

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4859 OF 2018

Mohan Lokayya Shetty Petitioner
V/s.
Municipal Corporation of Greater Mumbai & Anr. Respondents

Mr. Manoj P. Mhatre for the Petitioner.

Mr. Prakash Nichani, a/w. Mr. Manoj K. Pandey, for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND MAY, 2018.

P.C. :

1. Heard Mr. Mhatre, learned counsel for the Petitioner, and Mr. Nichani, learned counsel for Respondent No.2.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 10th April 2018 passed by the City Civil Court, Dindoshi, Mumbai, thereby allowing the Chamber Summons No.1506 of 2017 in L.C. Suit No.3485 of 2017.

3. The said Chamber Summons was filed by Respondent No.2 herein for its impleadment as Defendant No.2 in the Suit filed by the present Petitioner, challenging the notice issued by Respondent No.1-Municipal Corporation, under Section 351 of the Mumbai Municipal Corporation Act, 1888. The Trial Court has, after considering the submissions advanced before it, allowed the said Chamber Summons.

4. Being aggrieved thereby, the submission of learned counsel for the Petitioner is that, Respondent No.2 has no legal or commercial interest in the suit property and, therefore, his impleadment is not at all warranted. In this respect, learned counsel for the Petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.*, (1992) 2 SCC 524, wherein the provisions under Order 1 Rule 10(2) of the CPC were considered in respect of the addition of the parties and it was held that, “*in a Suit challenging the legality and validity of the notice issued by the Municipal Corporation for demolition of certain structures, the 'Lessor' of the premises was not a necessary party*”.

5. Learned counsel for the Petitioner has then placed reliance on the decision of the Hon'ble Apex Court in the case of *Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay and Ors.*, 2017 (6) ALL MR 420 (S.C.), wherein the purchasers of the suit property sought to be added as Defendants in a Suit filed by the Plaintiff, challenging the demolition notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888, and it was held that, “*for deciding legality of the demolition notice, presence of the Applicants is not required*”.

6. The facts of the present case, however, go to show that, there is

serious dispute between the Petitioner and Respondent No.2-Applicant in respect of the identity of the suit property itself. Already two Suits are pending between the parties; the one bearing Regular Civil Suit No.2040 of 2012 and another bearing Regular Civil Suit No.1145 of 2012. The former Suit is filed by the Petitioner, challenging the 'Deed of Conveyance'; whereas, the later Suit is again in respect of the notice issued, under Section 351 of the Mumbai Municipal Corporation Act, 1888, to the Petitioner in respect of another structure.

7. Thus, it can be seen that, when both the parties are in dispute relating to the identity and locality of the suit structure and the notice issued by Respondent No.1-Municipal Corporation is not stating in respect of which city survey number, the said notice is issued, then, it follows that, whatever the decision of the present Suit, it is going to have the impact on the litigation pending between the parties and in that sense, Respondent No.2 is having direct interest in the outcome of this litigation, as it may be inconsistent with the decision in the other Suits.

8. Hence, the Trial Court has rightly considered that the impleadment of Respondent No.2 in the Suit is essential. Therefore, in the writ jurisdiction, this Court does not find any ground made out to interfere in the impugned order passed by the Trial Court. Therefore, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]