validity or otherwise

of notice issued under section 351 of the Mumbai Municipal Corporation Act, 1888. He, therefore, submitted that the impugned order is liable to be set aside.

6. On the other hand, Mr. Pawar supported the impugned orders. He submitted that the learned trial Judge has allowed the Chamber summons after considering the decision of Apex Court in the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524. In paragraph 10, the learned trial Judge noted the contention advanced on behalf of the applicant that construction is carried out on compulsory open parking. The applicant has also filed the copies of registered Conveyance Deed and Index-II. The said copies prima facie recite that the applicant is the owner of the disputed structure and building and it is the duty of the society to protect the interest of members of the said society. In paragraph 11 the learned trial Judge observed that due to construction on compulsory open parking space, society is affected. It also shows that legal interest of the society is involved in litigation and the society will be ultimately affected due to decision of the suit on merits. The learned trial Judge, therefore, held that the applicant is a proper party in the suit.

7. I do not find that the learned trial Judge has committed any error in allowing the Chamber Summons. In the case of Aliji Momonji and Co Vs Lalji Mavji, AIR 1997 SC 64, the Apex Court

observed in paragraph 5 that the construction which is sought to be demolished by the Municipal Corporation may be made with or without the consent of the landlord or lessor but the demolition will undoubtedly materially affect the right, title and interest in the property of the landlord. The said decision was considered by this Court in *Lodha properties Development Pvt Ltd Vs. Kedia Holdings Pvt Ltd*, 2015 (3) Mh.L.J. 61.

8. In view thereof, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

9. At this stage, Mr. Dubey seeks extension of three weeks time for carrying out amendment in the suit. Notwithstanding dismissal of the petition, time to carry out amendment for impleading applicant as party defendant no.3, is extended by three weeks from today, with further understanding that no extension of time will be sought for. Order accordingly.

(R.G.KETKAR, J.)