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

WRIT PETITION NO.4217 OF 2016

Parmanand Melhumal Jamtani ... Petitioner
V/s.
The State of Maharashtra and ors ... Respondents

**ALONGWITH
CIVIL APPLICATION NO.72 OF 2017
IN
WRIT PETITION NO.4217 OF 2016**

Sharad Yashwant Kokane .. Applicant

In the matter between

Parmanand Melhumal Jamtani ... Petitioner
V/s.
The State of Maharashtra and ors ... Respondents

Mr. S. S. Kanetkar, for the Petitioner.
Mr. S. M. Sabrad, for Applicant in
C.A.No.72 of 2017
Ms. Vikas Mali, AGP for the Respondent
No.1
Mr. D. R. More, for respondent Nos. 2 to 7.

**CORAM : NARESH H. PATIL &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 3rd MAY, 2017.

P.C. :

1] Learned counsel for Applicant in Civil Application

submits that a suit has been filed by petitioner against him and any order passed in this petition may affect his right, title interest. Therefore, applicant be allowed to intervene in this petition.

2] In view of above submission, application for intervention is allowed.

3] The petitioner prays for the following substantial reliefs :-

“(a) This Hon'ble Court be pleased to issue writ of mandamus and/or any other writ, order or direction in the nature of mandamus and thereby be pleased to direct Respondent Nos 2 to 7 forthwith take action under the provisions of Maharashtra Municipal Corporation Act, 1949 and Maharashtra Regional Town Planning Act 1966 to remove unauthorized construction carried out on the property bearing Survey No.6, Hissa Nos. 4 to 7 situated at Rahatani and further be pleased to direct to remove and demolish the said unauthorized construction carried out on the said property in accordance with the law.

(b) This Hon'ble Court be pleased to issue writ, mandamus and/or any other writ, order or direction in the nature of mandamus and thereby be pleased to direct the Respondent Nos. 5 and 6 to forthwith cancel and/or withdraw the said Notice dated 5th May 2015 addressed by the Respondent Nos. 5 and

6 to the Petitioner herein (Exhibit “H” to this Petition:)

(c) This Hon'ble Court be pleased to issue writ certiorari and/or any other writ, order or direction in the nature of certiorari and thereby be pleased to quash and set aside the Notice dated 5th May, 2015 addressed by the Respondent Nos. 5 and 6 to the Petitioner herein (Exhibit “H” to this Petition).

4] Counsel for the petitioner submits that the petitioner filed Special Civil Suit against intervener; wherein application for injunction came to be filed by the petitioner. By order dated 12.07.2013, Jt. Civil Judge Senior Division, Pune rejected application Exh.5 and Exh.35. Counsel further submits that the Corporation issued notice to the petitioner which is required to be quashed and set aside.

5] Counsel appearing on behalf of intervener submits that Civil Court has prima facie held in favour of the intervener. He submits that petitioner has no locus to file present petition seeking directions against Respondent Corporation which would affect intervener's right, title and possession.

6] We find that the parties are litigating in Civil Court. The

said suit has been filed by the petitioner wherein intervener is defendant. Therefore, we do not express any opinion on the subject matter of Civil Suit.

7] As regards issuance of notice dated 5.5.2015 by Respondent corporation against petitioner, we observe that the petitioner may file appropriate representation to the corporation. If such representation is filed, the respondent corporation would deal with the same in accordance with law and take appropriate decision.

8] Without expressing any opinion on merits, the petition is disposed of by keeping all points open .

[DR.SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]