

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5475 OF 2021

Mohd Shaffi Mohd Akbar Pathan

and ors

.. Petitioners

Versus

The Asstt Commissioner Estate

Department and ors

.. Respondents

...

Mr.Vishal Pattabiramar with Mr.Jayesh Mestry for the petitioners
Mr.Om Suryawanshi for respondent no.1 – MCGM.

CORAM: BHARATI DANGRE, J.

DATED : 25th NOVEMBER, 2021

P.C:-

1 The petitioner is aggrieved by the order passed by the City Civil Court, Mumbai (Dindoshi) on 20th October 2020 on the Chamber Summons filed by M/s.Welfare Properties Ltd under Order 1 Rule 10 seeking to be added as the defendant in the Suit. Under the impugned order, the Chamber Summons has been allowed and the plaintiff is directed to carry out necessary amendment incorporating them as defendants, in the wake of the finding rendered that their presence is necessary in order to effectively and completely adjudicate upon the said issues involved in the suit.

2 The petitioner before this Court is the original

plaintiff who claim to be in exclusive use and possession in a plot of land with the description in the plaint situated at Village Tape, Taluka, Andheri, Mumbai, along with the structure being House No.8 standing thereon. The plaintiffs sought a declaration that they shall be declared as lessees in respect of the suit property and in the said proceedings, the Assistant Commissioner, Estate Department, Municipal Corporation as well as State of Maharashtra are impleaded as party respondents.

On careful reading of the plaint, it can be ascertained that the events narrated therein are spread over for a period commencing from 3.3.1952 when a letter was received by the father of the plaintiff addressed by the defendant no.1 to the effect that the suit property belong to them. The chronology of events is narrated and a reference is made to a Civil Suit being filed in the City Civil Court bearing No.2773/1992 seeking a declaration of their leasehold rights and cancellation of the alleged assessment. However, the Suit was not entertained since the property was an agricultural property and the declaration in respect of the leasehold rights could not have been granted by the Civil Court and that is how the issue was pending. In the year 2018, the Superintendent of Land Records, Slum Rehabilitation Authority of the Corporation issued a notice to the plaintiff for undertaking a survey of the suit property and in the notice it was clearly set out that it is for the purpose of implementation of Slum Rehabilitation Scheme. The plaintiff contested the notices and

approached the Court by invoking the remedy of filing a civil suit, pleading that the survey and the activities undertaken by the defendant no.1 would result into a dispossession and this is being done under the guise of the Slum Rehabilitation Scheme which would seriously prejudice his rights. Hence, the relief as prayed for and referred to above was sought.

3 On being noticed, the Estate Department of the Corporation filed a written statement and in the said written statement, a categorical statement is made to the effect that Tape village, Municipal Hutment Colony has been declared as slum by teh Maharashtra Slum Improvement Board and a statement is also made to the effect that photo passes have been issued to 333 hutment dwellers of the said colony and the stage had reached to the level of draft Annexure II. A specific statement is contained in the written statement to the following effect :

“(i) These defendants say and submit that in view of the above, as per the Property Card, Municipal Corporation of Greater Mumbai is the owner of the property. It is pertinent to note that as per the slum Directives published by Additional Collector (ENC) and Collector of Slum, Bombay and BSD under No.Unit-2-C/WS-407/84 dt. 25.11.1989, the suit property is declared notified slum and hutment dwellers on the same plot of land have been censused since 1975-76 and the photo passes to the hutment have been issued in 1976 as per the censused”.

In the said Suit, the Chamber Summons are taken out by the respondent no.3 to the present petition seeking

impleadment in the suit and the affidavit filed in support of the Chamber Summons, a specific averment is made to the effect that the applicants are the developers in respect of the suit property which is declared as a slum by a notification issued in the Official gazette. The specification of the scheme is also set out in the affidavit and a specific averment is made on oath that on 20th January 2018, the SRA had informed the applicants that the scheme submitted by them for the final plot and CTS number as mentioned in the letter is principally accepted subject to the conditions of submission of grant of LOI within a period of three months from the date of receipt of the letter.

4 It is categorically averred that the proposal was submitted by the applicant for developing the properties under DCR 33(10) and the same is accepted by the Slum Rehabilitation Authority. It is also pleaded that since the MCGM is the owner of the land by virtue of DCR 1.12, the leases are automatically cancelled.

5 It is this Chamber Summons supported by an affidavit with the aforesaid averment which has been granted under the impugned order by recording that the applicant/intervenor has staked his claim in form of right, title and interest in the property described in the plaint in which the plaintiffs are claiming relief for perpetual injunction against defendant nos.1 and 2. For effective and complete adjudication of the Suit filed

by the plaintiff, the presence of the respondent no.2/applicant is found to be necessary.

6 Order 1 Rule 10 sub-clause (2) permits the Court to strike out or at add parties, at any stage of the proceedings, either upon or without an application of either party and the addition shall be granted, if in the opinion of the Court, the presence of the party is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the Suit. By referring to the aforesaid provision and in the conspectus of the plaint, written statement and the impleadment which is sought, the impugned order perfectly justify its existence and the learned Judge has rightly granted the Chamber Summons. Since I fail to see any perversity in the impugned order, order deserve to be upheld. Necessarily, the Writ Petition is dismissed.

No order as to costs.

7 Needless to state that the observations made above are made for the limited purpose for adjudication upon the correctness in the impugned order and shall not be construed to be followed as a precedent by the learned Judge while determining the suit on its merits.

SMT. BHARATI DANGRE, J