

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7696 OF 2023

Mandabai Ramdas Datir & Ors.

...Petitioners

Versus

Maharashtra Industrial Development
Corporation & Ors.

...Respondents

Mr. Pandit Kasar for the petitioners.

Coram : Sharmila U. Deshmukh, J.

Date : June 27, 2023.

P. C. :

1. Heard Mr. Kasar, learned counsel appearing for the petitioners.

2. By this petition, the challenge is to the order dated 13th March 2023, permitting the impleadment of the respondent no. 3 to 7 as party to Special Civil Suit No. 1048 of 2022 instituted by the petitioners challenging the notice issued by the respondent-MIDC in respect of the structure constructed on the land described in paragraph no. 1 of the plaint and for compensation from MIDC in respect of the said structure in case the petitioners are evicted from the suit property.

3. Learned counsel appearing for the petitioners does not dispute the position that the structure, which is subject matter of the notice, is situated on the land in respect of which there is a Decree in favour of the Respondent Nos. 3 to 7 in RCS No 265 of 2015. As regards the decree passed, he would contend that by order dated 2nd May, 2022 passed by this Court in S.A. No 219 of 2022 challenging the decree, this Court has held the allotment to be illegal for the reason that no objection was not obtained from the other legal heirs and that the trial court has directed MIDC to re-consider the allotment. He would further submit that the present proceedings seeks to challenge the notice issued in respect of the structure constructed on the said land in which the respondent Nos. 3 to 7 have no right and as such no right can be claimed thus in respect of the compensation. In support of his submission he relied upon the decision of the Apex Court in the matter of ***Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay, [(2020) 14 SCC 392]***.

4. Considered the submission and perused the impugned order.

5. It is not in dispute that the Special Civil Suit No 1048 of 2022 was instituted to challenge the notice issued by MIDC in respect of the structure constructed on the land being PAP Plot No 33 ad measuring 100 square meters. The contention of the learned counsel for the Petitioners is that the suit is confined to the notice issued by MIDC. In that respect, if the plaint is perused, in paragraph 1 of the plaint, the suit property is described as the land being PAP Plot No 33 admeasuring 100 and the structure standing on the said land. Perusal of the prayer clause of the plaint discloses that, apart from the challenge to the notice issued by the MIDC, mandatory injunction restraining the Defendants from obstructing the possession of the Petitioners in respect of the suit property viz the land being PAP Plot No 33 and the suit structure, and from the allotting the plot or any part thereof to any third party is sought. The contention of the learned counsel for Petitioners that relief is sought only in respect of the structure cannot be accepted in view of the relief sought in the plaint. There is a decree in favour of Respondent Not 3 to 7 in respect of the land being PAP Plot NO 33. The issue requiring determination is whether the outcome of the

proceedings will affect the rights of the Respondent Not 3 to 7. The decree operating in favour of the Respondent Not 3 to 7 is in respect of the land forming the subject matter of the Special Civil Suit No 1048 of 2022. In event the petitioners succeed in the said proceedings, the rights of the respondent Nos. 3 to 7 will be directly affected and, as such, it cannot be said that they are not a necessary party to the proceedings. The Apex Court in the decision of ***Aliji Momonji & Co. Vs. Lalji Mavji*** ,[(1996) 5 SSC 379] has held that the party who has a direct and substantial right in the suit property is required to be impleaded.

6. The decision in the case of ***Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay*** relied upon by the learned counsel for the petitioners was in respect of the notice which was issued under section 351 of the Mumbai Municipal Corporation Act. In those proceeding the parties proposed to be added claimed to have an interest in suit house by virtue of an agreement for sale allegedly executed in their favour. The rights of the parties seeking impleadment were yet to be determined and in the facts of those case, the decision of the Apex Court was rendered. The said decision is distinguishable

on facts. In the present case, the respondent Nos. 3 to 7 claims proprietary interest in the suit land.

7. In view thereof, there is no infirmity in the impugned order. The Writ Petition stands dismissed.

[Sharmila U. Deshmukh, J.]