

Anand

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

WRIT PETITION 2965 OF 2022

Maheshchandra Harinarayan Singh .Petitioner

Vs.

The Municipal Corporation of Greater .Respondents
Mumbai & anr.

Mr. B. S. Shukla, Advocate, for the Petitioner
Mr. Santosh Parad, Advocate, for the Respondent 1 – MCGM
Mr. Kunal Bhanage a/w Mr. Akshay Pawar, Advocate, for the
Respondent 2

CORAM : ROHIT B. DEO, J.

DATE : 25.07.2022

P. C.

. The Petitioner is the Plaintiff in L.C. Suit 814 of 2017 and the challenge in the Petition is to the Order dated 27.10.2021, whereby the learned City Civil Court (trial Court) allowed Chamber Summons 729 of 2018 taken out by the Respondent 2 seeking impleadment under O. I, Rule 10 of the Code of Civil Procedure, 1908 (for short ‘CPC’).

2. The suit is instituted against the Municipal Corporation of Greater Mumbai (Corporation) questioning

the notice issued under Section 351 of the Mumbai Municipal Corporation Act (Act). It is alleged in the notice that by covering the compulsory open space of the building by fixing rolling shutter and collapsible gate, part of the construction of the shop which is in occupation of the Plaintiff, is unauthorized.

3. It is not in dispute that the Plaintiff is the tenant of the Third Party - Evershine Moon Co-operative Housing Society Ltd.. While learned counsel for the Plaintiff would submit that in the absence of conveyance or deemed conveyance, the said society does not have title to the building in which the shop is located, I am afraid a lessee cannot be heard questioning the title of his landlord.

4. Be that as it may, the learned trial Court considered several decisions of the Supreme Court and this Court holding field. The learned trial Court recorded a finding that the society is a necessary party and at any rate is a proper party, since its presence in the suit is necessary to enable the Court to effectively and completely adjudicate

all the questions involved.

5. I do not see any error in the view taken. Para 5 of the decision in *Aliji Momonji & Co. Vs. Lalji Mavji And Others*, reported in (1996) 5 Supreme Court Cases 379 reads thus :-

“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. Under those circumstances, the question of the commercial interest would not arise. In *Ramesh Hirachand Kundanmal* case reported in (1992) 2 SCC 524 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. This Court in *New Redbank Tea Co. (P) Ltd. v. Kumkum Mittal* reported in (1994) 1 SCC 402 has pointed out that Respondent 11 who filed a suit for specific performance in the High Court was sought to come on record in the suit in which he had no direct interest in the pending matter. Under those circumstances, this Court had held that Respondent 11 was neither necessary nor proper party in the leasehold interest involved in the suit. In *Union of India v. Distt. Judge* reported in (1994) 4 SCC 737 the Union of India who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10 CPC for determination of the compensation in respect of the acquired land. In *Bihar SEB v. State of Bihar* reported in 1994 Supp (3) SCC 743 the same question was also reiterated and it was held that the Electricity Board was a person interested and also a necessary party. In *Anil Kumar Singh v. Shivnath Mishra* reported in (1995) 3 SCC 147 similar question was answered holding that the respondent was a necessary party.”

6. The decision in *Aliji Momonji & Co. Vs. Lalji Mavji And Others (Supra)* is followed by this Court in *Ranjitsingh Linga and another Vs. Municipal Corporation of Greater Mumbai and another*, reported in *2010(2) Mh. L. J. 703*.

Suffice it to note the following observation in the said decision which reads thus :-

“12. Thus, what has been held by the Apex Court in the decision in the case of *Aliji Momonji* (supra) and by this Court in the case of Adam A. Sorathia (supra) is that if action of demolition of a building or a part thereof initiated by a Municipal Corporation is challenged, the rights of the landlord of the building will be directly affected and therefore such landlord would be a proper party though no relief has been sought against him. Thus, if a third party is the owner of the property sought to be demolished, such a third party has a direct and substantial interest inasmuch as in the event of its demolition, rights of such third party would be materially affected.”

7. I do not see any error in the order impugned much less an error as would compel me to exercise writ jurisdiction.

8. The Petition is dismissed.

9. At the request of the learned counsel for the Petitioner, the interim order shall continue to operate for the next 30 days and shall lapse automatically thereafter.

(ROHIT B. DEO, J.)