

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

WRIT PETITION NO. 5483 OF 2018

Abdul Hameed Mohd. Yusuf Mansoori & Ors. ... Petitioners

Vs.

Bhiwandi Nizampur City Municipal Corporation,
Through its Commissioner & Anr. ... Respondents

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Mr. R. D. Suryawanshi for the Petitioners.

Mr. N. R. Bubna for the Respondent No.1.

Mr. Atharva A. Dandekar a/w. Ms. Akshata Naik for the Respondent
No.2.

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CORAM: MADHAV J. JAMDAR, J.

DATE : 10th AUGUST, 2021.

P. C. :-

1. The Petitioners- original Plaintiffs have challenged order dated 25th July, 2017 passed by learned 4th Joint Civil Judge, Junior Division, Bhiwandi below Exhibit-20 in R.C.S. No. 335 of 2015. The said application bearing Exhibit-20 was filed by third party i.e. present Respondent No.2 under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 seeking her impleadment as party-Defendant. By impugned order the said application was allowed.

2. It is the contention of the Respondent No.2–Third Party in her application bearing Exhibit-20 filed under Order-I Rule 10 read with Section 151 of C.P.C. that the Plaintiffs have filed suit for injunction against the Bhiwandi Nizampur City Municipal Corporation

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(*hereinafter referred to as the “said Municipal Corporation”*) by contending that the Plaintiffs are carrying out legal construction on the land bearing survey No. 72/3, City Survey No. 342 at Nagaon, Khandupada, Bhiwandi, Dist. Thane. It is further stated in the application that Plaintiffs are carrying out construction upon survey No. 82/3 and 72/3 without obtaining permission. The Applicant had made complaints regarding illegal construction to the said Municipal Corporation and obtained information under the Right to Information Act. The said Municipal Corporation has informed the Applicant that no permission was obtained by the Plaintiffs for said construction. In view of the complaints of the Respondent No.2, the Respondent No.1-Municipal Corporation has issued notice under Section 52 of the M.R.T.P. Act against the Petitioners. It is contended by the Respondent No.2 in the said application bearing Exhibit-20 that she is necessary party to the said suit.

3. The Plaintiffs i.e. the Petitioners by filing say at Exhibit-53 contended that the Respondent No.2 is not concerned with the suit property and application Exhibit-20 has been filed in order to harass the Plaintiffs. It is further contended that the Respondent No. 2 has filed R.C.S. No.428 of 2015 and as per the Court Commissioner’s report filed in said suit, there is no encroachment on the land of the Respondent No.2.

4. By the impugned order dated 25th July, 2017 said application was allowed on the ground that although Respondent No.2 is not necessary party but she is proper party.

5. Mr. R. D. Suryawanshi, learned counsel appearing for the Petitioners submitted that the Respondent No.2 has filed suit bearing Regular Civil Suit No. 428 of 2015 and therefore, she need not be impleaded as party to the present suit. In the said suit Court Commissioner was appointed and as per the report of the Court Commissioner there is no encroachment on her land. He further submitted that the Respondent No.2 filed Writ Petition No. 6665 of 2017 and the same was disposed of by only directing the said Municipal Corporation to take action in accordance with law for demolition of illegal construction constructed on survey No. 72/3 CTS No. 342, Vetalpada at Bhiwandi, District Thane. It is specifically mentioned in the order that Writ Petition is not entertained in view of the pendency of the suit filed by the Respondent No.2. He therefore, submitted that the presence of Respondent No.2 is not necessary and therefore, the impugned order be set aside.

6. Mr. Atharva Dandekar, learned counsel appearing for the Respondent No.2 submitted that property of the Petitioners and the property of the Respondent No.2 are adjoining each other. He further submitted that action was taken against the Petitioners by said Municipal Corporation pursuant to several complaints filed by Respondent No.2. He therefore, submitted that Respondent No.2 is necessary and proper party.

7. Mr. Atharva Khandekar, learned counsel appearing for the Respondent No.2 fairly pointed out that R.C.S. No. 428 of 2015 filed by the Respondent No.2 was dismissed for default on 23rd October, 2019. He further states that the steps will be taken immediately for

restoration of the same. It is admitted position that the action taken by the said Municipal Corporation which is the subject matter of R.C.S. No. 335 of 2015 is on the complaints made by the Respondent No.2. Therefore, dismissal of R.C.S. No. 428 of 2015 in default will have no bearing on the merits of the application filed by the Respondent No.2 under Order I Rule 10 of C.P.C. in R.C.S. No. 335 of 2015.

8. It is admitted position that the Respondent No.2 has made several complaints to said Municipal Corporation contending that the Petitioners are carrying out illegal construction on Survey No. 72/3, CTS No. 342, Vetalpada, Bhiwandi, District-Thane and also on Survey No. 82/3. The Respondent No.2 is the owner of land admeasuring 300 sq. yards of City Survey No.334, Survey No. 82, Hissa No. 3, situated at village Nagaon, Khandupada, Bhiwandi, Dist. Thane. Thus, it is clear that Respondent No.2 is the owner of the adjoining plot of the suit property. There is no dispute that the Respondent No.2 sent several complaints to the said Municipal Corporation and pursuant thereto action was taken against the construction of the Petitioners.

9. A perusal of the order dated 9th February, 2018 passed in Writ Petition No. 6665 of 2017 on which the learned counsel Mr. R. D. Suryawanshi has relied, shows that the Division Bench of this Court declined to entertain the Writ Petition as the suit filed by the Respondent No.2 namely R.C.S. No. 428 of 2015 was pending. However, Division Bench observed that Municipal Corporation is bound to take action in accordance with law for demolition of illegal

construction on Survey No. 72/3, City Survey No.342 of Village Nagaon, Bhiwandi, District-Thane which is the suit property. It is also observed in the said order that documents produced by the Municipal Corporation prima facie show that notwithstanding several notices issued by the Municipal Corporation and notwithstanding grant of interim relief by the Trial Court, the huge construction of ground plus five floors high handedly proceeded. It is observed that the said construction is completely illegal and some of the premises have been permitted to be occupied. The Respondent No.2 has submitted complaints to the Municipal Corporation regarding said unauthorized construction. Thus, it is clear that the presence of Respondent No.2 will help in disposal of R.C.S No. 335 of 2015. The learned Trial Court has observed that although Respondent No.2 is not necessary party but she is having knowledge with regard to the said unauthorized construction and therefore, her presence will help the Court for proper adjudication of the suit. It is further observed that if Respondent No.2 is added as party to the suit, no prejudice would be caused to the Plaintiffs as Plaintiffs will have an opportunity to cross-examine the Respondent No.2.

10. In the facts and circumstances of this case, it is clear that the learned Trial Court has properly exercised the judicial discretion under Order 1 Rule 10 of C.P.C. Thus, this is not a case where interference by this Court under Article 227 of the Constitution of India is warranted. Writ Petition is dismissed, however, with no order as to costs.

(MADHAV J. JAMDAR, J.)