

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11678 OF 2017

- | | | |
|------------------------------------|---|------------------|
| 1. Rajnish Kumar Jain, |] | |
| Age : 67 years, Occ. Business, |] | |
| Daffodils Bungalow, |] | |
| Sher-e-Punjab Colony, |] | |
| Near Tolani College, |] | |
| Mahakali Caves Road, |] | |
| Andheri (East), Mumbai. |] | |
| 2. Smita Sanjay Shende, |] | |
| Through Constituted Attorney, |] | |
| Mr. Jairam Walku Late, |] | |
| Age : 24 years, Occ. Service, |] | |
| R/of 306, Sumer Castle, 'B' Wing, |] | |
| Castle Mill Naka, Meenatai Thakare |] | |
| Chowk, Kolkad, Thane (West) |] | Petitioners |

Versus

- | | | |
|-----------------------------------|---|------------------|
| 1. Thane Municipal Corporation, |] | |
| Mahapalika Bhavan, Chandan Wadi, |] | |
| Pachpakhadi, Thane - 400 602. |] | |
| 2. Sheetal James, |] | |
| Age : Adult, Occ. Retired, |] | |
| R/at Farm House at Plot No.12, |] | |
| Hissa No.1, Village Yeoor, Thane. |] | |
| 3. Monika James, |] | |
| Age : Adult, Occ. Retired, |] | |
| R/at Farm House at Plot No.12, |] | |
| Hissa No.1, Village Yeoor, Thane. |] | Respondents |

Mr. P.S. Dani, Senior Counsel, with Mr. Roshan Tanna, Mr. Rahul Sinha, i/by M/s. DSK Legal, for the Petitioners.

Mr. Akshay Kalodia, i/by M/s. J. Shekhar & Co., for Respondent No.1.

Ms. Sheetal James, Respondent No.2, is present in person.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH FEBRUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Dani, learned Senior Counsel for the Petitioners, Mr. Kalodia, learned counsel for Respondent No.1, and Ms. James, Respondent No.2, who is appearing in person.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 14th September 2017 passed by the 4th Joint Civil Judge, Senior Division, Thane, below “Exhibit-18” in Regular Civil Suit No.172 of 2017.

3. The application at “Exhibit-18” was filed before the Trial Court by Respondent Nos.2 and 3, under Order 1 Rule 10 of the Civil Procedure Code, 1908, seeking permission for their intervention and impleadment in the Suit. The Trial Court has, vide its impugned order, allowed the said application holding that presence of Respondent Nos.2 and 3 is utmost

essential for deciding the veracity of the suit notices, more particularly, when the Plaintiffs, i.e. the present Petitioners, are claiming themselves as 'owners' of the suit land.

4. While challenging this order of the Trial Court, the submission of learned Senior Counsel for the Petitioners is that, the Suit is filed by the Petitioners only for the relief of declaration that the notices issued by Respondent No.1-Municipal Corporation on 24th November 2015, 3rd March 2016 and 14th March 2016 are illegal, null and void and they should be quashed and set aside. It is submitted that, as the construction, which is carried out by the Petitioners on the suit land, is already demolished by Respondent No.1-Municipal Corporation, this action of Respondent No.1-Municipal Corporation in demolishing the entire suit structure is also null, illegal and void and the Petitioners have, therefore, sought a direction from the Court to Respondent No.1-Municipal Corporation to restore the suit structures.

5. It is submitted by learned Senior Counsel for the Petitioners that, the notice dated 24th November 2015 was issued under Sections 52 and 53(1) of the Maharashtra Regional and Town Planning Act, 1966, (*for short, "MRTP Act"*), alleging therein that, certain additional constructions, which were carried out by the Petitioners, were against the 'Sanctioned Plan' and, therefore, the Petitioners were directed to

demolish those constructions only. However, it is now a matter of record that, not only the additional construction, but the entire construction is demolished by Respondent No.1-Municipal Corporation. According to learned Senior Counsel for the Petitioners, the fact remains that the Petitioners' right to carry out such construction in the suit property was not disputed as such by Respondent No.1-Municipal Corporation, as the impugned notices were only in respect of the additional construction, which was not permitted under the 'Sanctioned Plan'.

6. Thus, the submission of learned Senior Counsel for the Petitioners is that, in the Suit of such a nature, where only the notices issued by the Municipal Corporation, under Sections 52 and 53(1) of the MRTP Act are challenged, the presence of a third party, like Respondent Nos.2 and 3, is not at all essential. Whatever alleged rights they may be having in the suit property, those rights will not be considered in this Suit. Moreover, Respondent Nos.2 and 3 had already filed a Suit, bearing Regular Civil Suit No.824 of 2013, in respect of their rights over the suit property and in the said Suit, all their contentions and rights can be decided completely and effectually. Therefore, their intervention is not at all warranted in the present Suit, which is filed by the Petitioners only for a limited purpose of declaring the notices issued by Respondent No.1-Municipal Corporation as illegal and directing Respondent No.1-Municipal Corporation to restore the demolished construction. It is

submitted that, as the scope of the Suit is very limited, by allowing the impleadment of Respondent Nos.2 and 3 in such a Suit, the scope of the Suit is unnecessarily expanded, thereby causing prejudice to the Petitioners and, therefore, the impugned order passed by the Trial Court cannot be justified in any way.

7. To substantiate this submission, learned Senior Counsel for the Petitioners has relied upon the Judgment of the Apex Court in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.*, (1992) 2 SCC 524, wherein the Suit was filed challenging the notice issued by the Municipal corporation of Greater Bombay under Section 351 of the Mumbai Municipal Corporation Act, calling upon the Plaintiffs therein to demolish the unauthorized construction. In that Suit, the third parties applied for being impleaded as Defendant on the ground that, they have materials to show that the constructions are unauthorized and they are necessary parties to the litigation. While deciding the said contention, the Apex Court was, after relying upon its own Judgment in the case of *Razia Begum Vs. Anwar Begum*, AIR 1958 SC 886, pleased to hold, in paragraph No.14, that, the presence of such third party cannot be essential. It was held that,

“The person to be joined in the Suit must be the 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. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result, which will affect him legally i.e. by curtailing his legal rights.”

8. In paragraph No.18 of the said Judgment, it was, accordingly, held that,

“Allowing Respondent No.2 in the said Suit, at whose instance the Municipal Corporation had taken the action and who has no direct interest in the subject matter of the litigation, the addition of such Respondent would result in causing serious prejudice to the Appellant and substitution or addition of a new cause of action would only widen the issue, which is required to be adjudicated and settled. Joining of the parties would embarrass the Plaintiff and 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 Rule 2 of Order 10 of CPC in such cases.”

9. Here in the case, according to learned Senior Counsel for the

Petitioners, Respondent Nos.2 and 3 had already filed a separate Suit to adjudicate whatever grievances they have; the Petitioners have also been joined in that Suit, on their application for impleadment. In such situation, the scope of this Suit filed by the Petitioners being limited, to challenge the notices issued by Respondent No.1-Municipal Corporation, the impleadment of Respondent Nos.2 and 3 is not at all necessary. Conversely, it is going to cause embarrassment to the Petitioners and also unnecessarily going to expand the scope of the litigation. Therefore, the impugned order passed by the Trial Court needs to be quashed and set aside.

10. Per contra, Respondent No.2, who is appearing in person for herself and on behalf of Respondent No.3, has supported the impugned order passed by the Trial Court and in my considered opinion, rightly so. Rejecting the impleadment of Respondent Nos.2 and 3, merely on the ground that, by their impleadment, the scope of the litigation is going to be widened cannot be done in this case, if one has regard to the backdrop of the facts of this case.

11. It is not merely that, at the instance of Respondent Nos.2 and 3, that Respondent No.1-Municipal Corporation has taken action of demolition against the construction of the Petitioners, but Respondent Nos.2 and 3 had come before the Court with a specific case that the Suit

land, on which the construction is undertaken by the Petitioners, is an agricultural land and they are the legal tenants thereof, under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, (*for short, "Tenancy Act"*). The name of their mother Smt. Shashi James is recorded as 'tenant' of the suit land. In this Suit, Petitioners are claiming themselves to be as 'owners / lessee' of the suit land. Therefore, the rights of Petitioners and Respondent Nos.2 and 3 are going to be directly affected by the result of the action in this Suit.

12. It must be stated that, in view of the contentions raised by Respondent Nos.2 and 3 that, the entire construction of the Petitioners is illegal, this Court has, in Public Interest Litigation, directed demolition of the said construction and, accordingly, the construction is, at present, demolished totally. Therefore, there is definitely substantive interest of Respondent Nos.2 and 3 in the subject matter of the litigation and that interest is going to be affected by the decision in this Suit, as observed by the Apex Court in the decision of *Ramesh Hirachand Kundanmal (Supra)*. This reason makes it necessary to make Respondent Nos.2 and 3 as party to the action, as they would be bound by the result of the action in this Suit. This Suit, therefore, cannot be effectually and completely settled, unless they are party to the Suit.

13. Moreover, the reliefs, which Petitioners are claiming in the present

Suit, are not only in respect of declaring the notices issued by Respondent No.1-Municipal Corporation, under Sections 52 and 53 of the MRTP Act, as illegal, null and void, but they are also further seeking a direction from this Court to Respondent No.1-Municipal corporation to restore the construction, which is already demolished as per the order of this Court. Now this relief is such, which is going to have direct effect on the rights of Respondent Nos.2 and 3. Therefore, result of the subject matter of this litigation is going to affect legally the rights of Respondent Nos.2 and 3, which they are claiming in the Suit. Therefore, it cannot be said that their impleadment in the Suit is not essential or the Trial Court has committed any illegality in allowing their impleadment in the Suit.

14. It is also pertinent to note that, the Petitioners themselves have, in paragraph Nos.11 and 12 of the plaint, made categorical averments against Respondent Nos.2 and 3 by stating that, they have made encroachments on some part of the suit land and carried out unauthorized construction over the same. It is also stated in paragraph No.12 that, Respondent Nos.2 and 3, in collusion and connivance with Respondent No.1-Municipal Corporation and with the malafide intention of usurping suit plots, are illegally and wrongfully making false claims over the suit plots. Thus, the Petitioners are also very much aware that the legal and substantive rights of Respondent Nos.2 and 3 are very much involved in the suit plots, on which the Petitioners had carried out

constructions, in respect of which the notices were issued for demolition of the said constructions and the Petitioners are seeking restoration thereof from Respondent No.1-Municipal Corporation. Therefore, whatever result, in this litigation, may take place, it is going to seriously affect the rights, which Respondent Nos.2 and 3 are claiming over the suit plots. In such situation, in the light of the Judgment relied upon by learned Senior Counsel for the Petitioners, the impleadment of Respondent Nos.2 and 3 in the Suit is utmost essential.

15. At this stage, it may also be stated that, the impleadment of the present Petitioners in the Suit filed by Respondent Nos.2 and 3 is allowed, thereby indicating that both the parties are interested in the same subject matter of the litigation i.e. suit plots claiming ownership and rights over the same property. Therefore, the result of one litigation is bound to affect the result in another litigation also. In view of two Suits pending in respect of same suit property, there is also likelihood of conflicting decisions, if Respondent Nos.2 and 3 are not allowed to be impleaded in this Suit. In such situation, the impleadment of Respondent Nos.2 and 3 in the Suit, as ordered by the Trial Court, cannot be called as illegal, so as to warrant interference therein, within the limited scope of the writ jurisdiction of this Court.

16. The Writ Petition, therefore, being without merits, stands dismissed.

17. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]