

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3249 OF 2019

Jaswant R. Barot and anr. .. Petitioners
vs.
Shailendra V. Patni and anr. .. Respondents

Mr. J.G. Damani a/w. Mr. D.J. Damani for the Petitioners.
Mr. B.P. Shukla for Respondent No.1.
Mr. Santosh Parad for Respondent No.2-MCGM.

CORAM : M. S. SONAK, J.
DATE : 25 MARCH 2019.

ORAL JUDGMENT :-

1] Heard Mr. Jaswant R. Barot, learned counsel for the petitioners, Mr. B.P. Shukla, learned counsel for respondent No.1 and Mr. Santosh Parad, learned counsel for respondent No.2-MCGM.

2] Rule. With consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 25th October 2018 by which the petitioners' application for impleadment came to be rejected by the learned Trial Judge.

4] The record indicates that the petitioners are occupants of 3rd floor of the suit building. The petitioners had lodged complaints to the Municipal Council against respondent No.1 for undertaking illegal constructions on the terrace of the 2nd floor. The Municipal Corporation for Greater Mumbai has issued notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) and it is this notice, which is challenged by respondent no.1 in the suit.

5] The petitioners have stated that they were heard at the time of consideration of the application for ad-interim reliefs since, the petitioners have filed a caveat. He points out that in fact the ad-interim relief was refused. He points out that the illegal construction is directly affecting them and they have also placed on record the materials to show *prima facie* as to how the same is affecting them. There is also reference to the covering over the alleged illegal construction catching fire and causing damages.

6] Mr. B.P. Shukla, learned counsel for respondent No.1, is right in his submission that the petitioners cannot be a

necessary party to such a suit which is essentially between respondent No.1 and the MCGM. However, in the peculiar facts of the present case, it cannot be said that the petitioners are not even a proper party to such a suit or that the presence of the petitioners will not assist the learned Trial Judge in the effective disposal of the suit.

7] In ***Mohamed Hussain Gulam Ali Shariffi vs. Municipal Corporation of Greater Bombay and ors. - 2017 (6) ALL MR 420 (S.C.)***, upon which reliance is placed by Mr. Shukla, the third party applicant sought impleadment on the ground that such party had purchased the suit property. The Supreme Court held that the suit is really not appropriate forum for deciding as to whether such purchase was indeed made or not and in any case, the presence of third party applicant was not necessary whether deciding legality of demolition notice was properly issued by the Corporation. Such fact do not apply to the present case. Similarly, in case of ***Deju Somaya Salian vs. The Municipal Corporation of Greater Mumbai and ors (Writ Petition No. 7123 of 2018 decided on 24th September***

2018), the third party had applied for impleadment on the ground that it was one of the co-owners of the suit property. Again, since the issue of co-ownership really does not arise in a suit of this nature, the impleadment was not permitted. Such facts do not apply to the present case.

8] The petitioners in the present case claim to be very seriously affected by the illegal constructions put up by respondent No.1 in the same building. Mr. Shukla, learned counsel for respondent No.1, interrupts the dictation of this judgment to state that the petitioners are not at all affected and further, respondent No.1 has not carried out any illegal constructions. Since, such disputes are being raised by respondent No.1, it is only appropriate that the petitioners are impleaded as party to the suit, since such disputes cannot be decided in the absence of the petitioners.

9] For all the aforesaid reasons, the impugned order is set aside and the petitioners' application for impleadment is allowed.

10] It is made clear that this Court has neither gone into nor accepted the rival allegations in the context of illegal constructions and damages. These all are matters which will have to be gone into by the learned Trial Judge.

11] Rule is made absolute to the aforesaid extent. There shall be no order as to costs. Respondent No.1 is directed to carry out the necessary amendment within four weeks from the date of this order uploaded on website.

(M. S. SONAK, J.)