

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1998 OF 2022

**ASHOK DAMODHAR PAWAR AND ANOTHER
VERSUS
THE CHIEF OFFICER, MUNICIPAL COUNCIL, JALNA AND OTHERS**

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Advocate for Petitioners : Mr. Sachin S. Bhise
Advocate for Respondent Nos. 1 & 2 : Mr. M.G. Deokate, Advocate
h/f Mr. A.S. Deshpande
Advocate for Respondent No.3 : Mr. A.S. Bajaj

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10th APRIL, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 28/09/2021, passed by learned 3rd Joint Civil Judge, Junior Division, Jalna, below Exhibit-14 in R.C.S. No.188/2021, thereby allowing application filed by respondent No.3 under Order I Rule 10 read with section 151 of the Code of Civil Procedure, for adding him as defendant No.3 in the suit.

2. The suit is filed by petitioners/original plaintiffs against Municipal Council, Jalna, seeking injunction that defendants should not interfere in the lawful possession of suit shop of the plaintiffs and should not demolish the steps, wharanda and shade in front of their shop. Respondent No.3 filed application Exhibit-14 seeking his impleadment in the suit as defendant. The said application came to be allowed. Hence the present petition.

3. Heard learned advocate for petitioners, learned advocate for respondent Nos.1 and 2 and learned advocate for respondent No.3. Perused the memo of writ petition, annexures thereto and the impugned order.

4. Learned advocate for petitioners by relying on *Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay and Others* [2017(6) ALL MR 420 (S.C.)], *Dempo Mining Corporation Private Limited Vs. Pradit Naik and Others* [2015(3) ALL MR 276], *Ramesh Shama Kumbhar and Another Vs. Sudhakar Budha Kumbhar and Others* [2013(4) Mh.L.J. 81], *Gopikabai Nathuram Malewar and Another Vs. Bapurao Mahadeorao Surkar* [1995(2) Mh.L.J. 816] and *Sulbha Devendra Kokate Vs. Surekha Kokate and Others* [2022(1) ALL MR 152], submits that plaintiffs are *Dominus litis* and they have not claimed any relief against defendant No.3 and trial Court has committed error in allowing the application filed by respondent No.3, thereby adding him as a party defendant. He, therefore, submits that the impugned order be quashed and set aside.

5. Learned advocate for respondent Nos. 1 and 2 submits that Municipal Council has issued notice to the petitioners on 24/09/2021 for demolishing of the alleged encroachment made by them.

6. Learned advocate for respondent No.3 by placing reliance on *Chandrakant Dharma Bhonu Vs. Pandurang Ramchandra Dandekar [2004(2) Mh.L.J. 782]* and *Dada s/o Gopinath Nimse Vs. Collector, Ahmednagar and Others [2012(6) Mh.L.J. 357]*, submits that respondent No.3 is owner of the complex in which petitioners have purchased shops and they have made encroachment in the property owned by respondent No.3. He submits that time and again he has complained to the Municipal Council about illegal encroachment made by plaintiffs and therefore, Municipal Council has issued notices to the petitioners for removal of encroachment. Hence, the third respondent is a necessary party. Trial Court is, therefore, justified in allowing the application and directing plaintiffs to add respondent No.3 as defendant No.3.

7. It appears from record that petitioner No.1 has purchased one shop from respondent No.3 by way of registered sale deed dated 17/05/2006. Petitioner No.2 has purchased two shops from respondent No.3 by registered sale deed dated 03/09/2007. From the averments and pleadings on record it *prima facie* appears that plaintiffs started encroaching on the open land of respondent No.3 by erecting teen shade adjacent to their shops. This fact is not disclosed by plaintiffs in the plaint. It further appears that respondent No.3 has repeatedly approached Municipal Council

seeking removal of encroachment made by the plaintiffs and therefore, action of removal of encroachment was initiated by the Municipal Council. The same is challenged by petitioners by filing the suit. In these circumstances, respondent No.3 appears to be necessary party in the suit, as due to the encroachment of petitioners his rights are affected.

8. In *Chandrakant Dharma Bhonu* (supra), in similar facts, learned Single Judge of this Court has held thus:-

"11. The conspectus of facts clearly shows that the Petitioner is directly and substantially affected by the unauthorized construction which is alleged to have been carried out by the First Respondent. Indeed, the process of enforcing the statutory powers and duties of the Municipal Corporation has been initiated on complaints filed by the Petitioner and pursuant to successive petitions filed before this Court under Article 226 of the Constitution. In the Chamber Summons which was filed before the City Civil Court, the Petitioner has specifically made a grievance of the fact that between the structure of the Petitioner and the First Respondent there was a vacant land in the past which had been used by the Petitioner and by his forefathers. The Petitioner was, in the circumstances, directly aggrieved by the conduct of the First Respondent in having allegedly increased the area of the ground floor and by constructing an unauthorized first floor thereon. The grievance of the Petitioner was that the inaction of the Corporation was due to the clout wielded by the First Respondent. The Corporation was constrained to act only upon successive petitions instituted by the Petitioner in this Court. Having regard to these facts and circumstances, I am of the view that the learned Trial Judge was clearly not justified in rejecting the Chamber Summons and in coming to the conclusion that the Petitioner was neither a necessary nor proper party. Undoubtedly, the Plaintiff is dominus litis and that is a principle which has been laid down by Vimadalal, J.

in *Jivanlal Damodardas Wani vs. Narayan Ukha Sali* (AIR 1972 Bombay 148). However, having regard to the provisions of Order 1 Rule 10 of the Code of Civil Procedure 1908 it cannot be said that the application for impleadment that was moved on behalf of the Petitioner was misconceived. The Petitioner is directly and substantially concerned with and affected by the proceedings before the City Civil Court for more than one reason. The action of carrying out an allegedly unauthorized construction and the alleged encroachment by the First Respondent directly affects the rights of the Petitioner. Secondly, it is at the behest of the Petitioner and, in view of the proceedings which were instituted before this Court, that the Municipal Corporation has almost grudgingly resorted to its statutory powers under the Mumbai Municipal Corporation Act 1888. In the circumstances, the order passed by the learned Trial Judge is unsustainable and is accordingly quashed and set aside. The Chamber Summons instituted by the Petitioner (Chamber Summons 714 of 2003) shall stand allowed. Rule is made accordingly absolute in terms of prayer clauses (a) and (b). Amendment to be carried out within a period of one week from today."

9. Similar view is taken by the learned Single Judge of this Court in *Dada s/o Gopinath Nimse* (supra), which reads thus:-

" In the instant matter, third party applicants contend that they are the adjoining land owners and as a result of unauthorised construction raised by plaintiff, their right of access is affected. It is contended by third party applicants that construction is on the public way which affects rights of those persons to use the public way and the third party applicants being the adjoining land owners are directly affected. Third party applicants contend that they have existing cause of action against plaintiff and also have entitlement to use the disputed area. In view of peculiar facts and circumstances of the instant case, reliance placed on the judgment of the Apex Court is misplaced.

4. Learned counsel for respondents has invited my attention to the judgment of the learned Single Judge of this Court in the matter of *Chandrakant Dharma Bhonu Vs. Pandurang Ramchandra Dandekar and another* reported in

AIR 2004 Bombay 374. In the reported matter application tendered by adjoining owner who was directly affected by unauthorised construction was entertained on the ground that third party applicants have cause of action and they would be directly affected by determination of issues those would be raised in the suit. In view of these facts and circumstances, I am of the view that trial Court is well within its limits in entertaining the application and permitting third party applicants to claim impleadment in the suit. Petition is devoid of substance hence stands rejected."

10. The aforesaid observations support the case of respondent No.3. Trial Court has passed well reasoned order and has properly appreciated the facts and is justified in allowing application of respondent No.3.

11. In the rulings relied upon by learned advocate for petitioners, principle that plaintiff is *Dominus litis* is reiterated. It is further held that where the lis is essentially between plaintiff and Municipal Council, merely because the suit property is subject matter between all the parties, is no ground to get the dispute settled in one suit regardless of the nature of cause of action on which suit is founded. There cannot be any dispute about the said proposition of law.

In the case in hand, since rights of respondent No.3 are affected and at his behest action for removal of encroachment is initiated by the Municipal Council, respondent No.3 is necessary party and therefore, trial Court has rightly allowed the application.

12. There is no illegality or perversity in the order impugned in present petition. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)