

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7074 OF 2016

Nimesh J. Patel .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai through Asstt. Engineer
& Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.4808 OF 2016

Rani Rajaram Chavan .. Petitioner

Vs.

Samsuddin Yasin Khan & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.4797 OF 2016

Rani Rajaram Chavan .. Petitioner

Vs.

Anwar Hussain Zinnat Ali Khan & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.4809 OF 2016

Rani Rajaram Chavan .. Petitioner

Vs.

Mayur Kantilal Shah & Anr. .. Respondents

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Mr. Pramod Bhosle i/b Mr. Sharad for the petitioner in Writ Petition No.7074 of 2016 and for respondent in Writ Petition No.4809 of 2016.

Mr. Rishikesh Soni with Mr. Hemang Raythatha and Mr. S.M. Seegarla I./b RMG Law Associates for the petitioner in Writ Petition No.4809 of 2016 and 4797 of 2016 and for respondent No.2 in Writ Petition No.7074 of 2016.

Mr. Naushad Engineer with Mr. Hemang Raythatha and Mr. S.M. Seegarla i/b RMG Law Associates for the petitioner in Writ Petition No.4808 of 2016.

Mr. R.P. Ojha with Mr. Ankit Ojha and Mr. Rakeshkumar Dubey and Mr. Anchit Ojha i/b Asit Kedar Singh for the respondent No.1 in Writ Petition No.4808 of 2016 and 4797 of 2016.

Mr. Om Suryawanshi for respondent-MCGM.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 14TH DECEMBER, 2021.

JUDGMENT:-

1. In the four writ petitions, the point which arise for determination is whether the owner/landlord of the suit premises is necessary or proper party in a suit filed against the Corporation restraining it from demolishing the demised premises. This point necessarily will have to be determined by

applying the test whether the outcome of the suit affects the legal interest of the landlord/owner.

2. In order to determine the aforesaid question, I must narrate the bare minimum facts, which give rise to the above question.

The petitioner Mrs. Rani Rajaram Chavan in Writ Petition Nos.4808 of 2016, Writ Petition No.4809 of 2016 and Writ Petition No.4797 of 2016 claim to be the owner of all that piece of parcel of land admeasuring 19685.80 sq. meters along with structures standing thereon and situated at Bail Bazar Road of Village Kurla, bearing C.T.S. Nos.66, 66/1-23, 66/30, 66/30-49 and 84(pt), 92, 92-1, vide a Deed of Conveyance dated 12/12/2009 read with a Deed of Confirmation dated 20/08/2010 entered into with the erstwhile owner Amlesh Patel, Kamlesh Patel and Harish Patel.

As per the petitioners, the conveyance is duly registered with the Sub-Registrar of Assurances at Kurla – 1 on 20/08/2010 and pursuant to the deed of confirmation and the deed of conveyance, her name is duly mutated in the property card as ‘owner’ of the property. Apart from this, the erstwhile owner has also executed a Deed of Rectification on 12/03/2013 with the petitioner, which is also registered with the Sub-Registrar of Assurances.

3. The petitioner found some illegal/unauthorized structure on the suit property and, therefore, she addressed several letters

to the concerned officer of the Municipal Corporation of Greater Mumbai (hereinafter referred to as **“the MCGM”**), requesting them to initiate action as per law against the said unauthorized occupants/trespassers. This resulted in issuance of notice by the competent officer of respondent No.2 by invoking Section 55 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as **“the MRTP Act”**) on distinct dates, directing demolition of the unauthorized constructions, which was duly responded to, by the occupants.

After complying with the due process of law, respondent No.2 passed an order, *inter alia*, holding that the respective respondents have failed to produce the documents to prove the existence of the structure prior to datum line i.e. 01/04/1962 and declared the structure in question as unauthorized. In the wake of the factual inspection, the notices issued were justified and on a thorough consideration of the structure, being not covered as a tolerated structure, and since the documents produced by the respective occupants failed to establish the existence of the structure prior to the datum line, the occupants/respondents were directed to remove the structure immediately, failing which they were threatened with an action of demolition at their own risk, costs and consequences arising therefrom. At subsequent dates, respondent No.2, with the assistance of the police authorities demolished the unauthorized structure being illegal.

4. The action on part of MCGM resulted in filing of distinct

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suits by the respective respondents to the four writ petitions, in the Court of City Civil at Bombay seeking a declaration that the order issued under Section 55 of the MRTP Act is arbitrary, *malafide* and illegal. Relief was also sought from the court to permit reconstruction of the suit premises, which are in the nature of commercial premises and for restraining the defendants from interfering in the business of the plaintiff or from removing any articles lying on the suit land. In the suit so filed, the MCGM was the only party impleaded as defendant.

5. In the distinct suits filed by the respective respondents, the petitioner filed chamber summons seeking her impleadment in the suit, in her capacity as owner of the said property and her claim is premised on the ground that she is likely to be affected by any construction undertaken on the suit property. It was pleaded by Ms. Rani Chavan that the concerned police station had filed a complaint in the court of Metropolitan Magistrate under Section 145 of the Code of Criminal Procedure and the learned Magistrate was pleased to direct the plaintiff and others not to enter upon the said property and to give an undertaking to maintain peace. This fact was sought to be brought to the notice of the City Civil Court at Bombay and certain photographs / relevant letters were also sought to be brought before the court, in the suit instituted by the plaintiff seeking a relief against the MCGM, as according to the land owner, these documents were necessary for effective adjudication of the respective suits. On

25/01/2016, the City Civil Court at Bombay rejected the chamber summons in the three suits viz. L.C. Suit No.2130 of 2011, L.C. Suit No.2956 of 2011 and L.C. Suit No.959 of 2014 and the common ground on which the impleadment of the petitioner was declined is that the petitioner has failed to prove her title because the deed of conveyance was not registered and the registration of the confirmation deed did not cure the defect of non registration of the deed of conveyance.

6. On a detailed deliberation, a finding is rendered to the effect that since the deed of conveyance is not registered, the claim of ownership of the petitioners based on the said deed cannot be accepted and she cannot be impleaded as a party in the suit. The three writ petitions assail the said order passed on 25/01/2016 on the misapplication of the legal position on two counts being, the non-registration of the deed of conveyance, though the deed of confirmation is registered and secondly, on the point that the legal interest of the petitioner in the property demanded her impleadment in the suit filed against the MCGM. Another ground, which is pressed into service is that in one of the suits being Long Cause Suit No.958 of 2014, filed by Nimesh Patel against the Corporation, where the petitioner had taken out Chamber Summons No.1141 of 2014, *inter alia*, praying for being impleaded as a party defendant, the very same court allowed the chamber summons, by an order passed on 25/01/2016, wherein learned trial court had accepted that the

petitioner was the owner of the said property. It is thus sought to be canvassed that if the petitioner is accepted as landlord/owner in respect of the same parcel of land, the City Civil Court at Bombay ought to have allowed the chamber summons in other proceedings too, instead, it has rejected the same in, three other suits, claiming similar relief.

7. In support of the petitioners in Writ Petition No.4808 of 2016, I have heard the learned counsel Mr. Naushad Enginner. I have also heard Mr. Pramod Bhosale for the petitioner in Writ Petition No.7074 of 2016 and Mr. Soni, for the petitioner in Writ Petition No.4809 and 4797 of 2016. I have also heard Mr. Ojha for respondent No.1 in Writ Petition No.4808 of 2016 and 4797 of 2016 and Mr. Suryawanshi for MCGM.

8. In the wake of the limited point that arises for consideration, the respective counsel submits that the petition shall be heard finally at the stage of admission.

Resultantly, I issue Rule. Rule is made returnable forthwith. By consent of the parties, all four writ petitions are heard finally.

9. Learned counsel Mr. Naushad Engineer would urge that the finding rendered by the learned City Civil Court at Bombay has failed to take into consideration, the settled position of law and the impugned order is liable to be quashed and set aside,

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since it has been recorded that the petitioner had failed to prove her title as the deed of conveyance is not registered and the deed of confirmation though registered, did not cure the defect of non-registration of the deed of conveyance. He placed reliance on the decision of the Hon'ble Supreme Court in the case of **Official Trustee of West Bengal v. Stephen Court Ltd.** reported in **(2006) 13 SCC 401**, which, in turn, has confirmed the decision in the case of **Mitchell v. Mathura Dass** reported in **(1884-85) 12 Indian Appeals 150**. A decision of this court in the case of **Mahendra Valjirathod v. National Radio and Electronics Company** reported in **2019 SCC OnLine Bom. 788** is also pressed into service in support of his submission about the misconstruction of the deed of conveyance. In his submission he is also joined by learned counsel Mr. Bhosale and Mr. Soni.

10. The decision in the case of **Mitchell (supra)** by the Privy Council deals with the effect of the registered instrument confirming a prior one with the same purport, which is not registered. The decision came to be delivered in the backdrop of an instrument purporting to assign a right in an immoveable property of more than the value of Rs.100/- being unregistered and was projected as ineffectual to effect the title of the purchaser. Some years after, the parties executed a deed of conveyance making the same assignment, confirming the former instrument and setting it forth in a schedule, the later instrument being registered. In a suit in which the ownership of the

property was contested, the Privy Council held that the fact of the prior deed not having effected, being unregistered was no reason why the deed afterwards registered should not be admitted as document of title. Recording that in construing so, there had been nothing contravening the object of the Registration Act, the decision of the High Court came to be reversed.

The Apex Court while dealing with the effect of non-registration of the document, which is subsequently cured by registering the very same document at a later point of time, in **Official Trustee of West Bengal (supra)** gainfully relied upon the decision of the Privy Council in **Mitchell (supra)** and in the facts placed before it, by referring to the recitals in the supplementary agreement, which was duly registered, though by curing the defect in the earlier deed of assignment, which was not registered, recorded as under:

“19. Broadly speaking the supplementary deed provided for the issuance of debentures by the appellant in favour of Arathoon Stephen. Until and unless the appellant had paid off the debentures the scheme of trust was to continue but:

"Upon proof being given to the reasonable satisfaction of the trustees that all the debentures entitled to the benefit of the trusts herein contained have been paid off or satisfied and upon payment of all costs, charges and

expenses incurred by the trustees in relation to those presents the trustees shall at the request and cost of the Company ... release the charged premises from this security."

20. *The effect of such an unregistered deed vis-à-vis a supplementary deed by way of debenture trust deed came up for consideration before the Privy Council in Mitchell v. Mathura Dass wherein it was opined: (IA P. 156)*

"The Registration Act was not passed to avoid the mischief of allowing a man to be in possession of real property without having a registered deed, but as a check against the production of forged documents, and in order that subsequent purchasers, or persons to whom subsequent conveyances of property were made, should not be affected by previous conveyances unless those previous conveyances were registered."

21. *In that case William Mitchell was indebted to Mathura Dass. The latter sought to attach a property on the basis that it belonged to the former. William's father Alexander, claimed that the property belonged to him. In the proceeding, two documents came to be filed, namely, one purporting to be a deed of conveyance of the property to himself and the other a confirmation bond executed by the same parties as the conveyance in the subsequent deed.*

22. The Judicial Committee held that the second deed being registered was a valid conveyance of the property to Alexander.”

11. The decision in *Mitchell (supra)* was followed by a decision of the Division Bench of this court in *Jamna Bai v. Dharsey Takersey* reported in *(1902) 4 BLR 893*. Conclusively, the supplementary agreement, which was registered relating to the conveyance of the same interest between the same parties was held to cure the defect of non-registration of an earlier document in respect of the conveyance of the interest in question. Recording that the supplementary agreement, a registered trust deed, conveys the same leasehold rights executed between “A” and the respondent-company, it was held that due registration of the latter conveyance cured the defect on non-registration of the earlier conveyance.

12. In the wake of the aforesaid legal position, if the documents in the form of a deed of conveyance and the deed of confirmation, which are produced on record are perused, it can be manifestly noted that the deed of confirmation executed on 20/08/2010 is between the same parties viz. Kamlesh Patel, Amlesh Patel and Harish Patel (“the Vendors”) and Shardaben (“the Confirming Party”) and Rani Rajaram Chavan (“the Purchaser”), the petitioner herein. When the recitals of the deed of confirmation are carefully perused, it leads to the following being recorded:

1. *The Vendors herein along with their mother Mrs. Shardaben Manubhai Patel, the Confirming Party herein and one Mrs. Rani Rajaram Chavan i.e. the Purchaser herein, had entered into an Indenture of Conveyance dated 12th December, 2009 (hereinafter referred to as "the said Indenture of Conveyance") vide which the Vendors have transferred and conveyed all their right, title and interest in the immovable property being all that piece and parcel of land lying and being at Kurla, bearing Survey No. 28, Hissa No. 1 to 5, Survey No. 32, Hissa No. 3, 9, 10, Survey No. 34, Hissa No. 3 to 10. Survey No. 35, Hissa No.1 to 7. Survey No. 36, Hissa No. 1 to 17 bearing corresponding C.T.S. 66A (pt): 66/1-23, 66/30-49, 84 (pt). 92 and 92/1, admeasuring 19685.8 sq. mtrs. or thereabouts of Village-Kurla, Taluka-Kurla, in the Registration District and Sub District of Mumbai and Mumbai Suburban and more particularly described in the Schedule hereunder written and hereinafter referred to as the "said property".*

2. *The said Indenture of Conveyance due to inadvertence remained to be stamped and registered before the Sub Register of Assurances at Mumbai, within the stipulated time under the Indian Registration Act and the said Agreement is annexed hereto and marked with letter 'A'.*

3. *The Vendors and the purchasers are now*

desirous of executing this deed of confirmation for admitting execution of the said Indenture of Conveyance and for purpose of confirming the registration for the said Indenture of Conveyance to confirm the same by this deed of confirmation.”

13. By the said indenture, the Vendors and the Purchasers confirmed that the indenture of conveyance, the original of which was part of the deed of confirmation covering the properties mentioned therein, executed between the Vendors, Confirming Party and the Purchaser, confirmed that the Indenture of Conveyance is binding on the Vendors and the Purchaser as if the same was duly registered in the Office of the Sub-Registrar of Assurance at Bombay, within the time stipulated for registration thereof. The deed of conveyance being signed by the Vendors, the Purchasers and Confirming Party and being a registered document, has cured the defect of non-registration of the conveyance deed executed on 12/12/2009, on registration of the Deed of Conveyance dated 20/08/2010. The deed of confirmation is between the same parties, covering the same properties in the deed of conveyance and the recitals therein record that due to inadvertent, the indenture of conveyance remained to be stamped and registered and since, the Vendors and Purchaser were desirous of executing the deed of confirmation for admitting the execution of the said indenture of conveyance and for confirming the registration of the indenture

of conveyance by the deed of confirmation, the same came to be registered. Amongst the said parties, if the agreement was to the aforesaid effect, the petitioner, who had acquired the right of ownership qua the suit premises through the deed of conveyance and the subsequent deed of confirmation, merely on the ground that the deed of conveyance was not registered, that by itself cannot create a doubt over her title, since the confirmation deed cured the effect of non-registration of the conveyance.

14. The learned Judge of City Civil Court has, however, failed to advert to the said position in law and by placing reliance on the decisions of the Calcutta High Court and Madhya Pradesh High Court, has returned a finding that the title of the petitioner does not flow from the said documents through it was canvassed before the learned Judge that the full stamp duty was paid on the transaction at the time of registration of the deed of confirmation on 20/08/2010. Learned Judge has, therefore, clearly erred on the said aspect.

15. As far as the second point sought to be advanced by learned counsel for the petitioner about the impleadment of the petitioner in the property as she is necessary party, I deem it expedient to reproduce Order I Rule 3 of the CPC, which reads thus:

“Order 1, Rule 3 : Who may be joined as defendants.—All persons may be joined in one suit as defendants where —

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

16. The distinction between the proper party and necessary party is well settled in catena of decisions delivered by the Apex Court as well as this court to the effect that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is claimed against him, he is a proper party. The necessity to join the applicants as parties to the suit would definitely depend upon the relief claimed. If no relief can be granted, in absentia of a party, then he is a necessary party in order to grant the relief claimed.

17. The Apex Court in the case of **Aliji Momonji & Co. v. Lalji Mavji & Ors.** reported in **(1996) 5 SCC 379** reflected upon Order I Rule 10, in somehow identical facts, by posing a question whether the landlord is a proper and necessary party to a suit for perpetual injunction against the Municipal Corporation for demolition of a demised building. In paragraph No.5, Their

Lordships of the Apex Court have made the following observations, which would, in fact, determine the question formulated by me, in the primordial part of the judgment.

“5. The controversy is no longer res integra. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licensee would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building.”

18. In the very same judgment, the decision relied upon by the counsel for the respondent in the case of **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay** reported in **(1992) 2 SCC 524** was distinguished with the following observation:

“In Ramesh Hirachand Kundanmal case this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances, it was held that the second respondent has no direct interest in the subject-matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled. It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that 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 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. The line has been drawn on a wider construction of the rule between the direct

interest or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest.”

19. The decision in the case of **Aliji Momonji (supra)** came to be followed by two Single Judges of this Court in the case of **Dunhill Dome Co-op. Housing Society Ltd. v. Manuel Mergulhao & Ors.** reported in **2020 SCC OnLine Bom 10596** and in the case of **Arun R. Singh & Anr. v. Municipal Corporation of Greater Mumbai & Ors.** reported in **2018 SCC OnLine Bom 20349**. In **Dunhill Dome (supra)**, the learned Single Judge (Justice S.C. Gupte, as he then was) has recorded his findings, on consideration of the decision in the case of **Ramesh Hirachand Kundanmal (supra)** and **Mohamed Hussain Gulam Ali Shariffi v. MCGM** reported in **2017 (6) ALL MR 420** in the following words:

“4. Learned Counsel for Respondent No. 1 rely on the judgments of the Supreme Court in the cases of Ramesh Hiranand Kundanmal v. MCGM and Mohamed Hussain Gulam Ali Shariffi v. MCGM. In Ramesh Kundanmal, the Supreme Court has held that addition of parties was a question of judicial discretion and not a question of initial jurisdiction of the court, such discretion having to be exercised in the light of facts and circumstances of every case. In the case before the Supreme Court, the third party, who applied for impleadment, had claimed that

it had evidence to produce on the question of authorisation or otherwise of the construction, demolition of which was ordered by the Municipal Corporation under Section 351 of the MMC Act. The court held that merely because the party had relevant evidence to offer on some of the questions involved in the suit, it could not be joined as a defendant to the suit. In Mohamed Hussain's case, the party applying for impleadment claimed to have interest in the suit house by virtue of their ownership rights claimed under an agreement for sale. It was claimed by the interveners that they had filed a suit seeking specific performance of that agreement. It was merely on that basis that they claimed themselves to be necessary parties for proper adjudication in relation to the suit house. The Supreme Court held that having regard to the nature of the controversy, which was the subject matter of the suit before it, respondent nos. 2 and 3 were neither necessary nor proper parties.

5. Both these cases are clearly distinguishable on facts. In Ramesh Kundanmal, impleadment was sought on the sole basis that the party seeking impleadment had some evidence to offer on some of the questions involved in the suit. In Mohamed Hussain, impleadment was sought simply on the basis that the suit property was subject matter of an agreement for sale as between an existing party to the suit and the interveñor, specific performance of which was sought separately by the third party intervenor. In our case, the Petitioner society is the owner of the whole structure, including the stilt portion, which is claimed to have been unauthorisedly enclosed by Respondent No. 1

(plaintiff). The society is vitally interested in protecting its property. It was at the instance of the Petitioner Society that the Municipal Corporation initiated proceedings under Section 351 of the MMC Act. The question before the court in the Respondent's challenge to those proceedings was, whether or not the structure was authorised, that is to say, was in accordance with the sanctioned plan in respect of the suit building. It is very much a question, in which the society is vitally interested. In fact, in similar circumstances, concerning another stilt portion of the same building, a learned Single Judge of this Court, after considering the judgments of both Ramesh Kundanmal and Mohamed Hussain, has taken a view that the Petitioner Society herein, which was also an applicant for intervention in that other suit, was necessary to be joined as a party defendant to the suit. (See case of Johnson John v. MCGM, Writ Petition No. 1083 of 2018, order dated 23 April 2018).”

20. Another Single Judge (Justice B.P. Colabwala) in the case of **Arun R. Singh (supra)**, by relying upon the decision in the case of **Aliji Momonji & Co. (supra)** has held that the society owing the premises, in which the unauthorized construction was made and for which a notice under Section 351 of the MMC Act was issued, was vitally affected and ought to be joined as a party. Pertinent to note that in **Arun R. Singh (supra)**, the decision in the case of **Mohd. Hussain Gulm Ali Shariffi (supra)** came to be distinguished with the following observations:

“11. Having said this, I shall now deal with the decisions relied upon by the learned advocate appearing on behalf of the Petitioner. The first decision relied upon was a decision of the Supreme Court in the case of Mohamed Hussain Gulam Ali Shariffi (supra). The facts of this case would show that the appellant had filed a suit against Respondent No. 1 (Municipal Corporation of Greater Mumbai) essentially challenging the notice issued under Section 351 of the MMC Act. The main grievance in the said notice was that the Plaintiff had made some unauthorized construction in the building in question and challenging the legality of that notice the suit was filed. During pendency of the suit, Respondent Nos. 2 and 3 filed an application seeking to implead themselves as Defendants in the suit. It was inter alia alleged that Respondent Nos. 2 and 3 had interest in the suit house inasmuch as they claimed to have ownership rights therein. It was also alleged that Suit No. 424 of 2008 seeking the specific performance of the agreement was also filed by Respondent Nos. 2 and 3 in relation to the suit house and the same was pending. It was thus prayed that Respondent Nos. 2 and 3 being the necessary parties for proper adjudication of the rights in relation to the suit house be added as Defendants in the suit in question. This contention of Respondent Nos. 2 and 3 was negated by the Supreme Court. The Supreme Court held that having regard to the nature of the controversy which was the subject matter of the suit, Respondent Nos. 2 and 3 were neither necessary nor proper parties. In the facts of that case it was quite clear that what was required to be decided in the suit was whether the notice under Section 351 of the MMC Act was legally

valid or otherwise. To decide this question, the only proper party was Mumbai Municipal Corporation and Respondent Nos. 2 and 3 had no role to play in that decision. Their right and interest was not being affected by the decision in the suit. This was more so considering that Respondent Nos. 2 and 3 had filed their independent suit seeking specific performance of the agreement in relation to the property in question. It was in these circumstances that the Supreme Court came to the conclusion that Respondent Nos. 2 and 3 before it were neither necessary nor proper parties. This decision, at least in my opinion, has no application to the facts and circumstances of the present case.”

21. While contesting the claim of the petitioners in three petitions, learned counsel for the respondents Shri Oza submits that on perusal of the prayers in the plaint it is apparent that they are directed against the Corporation and a declaration is sought to the effect that the order passed by it under Section 55 of the MRTP Act is illegal and the plaintiff may be permitted to reconstruct the suit premises and the Planning Authority shall restrain from interfering with their possession. Since there is no relief sought against the petitioner, who sought an intervention in the suit, it is sought to be argued that she may pre-supposedly be the owner, who has her interest in the property and but merely on that ground it cannot be said that she is also interested in the litigation since the two aspects are distinct. The relief in the suit being only against the Corporation, the impleadment of the owner is vehemently opposed.

22. Learned counsel for the respondents falls back on the decision of the Apex Court in **Ramesh Hirachand Kundanmal (supra)**, to demonstrate that the party, who seeks his/her impleadment should have interest in the litigation. The submission is, assuming that the suit is filed by a trespasser whatever declaration is required to be sought against him can be filed by instituting a fresh suit, but between him and the Corporation, there is no reason why the owner should seek an intervention.

23. He also relied upon a decision of this court in **Mohamed Hussain Gulam Ali Shariffi (supra)** and the decision of this court dated 15/07/2013 in the case of **Dargah Hazrat Mansurul Hasan Shah Qutubulayliya (R.A.) Sufi Sayyad Mansurool Hasan Shah Mehafil Hasani Trust v. Mumbai Municipal Corporation** in Writ Petition No.4182 of 2013 and in the case of **Shyam Fatechand Shende & Anr. v. Alka w/o. Vinod Ganvir & Anr.** reported in **1998 (1) Mh.L.J. 410.**

24. The bone of contention between the parties being whether the owner of the suit property was a necessary party in the suit filed by a trespasser/tenant being aggrieved by the notices received by him from the Corporation. The question will have to be determined in the backdrop of the provisions revolving

around the impleadment of a necessary or proper party to the suit.

The said issue is no more *res integra* and the authoritative pronouncement of the Apex Court as well as this court, time and again have settled the law to the effect, where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is claimed, against him, he is a proper party. The necessity to join the parties to a suit would definitely depend upon the relief that has been claimed. Under sub-Rule (2) of Rule 10 of Order 1 of the CPC, a person, whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate and settle all the questions involved in the suit, will be necessary party and he shall be added in the proceedings.

25. In the wake of the aforesaid, the main consideration seems to be whether or not the presence of the petitioner is necessary to enable the court to effectually and completely adjudicate upon and settle the question involved in the suit. A party may be eventually affected by the final outcome of the decision of the court and he shall then become a necessary party. Referring to the decision of the Apex Court in the case of **Aliji Momonji & Co. (supra)**, the terminology invoked is “having interest in the property”. The Apex Court, in a dispute between the Municipal Corporation and the lessees, revolving around demolition of a portion of the building on account of unauthorized construction

has held that the landlord seeking his impleadment under Rule 10 of Order 1 of the CPC on the ground of having interest in the property as in the event of demolition of building, his right, title and interest would be directly affected and, therefore, he was a proper party though no relief is sought against him. This decision has been followed by the Bombay High Court in the cases of **Dunhill Come Co-op. Hsg. Soc. Ltd.** and **Arun R. Singh & Anr. (supra)**.

26. The ratio in the case of **Ramesh Hirachand Kundanmal (supra)**, which is sought to be relied upon by the learned counsel for the respondent when carefully perused, deal with a case which did not involve, a structure but referred to two chattles, which are moveables on wheels and plates where servicing and repairs are done and which were used for storing equipments. Admittedly, respondent No.2 therein had no interest in those chattels and the demolition of the same. The thin line of distinction has been noted by Their Lordships while dealing with the case of **Aliji Momonji & Co. (supra)** and the concerned paragraph is already noted by me.

27. Turning to the decision in the case of **Shyam Fatechand Shende (supra)**, on reading of the said law report, it is evident that the suit was filed for a declaration that the map submitted by the plaintiff to the Municipal Corporation was deemed to have been sanctioned and the construction has been carried out in

accordance with the said plan and therefore it was not unauthorized. The applicants claimed that the proceedings were initiated pursuant to the complaint filed by the applicant regarding the unauthorized construction and if they are not jointed as parties in the suit, their rights along with the rights of other tenement holders would be affected in relation to the right of ingress and outgress over the passage specifically left out as per the sanction plan. Relying upon the decision in **Ramesh Hirachand Kundanmal (supra)**, the court had recorded that the applicants' right cannot be said to be affected merely because the non applicant No.1 has carried out some unauthorized construction in the premises. The issue regarding the right of way was recorded as an independant and different from the issue regarding the construction being authorized or unauthorized. It is on account of this fact, that the order of the trial court refusing joining of the applicants as parties to the civil suit was upheld. The aforesaid authority is, therefore, revolving around a right of way, unlike the present case, where the right of owner itself is involved.

28. In another decision in the case of **Darga Hazrat Mansurul Hasan Shah Qutubulayliya (supra)**, the petition was filed by the persons claiming to be trustees of the Trust and recording that the decision in the suit shall not affect the rights of the parties claiming to be the trustees of the Trust. Merely because respondent Nos.2 to 5 therein were the complainants at whose

instance, the notices were issued, they will not be the necessary or proper parties is the finding rendered. In the wake of the settled position of law, it was held that their presence is not necessary for effective and complete adjudication of the dispute involved.

29. Turning to the decision in the case of **Mohamed Hussain Gulam Ali Shariffi (supra)**, the facts reveal that the plaintiff had filed a suit wherein the challenge is raised to the notice issued by MCGM under Section 351 of the MMC Act on account of some unauthorized construction in the building. Injunction was also sought against the MCGM and during the pendency of the suit, respondent Nos.2 and 3 took out chamber summons seeking permission to implead them as defendants in the suit on the ground that they had an interest in the suit house as they claimed to have an ownership right in the suit house. The impleadment was also sought on the ground that one Civil Suit No.424 of 2008 seeking specific performance of an agreement is filed by respondent Nos.2 and 3 therein in relation to the suit house and the same is pending. In the backdrop of the factual aspect, the Apex Court in paragraph No.17 recorded as under:

“17. In the suit in question, the Court is not called upon to adjudicate the rights between the appellant and respondents Nos.2 and 3 in relation to the suit house. Any such dispute, if arises, the same can be decided in the separate

suit, which is pending between the parties or may be filed, if required, by the parties against each other but such dispute cannot be tried on the cause of action pleaded in the present suit by the appellant where the lis is essentially between the appellant (plaintiff) and respondent No.1. Merely because the suit house is the subject matter between all the parties is no ground to get the dispute arising between the parties settled in one suit regardless of the nature of cause of action on which the suit is founded.”

30. The distinguishing feature in the aforesaid decision is the impleadment sought by the respondent, who had an interest in the house but, they were not the owners of the house and their claim for ownership was subject matter of a distinct suit in which specific performance of the agreement was sought by them in relation to the suit house. Therefore, recording that merely because the suit house is a subject matter between the parties, it was held to be no ground for intervention in the suit filed by assailing the notice under section 351 of the MMC Act. The aforesaid decision relied upon by learned counsel for the respondents, therefore, offers no support to him and the position of law which emerges is that the petitioner is necessary party to the suit filed by the respondents, since she is the owner of the property and her right, title and interest in the same, which would be affected by the outcome of the proceedings, make her a necessary party.

31. In the impugned order, learned Judge has clearly missed out the said aspect and has declined her impleadment which, therefore, calls for an interference and the order is liable to be set aside by permitting her impleadment in the suit.

32. As far as Writ Petition No.7074 of 2016 is concerned, the order under challenge is the one passed on 25/01/2016, on chamber summons filed in L.C. Suit No.958 of 2014, where Mrs. Rani Chavan sought her impleadment and which came to be granted. The observation made in the order impugned in paragraphs 28 and 30 recorded as under:

28. Plaint reveals that the suit premises is situated at CTS No.66(part) at Bha Bharat Coal Compound, near Bail Bazar, Kurla (W), Mumbai – 400 070. Along with affidavit of rejoinder, applicant has filed on record letter written by the plaintiff dt. 22/3/2014 wherein the plaintiff has recorded that vide letter dt. 20th August 2010 erstwhile landlords have conveyed that the rent should be provided to the applicant. However, in absence of proper address of the applicant, plaintiff cannot tender rent to her. With said letter, the plaintiff has sent a cheque for rent of Rs.36,822/-. Copy of letter dt. 13th June 2014 further reveals that the applicant has accepted the plaintiff as her tenant but has returned the cheque contending that the plaintiff is in breach of tenancy. Letter dt. 25/11/2014 further reveals that plaintiff has disputed that the plaintiff is landlord.

30. *Once it is held that the plaintiff has accepted that applicant is his landlord, then in view of the observations of the Hon'ble Bombay High Court in Ranjitsingh's case, cited supra, the applicant becomes the proper party to the suit as her rights would be directed affected by the decision in this case. Therefore, I hold that on the strength of plaintiff's conduct and admission that the applicant is landlord, the applicant can succeed in this case. Hence, I hold that Chamber Summons needs to be allowed in terms of prayer Clause (b). Hence, the order."*

Based on above, the chamber summons stand allowed. Rightly, the learned Judge has allowed the impleadment of the land owners/landlord as her rights are likely to be affected. I see no reason to rescind the said order at the instance of the plaintiff in the suit. Necessarily, Writ Petition No.7074 of 2016 is dismissed.

33. Resultantly, the writ petitions filed by the landlords are allowed by quashing and setting aside the order passed on the chamber summons refusing her impleadment in the suits filed against the Corporation as her interest is dependent on the outcome of the said suits. Writ Petition No.7074 of 2016 is dismissed since the impugned order does not warrant any interference. No order as to costs.

[SMT. BHARATI DANGRE, J.]