

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

WRIT PETITION NO.8569 OF 2019

Yusuf Ahmed Trankwala ... Petitioner
Vs.
Nashik Municipal Corporation & Anr. ... Respondents

.....
Mr. Tushar N. Sonawane for the Petitioner.
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CORAM : M. S. KARNIK, J.

DATE : 4th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner is the original plaintiff. The Plaintiff had filed the Regular Civil Suit No.380 of 2019 before the Trial Court for declaration and injunction. In the suit the notice issued by the respondent - Nashik Municipal Corporation is challenged. The Corporation issued notice on 25.4.2019 to the plaintiff to remove unauthorised construction made by him in city Survey No.3823/A which is the subject matter of the notice. The third party made the application below Exhibit 20 for impleading him as party defendant. The application is made on the premise that the intervenor is the owner of the suit property in question. It is

moreover stated in the plaint that at the behest of the intervenor third party the Corporation is taking action of demolishing the construction in question. By the impugned order the Trial Court under Order I Rule 10 of the Code of Civil Procedure allowed the application.

3. Learned counsel for the petitioner vehemently contended that in the suit only the notice issued by the respondent Corporation is under challenge. He would submit that the plaintiff is the dominus litis and therefore it is for him to decide who should be defendants. He would moreover submit that no reliefs are sought against intervenor third party. He would submit that only passing reference is made in the plaint that the notice is issued and the action is taken by the Corporation at the behest of the intervenor third party. He would therefore submit that as no relief is sought against the intervenor third party, the Trial Court should have rejected the application. He would further submit that the plaintiff is occupying small shop premises and as the notice issued by the Corporation is for demolishing of the unauthorised shop, the intervenor third party is neither a necessary nor a proper party.

4. I have gone through the order passed by the Trial Court. No doubt in the suit the plaintiff seeks declaration that the notice issued by the Corporation for demolishing unauthorised structure be declared as illegal. From the averments made in the plaint, I find that the plaintiff has taken the contention that the notices were issued on the behest of third party and even reliefs are claimed against the Corporation or any of the third persons. The intervenor third party claims to be the owner and having interest in the city Survey No.3823/A on which unauthorised construction is situated. The petitioner has not denied the ownership of the intervenor third party in respect of the suit property.

5. In this view of the matter, if the Trial Court has allowed the application made under Order I Rule 10 of the Code of Civil Procedure for impleading of third party intervenor as the party defendant, I do not find this to be a fit case to warrant interference with the view taken by the Trial Court.

6. The petition is rejected with no order as to costs.

7. Needless to mention that the Trial Court will decide the suit on its own merits without being influenced by any of the observations made by me in this order.

(M. S. KARNIK, J.)