

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 904 OF 2021
WITH
WRIT PETITION NO.1469 OF 2021**

Cararra Co-operative Housing
Society Ltd.

.... Petitioner.

V/s

Avtar Singh Nagi & Others

..... Respondents.

Mr. Manoj J. Bhatt for the Petitioner in both the above Writ Petitions.

Mr. Makrand Kale i/b Samadhan A. Kashid for Respondent Nos. 1 and 2.

Mr. Anand Kulkarni for Respondent No.3.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 07, 2021

P.C.:-

1] As the issue involved in both these Petitions is similar, by consent they are tagged, heard together and disposed of by this common order. For the sake of convenience, facts in Writ Petition No. 904 of 2021 are taken into account.

2] Respondent Nos. 1 and 2 initiated RCS No.825 of 2015 on

the file of Civil Judge, Senior Division, Thane with a prayer for declaration, mandatory injunction and in the alternative for damages.

3] The case of Respondents/Plaintiffs is that the stilt parking which was allotted to them was demolished by the Corporation and as such, they have suffered damages. In the said pending suit against the Corporation, the Petitioner invoked provisions of Order 1 Rule 10 seeking impleadment on the ground that stilt parking is the property of the Co-operative Housing Society and action against the Respondents/Plaintiffs was taken pursuant to the complaint moved by the Petitioner.

4] The said application came to be rejected vide impugned order dated 25/02/2020 passed by the 2nd Joint Civil Judge, Senior Division, Thane. As such, this Petition.

5] The contentions of the learned Counsel for the Petitioner are, very existence of the Respondents/Plaintiffs over the property particularly occupation of stilt parking is qua their status as member of the Co-operative Housing Society and even if Petitioner is not a necessary party it has to be termed as proper party to the suit for appropriate adjudication of the suit claim. According to him, Court below has committed an error in rejecting the prayer.

6] The learned Counsel appearing for Respondent Nos. 1 and 2 supported the order impugned and would urge that the reliefs claimed in the suit are principally against the Corporation and as such, Petitioner is neither necessary nor proper party. He has sought dismissal of the Petition.

7] Considered rival submissions.

8] The very existence of the Respondents/Plaintiffs on the suit

property is qua their status as member of the Petitioner – Co-operative Housing Society. The stilt parking in regard to which reliefs are claimed in the suit, is a property which is owned and managed by the Co-operative Housing Society. Even if the suit has been brought principally against the Corporation and no specific relief is claimed against the Petitioner-Society, however, considering the nature of the prayer made in the plaint, particularly in regard to stilt parking and mandatory injunction relating thereto, in my opinion, Society is required to be impleaded as proper party. It has to be inferred from the record that in case if suit of the Respondents/Plaintiffs is decreed, same will result into carrying out certain construction in the stilt parking which will definitely make violence to the property of the Society, thereby jeopardizing the interest of other members. As such, the order impugned is not sustainable and is liable to be quashed and set aside.

9] As a consequence of above, both the impugned orders are

quashed and set aside. Application of the Petitioner moved under Order 1 Rule 10 stands allowed.

10] Both the above Writ Petitions are accordingly allowed and disposed of.

(NITIN W. SAMBRE, J.)