

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

WRIT PETITION NO.10622 OF 2015

Shri. Jitendra Manohardas Thakker Petitioners
& Anr.

Vs.

Ahmedsaheb Fakirsaheb Kokani Respondents
(deceased) thru' legal heirs &
representatives.

Mr. Y.S. Jahagirdar, Senior Counsel i/by Mr. P.J. Thorat for the
Petitioners.

Mr. Vaibhav R. Gaikwad for Respondent nos. 1 to 4.
Mr. A.B. Tajane for Respondent nos. 5 to 8
Mr. Sumit S. Kothari for Respondent nos. 9 and 10.
Mr. Atul Damale, Senior Counsel i/by Kuldeep U. Nikam for
Respondent nos. 11 and 12.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 6th December, 2017

P.C.:

1 Heard. Rule. Rule made returnable forthwith by consent
of the parties.

2 The petitioners herein happens to be the plaintiffs in Special Civil Suit No. 666 of 2011, pending before 5th Joint Civil Judge, Senior Division at Nashik. The original defendant nos. 1 to 4 had created third party interest in favour of defendant nos. 5 to 8 and hence they were impleaded in the said suit. It was the case of the plaintiff that during the pendency of the suit, defendant nos. 5 to 8 had sold 50 Ares out of the subject suit property to defendant no. 9 and thereafter the defendant no.9 had signed the development agreement with defendant no.10. The property was being developed through the developers i.e. the proposed defendant nos. 11 and 12.

3 The plaintiffs had learnt about the development agreement in favour of the proposed defendant nos.11 and 12 only in 2014, although agreement was entered into in the year 2011. The plaintiff was therefore constrained to file an application under Order 6, Rule 17 Code of Civil Procedure seeking liberty to implead the developers as the defendant nos. 11 and 12 in the said suit. It was specifically stated by the plaintiffs that 54.5 Ares out of the subject suit property was included in the map, which was sanctioned by the

Municipal Corporation of Nashik. The said application filed by the plaintiff was partly allowed vide order dated 12th August 2015. Hence, this writ petition.

4 The learned court had only permitted the plaintiff to correct the typographical error, however, had rejected the prayer for impleadment of defendant nos.11 and 12. The learned court had lost sight of the fact that the portion of the subject suit property admeasuring 54.5 Ares was included in the development plan, which was sanctioned by the Municipal Corporation. In fact, in the given set of facts, it was incumbent upon the learned court to grant liberty to the petitioner to implead respondent nos.11 and 12, since the portion of the subject suit property was sanctioned by the Municipal Corporation in the development plan. The court also cannot be oblivious of the fact that the said development plan was sanctioned only on 7th May, 2012 i.e. during pendency of the suit and therefore it had become necessary to implead the developer as the party-defendants. Hence, in view of the above mentioned facts, the order dated 12th August, 2015, Clause 3 needs to be quashed and set aside.

5 The learned court shall permit the plaintiffs to implead
the proposed defendant nos.11 and 12 to the plaint, subject to
condition that the amendment is carried out on or before 21st
December 2017. It is further made clear that amendment is
restricted to the area of 80 Ares, out of the subject suit property. The
petition is allowed in above terms.

6 Rule is made absolute. The petition stands disposed of.

7 The respondents nos.1 to 4, 5 to 8, and 9, 10 have
vehemently opposed the grant of the said relief. However, the said
submissions cannot be taken into consideration in view of the facts of
the case.

(*Smt. Sadhana S. Jadhav, J*)