

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8691 OF 2022

Ram Rudra Co-op. Hou. Soc. Ltd. Thr ...Petitioner
Chairman Jitendra Vasudev Barhate

Versus

Mira Bhayandar Municipal Corporation Thr. ...Respondent
Commissioner And Ors .

Mr. Ashutosh R. Gole, for Petitioner.
Ms. Pooja Singh and Mr. Drishti Saigal i/b. Mr. N. R. Bubna, for
Respondent No.1-Corporation.
Mr. G.S. Godbole, Senior Advocate i/b. Mr. Shon D. Gadgil, and
Mr. Kaushtubh Thipsay, for Respondent Nos.2 and 3.

CORAM : M.M. SATHAYE, J.

DATED : 3rd March 2023

P.C. :

1. This petition under Art. 227 of the Constitution of India, is filed challenging Judgment and Order dated 10.06.2022 passed by 4th Joint Civil Judge, Senior Division, Thane below Exhibit-22 in Regular Civil Suit No.713 of 2021. This is suit filed by the Petitioner seeking declaration that the suit Notice dated 02.09.2021 issued by Respondent No.1 Mira Bhayandar Municipal Corporation to the Petitioner-Society, is illegal and further seeking consequential reliefs of injunction against the

Respondent No. 1 not to act on said notice, not to demolish Petitioner's compound wall etc.

2. The Respondent Nos.2 and 3 filed an application in the said suit below Exhibit-22 for impleading themselves under Order 1 Rule 10 of Civil Procedure Code contending inter alia that they are owners of adjoining land to the suit property and a portion of land admeasuring 316.21 sq. mtrs. & 15.78 sq. mtrs out of old Survey No.221 (new Survey No.195 Hissa No.1) i.e the suit property, is encroached upon by Petitioner, for which they have filed representation to Respondent No. 1 Municipal Corporation, with a request to demolish compound wall on the encroached portion. It is alleged that before Respondent No. 1 could take action, the suit is filed by the Petitioner without making them party and in collusion with original Defendant-Municipal Corporation.

3. The Trial Judge, vide the impugned Order, has allowed the said application and permitted Respondent Nos.2 & 3 to be made party in the suit.

4. Heard Mr. Gole, learned counsel for the Petitioner. He submitted that his client i.e the Petitioner Society is *dominus*

litis in the suit who has chosen to file suit against Municipal Corporation who has issued the suit notice in respect of the compound wall of the Petitioner-Society. He submitted that it is Petitioner's choice whom to make party-defendant, especially when the prayers in the suit are only in respect of declaring the suit notice as illegal and consequential injunctive orders. He further submitted that the question involved in the suit filed by the Petitioner, is only about the legality of the said notice and nothing else. He relied upon the judgment of Hon'ble Supreme Court in the case of **Ramesh Hirachand Kundanmal V. Municipal Corporation of Greater Bombay And Ors. reported in (1992) 2 SCC 524**, and a Judgment delivered by this Court in **Writ Petition No. 9970 of 2019 dated 14.07.2022 in the case Kalpana Vijaysinh Savant & Anr. V. Barkha Amir Haldive @ Barkha Govind Valanju & Ors**, in support of his case.

5. Per contra, Mr. Godbole, learned Senior counsel appearing for Respondent Nos.2 & 3 submitted that the suit notice itself mentions the name of his client i.e. Respondent No.2, who is Complainant with the Respondent No.1 Municipal Corporation, at whose instance the suit notice is issued. He submitted that when the suit notice includes the name of Respondent No.2, his

client ought to have been made party, being both proper and necessary party. He invited Court's attention to the averments of Application below Exhibit-22 filed by Respondent Nos. 2 & 3. He submitted that Respondent Nos.2 & 3 are claiming interest viz. ownership in the aforesaid portion of suit property, about which the Petitioner has filed the said suit and upon which the alleged offending structure compound wall is existing. He distinguished the Judgments relied upon by the Petitioners and relied upon the Judgments in the case of **Aliji Momonji & Co. V. Lalji Mavji & Ors.** reported in *(1996) 5 SCC 379* and **Chandrakant Dharma Bhonu V. Pandurang Ramchandra Dandekar and Anr.** reported in *2004(2) Mh.L.J., 782*

6. During the course of hearing, it was brought to the notice of the Court that after the impugned Order was passed and before ad-interim relief was granted by this Court in the present writ petition, Respondent Nos.2 & 3, as added defendants, have filed written statement and counter claim claiming a declaration that they are owners of the aforesaid portion of suit property and further declaration that the possession of the Petitioner/Plaintiff to the extent of the said portion of suit property is illegal and further declaration that Petitioner's

compound wall on the said portion is unauthorized and also mandatory direction against the Petitioner/Plaintiff to demolish the same. Be that as it may.

7. Heard both sides. Perused records.

8. From the facts of the case, it is clear that added parties (Respondent Nos.2 & 3) are claiming ownership right in the portion of the land which is suit property. On this premise, let us proceed to consider the judgments relied upon by the Petitioner. A perusal of Judgment of **Ramesh V. Municipal Corporation (supra)** shows that in the facts of that case, there were no allegations of collusion by the third person to sought his impleadment in the suit between a private party and Municipal Corporation. In that case, the offending structure for which notice was issued by the Municipal Corporation was two chattels on the terrace of the structure of the petrol pump and there was no dispute about adjoining land owner or any allegation about part of the suit property itself being encroachment. In the present case at hand, third party seeking impleadment is claiming ownership right in the portion of suit property and has alleged collusion between Petitioner and Municipal Corporation.

In that view of the matter this Judgment is clearly distinguishable and does not advance the case of the Petitioner.

9. So far as the Judgment and Order in the case of **Kalpana V. Barkha (supra)** is concerned, the facts of that case are totally different from the facts of this case. A perusal of para 13 & 19 shows that the dispute therein had arisen out of contractual obligations between parties and the only interest the third party claimed is in the recovery of the amount which was allegedly due and payable by the Plaintiffs. In the facts of the present case, the right or interest claimed by a third person (Respondent Nos.2 and 3) is of ownership in the portion of suit property, which according to them is actually encroached by the Plaintiff and there is a construction of the compound wall. For that reason, this Judgment is also clearly distinguishable and does not advance the case of the Petitioner.

10. On the other hand, in the case of **Aliji Momonji V. Lalji Mavji (Supra)** (which considers the case of Ramesh V. Municipal Corporation (supra) also) it was held that it is settled law by catena of decisions that where the presence of a party is necessary for complete and effective adjudication of the dispute,

though no relief is sought against him, such person is proper party. In the present case, if the cause of action (suit notice) itself is inclusive of complaint / representation of Respondent No. 2 and 3, they are certainly proper party.

11. The Judgment of **Chandrakant V. Pandurang (Supra)** relied upon by the Respondent Nos. 2 and 3 are directly applicable to the present case. In this case also, the dispute was between the Plaintiff and the third person who is the adjoining land owner and the initiation of an action against the Plaintiff was on the complaint by the third person drawing the attention of the local Corporation that the Plaintiff was involved in the unauthorised construction. In such situation, the addition of such third person as a party under Order 1 Rule 10 of Civil Procedure Code, was sustained by this Court.

12. In the light of the aforesaid factual and legal position, when the name of Respondent No.2 was mentioned in the suit notice itself, the Petitioner/Plaintiff ought to have made them party but it chose not to do so. This actually lends credence to case of Respondent Nos.2 and 3 that the suit has been filed conclusively with the Municipal Corporation. Since Respondent

Nos.2 and 3 have claimed to have a direct interest of ownership in the portion of the suit property, this Court is of the view that they are proper parties for proper adjudication.

13. It will not be out of place to state that in view of Counter claim, now raised by Respondent Nos. 2 and 3 including prayers as already discussed, they are also necessary parties. It is now only a matter of fact that the litigation has turned into rival claims between the Petitioner and Respondent Nos.2 and 3.

14. In the light of the aforesaid discussion, I find no patent illegality or perversity in the impugned Order and no interference is called for. The Petition is therefore dismissed. No order as to costs.

15. It is however clarified that the Petitioner will be at liberty to file a written statement to the counter claim filed by Respondent Nos.2 and 3, raising all contentions as it pleases. All contentions of both the parties, including the issue of limitation about Counter Claim made by Respondent Nos.2 and 3, are expressly kept open.

16. At this stage learned counsel for the Petitioner seeks

extension of the ad-interim relief as existing today. In order to enable the Petitioner to pursue the matter further, the ad-interim relief granted by this Court on 29.07.2022 and modified thereafter on 26.08.2022, is continued for a period of 4 weeks from today.

(M.M. SATHAYE, J.)