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

WRIT PETITION NO. 11524 OF 2017

M/s Mulraj Khatau and Sons Ltd.	]	
A company incorporated under the	]	<u>Petitioners</u>
Provisions of Companies Act, 1956	]	Original
having office at 6, Laxmi Building	]	Applicant
Shoorji Vallabhdas Marg, Fort	]	in Chamber
Mumbai 400 001	]	Summons

V/s.

1] Nagesh Samar Bahadur Singh	]	
age: 34 years, age:adult	]	
residing at: National Dairy Farm	]	<u>Respondent No.1</u>
Opp. National Dairy Farm,	]	Original plaintiff
Opp. National Park,	]	in suit
Western Express Highway,	]	
Borivali(E), Mumbai 400 066	]	
	]	
2] The Municipal Corporation of Greater	]	<u>Respondent No.2.</u>
Mumbai	]	Original
Through Competent Authority	]	defendant
Assistant Engineer (Building and Fact)	]	in suit
R/Central Ward, Municipal Market Bldg	]	
S.V. Road, Borivali (W)	]	
Mumbai 400 092	]	

Ms. Sharmila V. Deshmukh, for the Petitioner.
Mrs. Anjali Helekar, for the Respondent No.1 .
None for respondent No.2 Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th MARCH, 2018.

ORAL JUDGMENT :

1] Heard learned counsel for the petitioners and learned counsel for respondent No.1.

2] Rule.

3] Rule is made returnable forthwith with the consent of learned counsel for both the parties and the petition is taken up for hearing.

4] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 26.07.2017, passed by Ad-hoc Judge, City Civil Court, Bombay, thereby rejecting the Chamber Summons No.52 of 2016 in L.C.Suit No.1635 of 2014.

5] The said Chamber Summons was taken out by the present petitioner for impleading it as necessary party to the suit under Order I, Rule 10 of Code of Civil Procedure, on the grounds that the petitioner is the owner of the suit property, of which plaintiff-respondent No.1, is a tenant. The respondent No.1 has filed the instant suit challenging the Notice dated 22.04.2014, issued by the defendant Municipal Corporation, under Section 354A of the Mumbai Municipal Corporation Act, 1888, for carrying out unauthorized construction. As the property belongs to the petitioner and the petitioner being the owner thereof, it is submitted that petitioner is necessary to be impleaded in the suit. Whatever decision of the suit may happen, it is

going to directly and substantially affect petitioner's interest in the suit property and therefore, he may be permitted to be joined in the suit.

6] This Chamber summons came to be resisted by respondent No.1 and the trial Court, has vide its impugned order, held that as the petitioner has not carried out the construction in respect of which the Municipal Corporation has issued notice, as it being illegal and unauthorized, petitioner's impleadment in the suit is not necessary. Petitioner can in it's own right take independent proceeding for recovery of possession of the suit property from respondent No.1. However, petitioner's presence being not necessary to decide the dispute involved in the suit, the trial Court has dismissed the said Chamber Summons.

7] While challenging this order of the trial Court, learned counsel for the petitioner has taken this Court, through the earlier litigation between the petitioner and respondent No.1. It is contended that in the present suit filed by respondent No.1, he has not given description of the stable. He has simply stated that he is in possession of the stable for more than 60 years and carrying on business of milk and dairy products therein. It is urged that in paragraph No.5 of the plaint, he has stated that the said stable was constructed as far as back in the year 1959; now it require changes, therefore, he has

undertaken renovation of the said stable.

8] In this situation, it is urged that this Court has to advert to the earlier suit, which was filed in the year 1970, that is suit bearing R.A.E.Suit 3461 of 1970. In that suit, description of the tenanted property was given as survey No.10, Hissa No.5 part (1000 sq. y. approx.), Kaneri Bando, N.G. Road, Borivali (East)..

9] Learned counsel for the petitioner has also referred to the judgment in L.C. suit No.824 of 2009 which was filed by respondent-plaintiff against defendant Municipal Corporation in which description is merely given as stable, named and styled as, “National Dairy” admeasuring 2000 sq. meters. In that suit a reference was made to the earlier suit bearing R. A. E. No.3461 of 1970, which was filed in the Small Causes Court. The description of the suit property is given in that suit as Survey No.10, hissa No.5 part (1000 sq. yard).

10] Learned counsel for the petitioner, has then referred to the City Survey record, produced at page No.87 to show that survey No.10/5 is corresponding to C.T.S.No.531/1, 532/2 and 525/6; whereas the notice issued by the Municipal Corporation initially in the year 2009, under Section 351 of Mumbai Municipal Corporation Act, is in respect of the tabala structure which was situate in C.T.S. Nos. 531/1 and 2 and 526/6. Therefore, it is urged that the respondent No.1 is making encroachment on the property owned by

the petitioner and hence the petitioner is very much concerned with the suit property and his impleadment in the suit is utmost essential.

11] According to learned counsel for respondent No.1, however, even a cursory glance to the earlier orders and city survey record goes to show that respondent No.1 is tenant in 2000 sq. meter area and he was and is in possession of the said area since more than 50 years. The petitioner has not challenged the judgment and decree passed in the earlier suit being No.824/2009, which was filed by Respondent No.1 against Municipal Corporation, challenging the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888. It is urged that survey No.10/5 also consists of C.T.S.No.526 in addition to C.T.S. No.531/1 and 531/2. Therefore, according to learned counsel for respondent No.1, as regards the impugned notice issued by defendant Municipal Corporation under Section 354A of the Mumbai Municipal Corporation Act, 1888, it nowhere says that respondent No.1 is making encroachment on any property. The only allegation is that he is enhancing height of roof of the structure. Hence, for deciding the legality and validity of the said notice, presence of petitioner is not at all necessary in the suit. As observed by the trial Court, petitioner has neither erected the said construction nor he could be considered to be aggrieved, if any action is taken against the said construction by the respondent No.2

Municipal Corporation. Therefore, according to learned counsel for respondent No.1 the impleadment of the present petitioner is going to un-necessarily expand the scope of the litigation.

12] In support of this submission, reliance is placed by learned counsel for respondent No.1, on the observations 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]*, which is as follows :-

“The object of Rule 10(2) of Order 1 is not to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

13] Learned counsel for respondent No.1 has invited the attention of this Court, particularly to following observations of the Apex Court that :-

“Allowing third party to join in the said suit is unnecessarily going to expand the scope of the suit and embarrass the plaintiff and as a result the issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases”.

14] Learned counsel for respondent No.1 has then placed reliance on the judgment of this Court, in case of *Chouhan Builders India Housing Development Pvt. Ltd -vs- BMC and Anr, Writ Petition No.4625 of 2014 dated 15th July, 2016* ; wherein the impleadment was sought by applicant on the ground that at his instance, Notice under Section 314 of the MRTP Act was issued by the Municipal Corporation and therefore, his impleadment in the suit challenging the said notice was necessary. The trial Court has allowed his impleadment. When the said order was challenged before this Court, this Court has held that, applicant cannot be necessary party as the dispute is between plaintiff and Corporation and Corporation can take appropriate steps to protect its interest. Apart from that it was found in that case that the third party has already filed suit for protecting its interest. The

same is pending for hearing and final disposal on its own merits. Hence, it was held impleadment of the third party in the suit is not necessary.

15] Per contra, learned counsel for the petitioner has relied upon the judgment of the Apex Court, in case of *M/s Aliji Monoji & Co., -vs- Lalji Mavji and ors [AIR 1997 SC 64]*, wherein, in a suit filed by tenant challenging the notice issued by the Municipal Corporation under Section 351 of Mumbai Municipal Corporation Act, 1888, like in the present case, the landlord has filed an application to implead himself in the said suit under Order 1 Rule 10 of CPC, contending that he has direct interest in the property. When the matter reached upto the Apex Court, it was held that, as the landlord is having direct and substantial interest in the property, even though no relief has been sought against the landlord as the rights and interest of the landlord would be affected, by the decision of the suit, the landlord would be proper party.

16] The learned counsel for the petitioner has further relied upon the judgment of this Court in case of this Court in the case of *Chandrakant Dharma Bhonj -vs- Pandurang Ramchandra Dandekar [2004 (2) Mh. L.J. 782]*; wherein, unauthorized construction was undertaken on the vacant land between the structure of the petitioner and first respondent. As the said land used by the

petitioner and by his forefathers; it was held that the petitioner was directly aggrieved by the conduct of the first respondent and inaction of the Bombay Municipal Corporation. In paragraph No.10 of the judgment it was further observed that the process of initiating action against the first respondent was initiated on the complaint by the petitioner, drawing to the attention of the Municipal Corporation that the first respondent was in the process of carrying out an unauthorized construction. In such circumstances, it was held that the petitioner was directly and substantially affected by the unauthorized construction which is alleged to have been carried out by the first respondent and hence as the action of enforcing the statutory powers and duties of the Municipal Corporation has been initiated on complaints filed by the petitioner, his impleadment in the suit is necessary.

17] Learned counsel for the petitioner has then relied upon the judgment of this Court in the case of, *Milind Dattatreya Sugavkar -vs- Municipal Corporation of Greater Mumbai and another*, [2006 (2) Bom. C.R.617], In the said case, suit was filed against Municipal Corporation, restraining the Corporation from taking any action against the alleged unauthorized construction. The Co-operative society in which construction was alleged to be carried out, applied to add it as party defendant in the suit under Order I Rule 10 of CPC. It

was held that presence of the society in these proceeding is necessary, therefore, the trial Court cannot be faulted for allowing the Society to be impleaded as party to suit.

18] Relying on these citations, the submission of learned counsel for the petitioner is that the consistent view taken by this Court and the Apex Court is that the landlord is necessary party to suit, when the suit is filed challenging the notice issued by the Municipal Corporation, against the unauthorized construction undertaken by the tenant.

19] Here in the case, it is urged that respondent No.1 has under the garb of renovation, undertaken totally new construction of the stable and that construction clearly encroaches on the property owned by the petitioner and therefore, petitioner will be affected directly and substantially due to result of the suit. Even if petitioner files separate suit to protect his interest, result of this suit is going to have an adverse impact and possibility of conflicting decisions also cannot be ruled out. Therefore, in order to effectively and completely decide the rights of the parties, impleadment of the present petitioner is necessary.

20] I find much substance in the submission advanced by learned counsel for the petitioner. Admittedly, the petitioner is the owner and the landlord of the suit property. The material, including

the notice issued by Municipal Corporation shows that respondent No.1, is carrying out new construction after demolishing old construction. Hence, it has to be seen whether the said construction is by way of making encroachment on the property of the owner i.e. petitioner or otherwise. Hence, if ultimately respondent No.1 succeeds in this suit, and the the notice issued by Municipal Corporation is held to be illegal and the construction of respondent No.1 is held to be legal, the interests of the petitioner are going to be directly and substantially affected being landlord of the suit premises.

21] As regards the judgment relied upon by learned counsel for respondent No.1, in *Ramesh Hirachand Kundanmal -vs- Municipal Corporation of Greater Bombay and ors (supra)*, wherein the third party, who has sought impleadment in the suit, was not the owner or landlord or in any way concerned with the said property. He was only a person at whose instance the notice was issued by Municipal Corporation, hence it was held that his impleadment is not necessary and it will unnecessarily expand the scope of the suit.

22] Similarly in the decision of this Court in *Chouhan Builders India Housing Dvelopment Pvt. Ltd -vs- BMC and anr (supra)*, the third party was not having any interest or ownership rights in the suit property, but only at his instance, Respondent Corporation has taken action and therefore, his impleadment was not found necessary,

especially because the suit filed by third party was already pending.

23] As against it, in the present case, the decision of this suit is definitely going to affect the interest of the petitioner as he is the owner and the landlord of the suit property. Even if he files separate suit against respondent No.1, then also there are chances of conflicting decisions. If the respondent No.1 is found to have made any unauthorized construction, as the petitioner is very much interested being landlord of the suit property to ensure that such unauthorized construction does not take place on his property. In view thereof, the impleadment of petitioner is necessary in the suit .

24] The impugned order passed by the trial Court, therefore rejecting the petitioner's Chamber Summons, needs to be quashed and set aside.

25] Accordingly the Writ Petition is allowed.

26] The impugned order passed by the trial Court dismissing the Chamber Summons is quashed and set aside and the Chamber Summons is allowed.

27] The respondent No.1 to carry out necessary amendment in the plaint to join the petitioner as defendant No.2, within six weeks from the date of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]