

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7172 OF 2018

Nahalchand Laloochand Pvt. Ltd. .. Petitioner
vs.
Municipal Corporation of Greater
Mumbai and anr. .. Respondents

Mr.Rajesh Kachare i/b Mr.Gaurav Patankar for the
Petitioner.
Ms Sheetal Bane for Respondent Nos.1 and 2.
Ms Nisha Shah i/b Mr. Kalpesh Joshi Associates for
Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 16 APRIL 2019.

P.C. :-

1] Heard Mr. Rajesh Kachare, learned counsel for the
petitioner, Ms Sheetal Bane, learned counsel for respondent
Nos.1 and 2 and Ms Nisha Shah, learned counsel for
respondent No.3.

2] The challenge in this petition is to the order dated 7th
June 2018 by which learned Trial Judge has ordered the
impleadment of respondent No.3 as a defendant in the suit.

3] Learned counsel for the petitioner submits that
respondent No.3 is neither a necessary nor a proper party.
He points out that in the impugned order learned Trial Judge

has himself noted that respondent No.3 is not a necessary party. He submits that the suit is filed on the apprehension that the MCGM may demolish the construction undertaken by the petitioner without following due process of law. He submits that in such a petition, respondent No.3 society can have no role to play. He submits that the impleadment of respondent No.3 will unnecessarily embarrass the trial and delay the proceedings. He therefore, submits that the impugned order warrants interference.

4] Ms Nisha Shah, learned counsel for respondent No.3-society, points out that the petitioner has undertaken illegal construction and even gone to the extent of converting the society office into an apartment. She submits that the action of MCGM is in pursuance of complaints made by respondent No.3 society. She submits that MCGM is not effectively defending the suit. She submits that respondent No.3 society has been correctly impleaded as a defendant in the suit and therefore, this petition may be dismissed.

5] Ms Sheetal Bane, learned counsel for respondent Nos.1 and 2, submits that MCGM is defending the suit. However, MCGM has no objection if respondent No.3 is impleaded as a party in the suit.

6] The rival contentions now fall for determination.

7] In the facts of the present case, there is absolutely no jurisdictional error in the view taken by the learned Trial Judge. In fact, the view taken by learned Trial Judge is quite consistent with the law laid down by this Court in case of **Mr. Ranjitsingh Linga and anr. vs. The Municipal Corporation of Greater Mumbai and anr. - 2010 (2) ALLMR 537** and **Milind Dattatreya Sugavkar vs. Municipal Corporatoin of Greater Mumbai and anr. - 2006 (1) ALLMR 488.**

8] Even the Hon'ble Supreme Court in case of **M/s.Aliji Monoji and Co. vs. Lalji Mavji and ors. – AIR 1997 SC 64** has held that in a suit for perpetual injunction restraining

the Municipal Corporation from demolishing the demised building, the landlord of such a building is a proper party.

9] That apart, respondent No.3 is really not a stranger in matter of this nature. The presence of respondent No.3 is bound to assist learned Trial Judge in determining the issues which arise in the suit. The stance of the petitioner to keep respondent No.3 society away cannot be appreciated. Ultimately, the petitioner seeks to protect the constructions undertaken by him, which, according to the society, are illegal constructions. Therefore, it is not as if respondent No.3 society will not be affected by any order that will be made in the suit. Thus, construed there is no case made out to interfere with the impugned order.

10] Accordingly, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)