

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1874 OF 2017

Abdul Rahim Abdul Gani Ghadiyali	...	Petitioner
Vs.		
Mehrab Ali Ajmar Ali Shaikh & Ors.	...	Respondents

Mr. Brijesh Shukla, i/by Mr. Yousuf Khan, for the Petitioner.

Mr. Mandar Limaye for Respondent Nos.27 to 29.

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

DATE : 3RD APRIL 2017.

P.C. :

1. Heard Mr. Shukla, learned counsel for the Petitioner and Mr. Limaye, learned counsel for Respondent-Municipal Corporation.

2. By this Petition, the Petitioner seeks a direction to the Respondent-Municipal Corporation to demolish the alleged illegal construction / structure adjoining his plot. Admittedly, the Regular Civil Suit No.122 of 2013 is pending in the Trial Court. In the proceedings of the said Suit, the Petitioner had filed an application (Exhibit-25) for adding him as 'Defendant', as per Order I Rule 10 of the Civil Procedure Code, 1908.

3. By an order dated 9th January 2015, the 5th Joint Civil Judge, Senior Division, Thane, rejected the said application (Exhibit-25). The learned counsel appearing for the Petitioner submits that, in the past, for about three to four times, the suit structure had been demolished; however, it was reconstructed again. The Petitioner, therefore, seeks a direction to the Respondent-Municipal Corporation to do the needful by demolishing the illegal construction / structure adjoining his plot.

4. The learned counsel appearing for the Respondent-Municipal Corporation submits that, in the facts of the case, appropriate steps would be taken. He further submits that, the Respondent-Municipal Corporation would also look into the orders passed by the Civil Courts in the proceedings of Regular Civil Suit.

5. While dealing with the application of the Petitioner, the 5th Joint Civil Judge, Senior Division, Thane, has made observations in paragraph No.5 of his order dated 9th January 2015, passed below Exhibit-25 in Regular Civil Suit No.122 of 2013, which reads as under :-

“5. Considering the submissions of both sides, as per Order 1 Rule 10 of C.P.C., the Court may add any person as a party, whose presence before the Court may be

necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The present suit is filed by plaintiff contending that he is constructing building over suit property as per the plan sanctioned by defendant No.2 Corporation. But the officers of defendant no.2 Corporation threatened plaintiff that they will demolish the suit building carried out over suit property. Plaintiff has prayed that it be declared that defendant no.2 corporation have no right to demolish the building carried out over suit property without following due process of law. Applicant has not stated any grounds in the application on the basis of which he claims that he be added as a party. Applicant has filed separate affidavit wherein it is contended that applicant has made complaints to defendant no.2 corporation against defendant no.1 in respect of making unauthorized construction. Even though applicant is the original complainant, who has made complaint about unauthorized construction carried out by defendant no.1 that can not be a just ground so as to add applicant as a defendant. The another ground on which applicant claims that he added as a party is that he is residing adjacent to suit property and he is by-passing through suit property. This is also not a just ground for adding applicant as a defendant. For complete adjudication and settlement of all questions involved in the present suit, this Court is of opinion that the presence of applicant on the grounds discussed above is not neither necessary nor proper. Hence, considering above discussion, application stands rejected.”

6. Therefore, it is for the Respondent-Municipal Corporation to take appropriate decision. In the facts of the case, we direct that, while taking decision, the Respondent-Municipal Corporation would also verify the orders passed by the Civil Courts in respect of the subject structure.

7. Petition is disposed of in the above terms.

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