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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 13105 OF 2019**

MR. SUDHIR SHIVANAND GOKARN

....Petitioner

V/s.

**THE MUNICIPAL CORPORATION
OF GREATER MUMBAI
AND ANOTHER**

.....Respondent

Mr. Deepak Pandey for the Petitioner

**Mr. Santosh Parad a/w Om Suryawanshi for Respondent no. 1
MCGM**

Mr. Ashokkumar Dubey i/b Savj Law Solutions for Respondent no. 2

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 14, 2022.

P.C.:

1] Heard respective counsel.

**2] Petitioner initiated LC Suit No. 3003 of 2015 for declaration
against Respondent-Corporation in the matter of notice dated
08/06/2011.**

**3] In the said Suit, chamber summons is taken out by Respondent
no. 2 no. 78/2019 which was allowed vide order dated 05/10/2019.**

As such, this petition by original Plaintiff.

4] Counsel for the Petitioner Mr. Pandey would urge that as a consequence of grant of chamber summons no. 78/2019 passed by the City Civil Court, Mumbai, Respondent no. 2 is directed to be impleaded as Defendant no. 2 to the Suit. By relying on the averments made in the Plaint and the order of the Municipal Corporation which is impugned in the said Suit, he would claim that said Respondent no. 2 is neither a necessary nor appropriate party. So as to substantiate his claim he has drawn support from the very language of Order I Rule 10 of Code of Civil Procedure, 1908 and from status of Respondent/proposed Defendant no. 2.

5] Mr. Dubey, counsel appearing for Respondent no. 2 would urge that rights of the proposed Defendant are hampered because of act of the Plaintiff. He would claim that Petitioner obstructed the Respondent in lawful use of terrace above his property, as a consequence of which notice came to be issued. By relying on certain pleadings and communication, he would claim that for

effective adjudication of the Suit, Respondent no. 2 is appropriate party, even if no relief is claimed against him.

6] Mr. Parad, counsel appearing for Respondent corporation would urge that in the facts and circumstances, court may pass appropriate orders.

7] I have considered rival submissions.

8] Principally, LC Suit initiated by the Petitioner is against Respondent Corporation thereby seeking declaration that notice dated 08/06/2011 is illegal, bad in law and not binding on the Petitioner-Plaintiff. Other reliefs which are claimed are in relation to very structure as is mentioned in the said notice dated 08/06/2011.

9] As far as case of the Respondent/proposed Defendant no. 2 is concerned, according to him, as a consequences of Corporation having noticed illegal structure, the impugned notice/order in the Suit came to be issued at the behest of Respondent.

10] Even if, presuming that there is such illegal structure, at this moment, it is difficult to infer that such structure in any way hampers right of the proposed Defendant. Status of the Defendant is that of member of the society and proposed Defendant no. 2 is occupying commercial Gala/Shop. Defendant, if claimed to have any right over the property in relation to which impugned notice is issued to the Plaintiff-Petitioner, he has every right to file an independent Suit and he cannot be termed as necessary or appropriate party to the Suit in question as it is not demonstrated from the record that any of his rights are hampered in case if the Suit is decreed or dismissed.

11] In the wake of above observations, Judgment impugned passed in Chamber Summons No. 78/2019 on 05/10/2019 is hereby quashed and set aside. Chamber Summons No. 78/2019 stands rejected.

12] Petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]