

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7958 OF 2013

Malpani Jai Builders Pvt. Ltd. and Anr.Petitioners
Vs.
Nasik Municipal Corporation ...Respondent

Mr. L.K. Odhekar a/w. Ms. Janaki Bhide for Petitioners
Ms. Chaitrali Deshmukh for Respondent Nos.1 to 3
Mr. Sachin Gite for Respondent Nos. 5,6,7,9,10 and 11.

CORAM: M.S.SANKLECHA, J.
DATE : 6th SEPTEMBER, 2017.

P.C:-

1. This petition under Article 227 of the Constitution of India challenges the order dated 14th June, 2013 passed by the Joint Civil Judge, Senior Division, Nashik. By the impugned order, the application of Respondent Nos. 5 to 11 seeking to add themselves as party Defendants under Order 1 Rule 10 of the Civil Procedure Code (Code) to the suit was allowed.

2. The Petitioners i.e. the Original Plaintiffs being developers and builders had filed a suit being Special Civil Suit No. 438 of 2002 challenging the notice dated 7th August, 2002 received from Respondent No.1- Municipal Corporation seeking to demolish its alleged illegal construction being a part of building. In the aforementioned illegal construction, Respondent Nos. 5 to 11 (flat purchasers) have purchased

flats constructed by the Petitioners herein.

3. Mr. Odhekar, learned counsel appearing for the Petitioners in support of the petition submits that the application to add Respondent Nos. 5 to 11 should not have been allowed on account of gross delay filing the application in 2013 for being added as party defendants in respect of the suit filed in 2002. Further, the reliance is placed upon the Apex Court's decision in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors. [(1992) 2 Suprem Court Cased 524]** to contend that the cause of action which Respondent Nos. 5 to 11 may have against the petitioners is nothing to do with the cause of action arising in the suit viz. illegal construction of a building/ part of the building as alleged by the Municipal Corporation. Therefore, the application ought to have been dismissed.

4. The impugned order taking into account the fact that Respondent Nos. 5 to 11 herein – proposed Defendants are the innocent flat purchasers having purchased the flats from the Petitioners herein and are in possession of the flats in the building/ a part of which is sought to be demolished by the Corporation. Therefore, any orders passed by the Court would directly affect Respondent Nos.5 to 11. Consequently, it was held that Respondent Nos.5 to 11 would be proper parties in whose absence an effective order could be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The impugned order proceeds to hold that under Order 1 Rule 10(2) of the Code a proper party may be added to the proceedings at any stage of the proceedings. Thus the bar of commencement of trial etc. found in Order 7 Rule 17 of the Code is not invoked. The grievance of the Petitioners that Respondent Nos. 7 to 11 ought to have exercised their

rights independently and not seek to add themselves in the proceedings which have been initiated by the Plaintiffs. This would any lead to multiplicity of proceedings and, therefore, not accepted. In any case, it is undisputed that the Petitioners would be directly affected if the notice dated 7th August, 2007 issued by the Corporation is upheld.

5. The reliance upon the decision of the Apex Court in **Ramesh Hirachand Kundanmal (supra.)** is inappropriate as it does not support the petition. In the above case the Supreme Court observed that although the plaintiff- appellant is *dominus litis* and is free to choose the presence of parties defendant in his suit, the Court in exercise of its judicial discretion in the context of necessary and proper party can direct adding of a party. The Apex Court observed that the Order 1 Rule 10(2) of the Code give wide discretion to the Court in every case to join a person whose presence is necessary so as to avoid multiplicity of action and also for complete and final disposal on the question involved in the proceedings. Further reliance in **Ramesh Hirachand Kundanmal (supra.)** particularly in paragraph 18 thereof to my mind also does not support the cause of the petitioner. In that case the Court had come to the conclusion that Respondent No.2 therein who was the lessor of the property had no interest in the chattels which were being demolished. This is certainly different from the case herein as in the present case Respondent Nos. 5 to 11 herein – proposed Defendants are the innocent flat purchasers from the Petitioners herein and are in possession of the flats in the building/part of the building which is sought to be demolished by the Corporation in which they are staying.

6. Thus, in the above facts, the view taken in the impugned order of adding Respondent Nos. 5 to 11 as defendants in the suit filed by the

Petitioners is an eminently possible view. Therefore, it does not require any interference in my supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, petition is dismissed. No order as to costs.

(M.S.SANKLECHA,J.)