

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

WRIT PETITION NO.6922 OF 2023

Dharnendra Sheshmal Jain and Anr. Petitioners

Vs.

The Municipal Corporation of Greater
Mumbai

..... Respondents

Mr. Sandeep Sharma for the Petitioners.

Mr. R. Y. Sirsikar for Respondent-BMC.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 3rd JULY 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 18/2/2023 passed in Chamber Summons No.294/2003 in L. C. Suit No.448/2023 permitting the applicant therein i.e. respondent No.4 herein to be impleaded as party to the proceedings.

3. Learned counsel appearing for the petitioners submits that the petitioners along with respondent No.3 are the tenants in respect of Room No.5A & 14 of building known as 'Modi Building', Dr. M. B. Welkar Street, Kalbadevi Road, Mumbai in

respect of which notice was issued under section 351 of the MMC Act, 1888 on 4/2/2020 alleging that the lofts in the suit premises were constructed subsequently. He would further submit that as the notice came to be issued by the Corporation on 31/10/2022 intimating that the officials will come for demolishing the notice structure, L. C. Suit No.448/2023 came to be filed. He would contend that the applicant, who is the owner of the premises is neither a necessary party nor a proper party and at the most respondent No.4 can be summoned as the witness of the respondent-corporation. In support of his contention he has relied upon the compilation of judgments and has pressed into service decision of the Apex Court in the case of *Mohamed Hussain Gulam Ali Shariffi vs. Municipal Corporation of Greater Bombay and Ors., Civil Appeal No.12273 of 2016*. He also placed reliance upon the decision of this Court in the case of *Deju Somaya Salian vs. The Municipal Corporation of Gr. Mumbai & Ors., Writ Petition No.7123/2018 dated 24/9/2018*. He would submit that the decision of the Apex Court as well as this Court has held that in respect of notice issued by the Corporation, it is only the validity of the notice which will be in question and as such presence of the

proposed applicants therein were not necessary. He would urge that the facts of the case in the case of *Deju Somaya Salian (supra)* are identical and in that decision this Court had quashed the order of impleading respondent No.3 who was the landlord of the property.

4. Considered the submissions of Mr. Sandeep Sharma, learned counsel for the petitioners and Mr. R. Y. Sirsikar for respondent- BMC.

5. L. C. Suit no.448/2023 challenges the notice of the Corporation issued under section 351 of the MMC Act. The respondent No.4 is the co-owner of the property in respect of which the notice has been issued by the Corporation seeking to demolish the unauthorized portion of the suit premises. Respondent No.4/applicant being the co-owner of the suit premises has direct and substantial interest in the property forming subject matter of the L.C. Suit No.448/2023. The Apex Court in the case of *Aliji Momonji & Co. vs. Lalji Mavji & Ors., (1996) 5 SCC 379* has held that the landlord as the owner of the property has direct and substantial interest and as such an appropriate party

to the proceedings in a suit against the Corporation. The decision which has been relied upon in the case of *Mohamed Hussain (supra)* by the learned counsel for the Petitioner is distinguishable as in that case the applicant had filed a separate suit seeking specific performance of the agreement in relation to the suit house and same was pending. In the facts of that case the interest of the applicant was yet to be determined. As regards the decision of this Court in the case *Deju Somaya Salian (supra)*. Respondent No.3 therein had already filed a separate suit for seeking partition of the property including the suit property and in the facts of that case, this Court had held that respondent No.3 was not a necessary party.

7. The facts of the present case are clearly distinguishable and the decision of the Apex Court in the case of *Aliji Momonji (supra)* is squarely applicable. Considering that this Court is called upon to exercise jurisdiction under Article 227 of the Constitution of India which is not to be exercised for correcting mere errors of law or fact unless grave prejudice is shown to be caused by the impugned order, in the present case, I do not find any reason to

interfere in the impugned order.

8. In view thereof, the petition is devoid of merits and stands dismissed.

SHARMILA U. DESHMUKH, J.