

Anand

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

WRIT PETITION 9698 OF 2017

The Municipal Corporation of Greater Bombay .Petitioner

Vs.

M/s. Tyabji Estates Private Limited & ors. .Respondents

Mr. B. M. Chatterji, Senior Advocate a/w Ms Kavita Singh &
Mr. Om Suryavanshi i/b. Mr. Sunil Sonawane, Advocate, for
the Petitioner - MCGM

Mr. Narayan Sahu a/w Mr. Shrinivas Mudliyar & Mr. Dinkar
Desai i/b. M/s. Federal & Co., Advocate, for the Respondents
1 & 2

Ms Pooja Gulbhile (S.E.) D. P.

CORAM : ROHIT B. DEO, J.

DATE : 29.06.2022

P. C.

. The Municipal Corporation of Greater Bombay
(Corporation) took out the Chamber Summons 1732 of
2015 in B.C.C.C. Suit 6796 of 2004 (High Court Suit 1558 of
2004) seeking its impleadment as party Defendant, which
the learned Judge of the City Civil Court has dismissed vide
Order dated 06.05.2016, which order is impugned.

2. The suit is instituted by Respondents 1 & 2 seeking declaration that the purported Deed of lease dated 24.06.1982 in favour of the Defendant and the purported Deed of Confirmation Deed dated 22.07.1999 are null and void. Several consequential and ancillary reliefs are sought. It would not be necessary to delve deeper in the controversy which is pending in the suit. Suffice it to say that the Corporation is not concerned, even according to the learned counsel who appears on behalf of the Corporation with the inter se dispute.

3. The impleadment in the suit is sought on the premise that the suit property is affected by various DP reservations and that possession of portion of land which is reserved for DP road will have to be taken in order to implement Development plan proposals.

4. It would be relevant to reproduce paras 2, 3, 4 & 5 of the Application under O. I, Rule 10 of the Code of Civil Procedure, 1908 which gives a broad idea of the case

pleaded by the Corporation in support of the Chamber

Summons seeking impleadment which read thus :-

“2. The Respondent Nos. 1 & 2 filed Suit No. 1558 of 2004 against the Respondent No. 3 for declaration that the purported deed of lease dt. 24.06.1982 & deed of Confirmation dt. 22.07.1999 be declared null and void and such other consequential reliefs. The Respondents Nos. 1 & 2 in the said plaint specifically admitted the fact that the part of the Suit property i. e. C. T. S. No. 166 of village Majas, Jogeshwari (East), Mumbai-60 was acquired by the petitioners with respect to following points by way of filling writ petition or any other legal remedy. This 13.40 D. P road is a part of approved layout under no. CE/1688/WS/LOKE and registered terms and conditions under no. BDR-8/2792/17/2002 dated 1.7.2002. as per the condition no. 35 of said registered terms and conditions the developer has to handover the D. P. Road and other reservations to MCGM in lieu of TDR only. The condition no. 35 is reproduced as below. The petitioners M. C. G. M. “that the land under reservation shall be handed over to Municipal Corporation Greater Mumbai/Competent authority in lieu of TDR before asking C. C. beyond 50% permissible potential of the plots. The D. P. Road under reference is in possession of Court Receiver since, 2004. This is long pending case. As the matter is subjudiced, and MCGM is unable to provide amenities i. e. Sewer

& Road to the public residing threat. This is important connectivity, Petitioners say. It is to mention here that the road under reference is D. P. Road as per sanctioned Revised Development Plan of K/E ward, 1993 and is a part of approved layout, as such section 306 of MMC Act.

Petitioners MCGM is being Public Authority and planning Authority has approved the Layout. It is further to state that it is the mandatory duty of MCGM to provide Roads and sewer lines for the public. Therefore Hon'ble Court should be requested to allow MCGM to execute the work of missing link of sewer line and construction of D. P. road. Due to completion of this missing link of sewer line and D. P. road large public in the area will be benefitted. The public residing in the layout will also be benefitted by having direct connection to Municipal sewer line. It is to further mention here that as per layout condition, the TDR for the 13.40 mt D. P. Road will be given to the owner who will be proved in the Court of Law as and when.

Petitioners MCGM's motive is to provide the facilities of sewer and road which are not developed due to long pending subjudiced matter & the public is depriving from getting facilities of sewer and road.

Therefore if Hon'ble Court allows MCGM to execute the Work, the facility of sewer line and D. P. Road can be provided to the public.

The contention of the Petitioners is that the said CTS No. 166 is affected by D. P. Reservations i. e. Garden, Dispensary, Secondary School, Playground and 44 ft D. P. Road portion of the said land is in Court Receiver's possession and it is necessary to lay the new sewerage line in Poonam Nagar Area by Sewerage Project Department. Petitioners say that Concerned Dept. as per Dy. Ch. E. (S. P.) say that provision of sewer on proposed D. P. roads projects stopped due to litigation pending on disputed portion of D. P. roads which is located on downstream side.

3. The Petitioners state that for the reasons stated in the Affidavit in Support of Chamber Summons it is just and necessary that the Petitioners are proper and necessary parties to be impleaded in the said Suit. The contention of the Petitioners is that as the part of the Suit property is affected by D. P. Reservation, the Public Projects are getting delayed because of the said Chamber Summons. Hereto annexed and Marked **EXHIBIT "B"** is the copy of the said Chamber Summons.

4. The Petitioners prefer the present Petition on the following grounds :-

GROUNDS

a) The Trial Court ought to have appreciated that as the part of the Suit Property was admittedly acquired by the Petitioners, MHADA and BEST, no right, title or interest devolved upon

the Respondents;

b) The Trial Court ought to have appreciated that as no right, title or interest devolved upon the Respondents for the reasons stated hereinabove, the Respondents are not entitled for any reliefs by filing the said Suit;

c) The Trial Court ought to have appreciated that the said CTS NO. 166 is affected by D. P. Reservations i. e. Garden, Dispensary, Secondary School, Playground and 44 ft. D. P. Road;

d) The Trial Court misinterpreted the provision of order 1 Rule 3 of the CPC while passing the impugned order;

e) The Trial Court erred by observing in Para No. 7 of the impugned order, contending that by filing the present Suit the Plaintiff is not claiming any reliefs against the Petitioner;

f) The Trial Court erred by observing in Para No. 8 of the impugned order that the Petitioner have to take out separate proceeding under MRTP Act;

g) The Trial Court ought to have appreciated that by allowing the Chamber Summons of the Petitioners, the multiplicity of the proceedings would have been avoided;

h) The Trial Court ought not to have observed the findings in para 9 of the impugned order which are far away

from the provisions of the Law;

i) The observations of the Trial Court in para 9, were observed without having authority;

5. The Petitioners have not filed any other Petition, Application or Appeal either in this Hon'ble Court or in the Hon'ble Supreme Court of India for the same or similar reliefs."

5. The learned trial Judge has rejected the Motion on the premise that the Corporation is neither necessary nor proper party to the suit. The learned trial Judge observed that there is no relief claimed against the Corporation nor is the Corporation claiming any right which is based on the inter se transactions between the Plaintiff and Defendant. Dealing with the submission that the Corporation is statutorily required to implement Development Plan proposals, the learned trial Judge noticed in para 8 that the Corporation would be required to take out appropriate proceedings under the provisions of the Maharashtra Regional Town Planning Act, 1966.

6. Having heard learned counsel for the parties, I

broadly agree with the conclusion reached. The learned counsel for the Corporation expresses an apprehension that pendency of the suit and the fact that the subject land is in possession and control of the Court Receiver may be an impediment in the exercise of statutory powers by the Corporation. I do not see any reason why the Corporation should nurture such apprehension. The Corporation is always free to exercise its statutory powers in accordance with law. I need not make any further observation.

7. Subject to the observations supra, the Petition is disposed of.

(ROHIT B. DEO, J.)