



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7465 OF 2023

Ashwin Bansilal Shah & Another. ...Petitioners.

Versus

Yash Dhanpatraj Bhansali and Others. ..Respondents.

WITH

WRIT PETITION NO. 7463 OF 2023

Ashwin Bansilal Shah & Another. ...Petitioners.

Versus

Yash Dhanpatraj Bhansali and Others. ..Respondents.

WITH

WRIT PETITION NO. 7461 OF 2023

Ashwin Bansilal Shah & Another. ...Petitioners.

Versus

Yash Dhanpatraj Bhansali and Others. ..Respondents.

*Mr. Mayur Khandeparkar, Mr. Prathamesh Kamat and Mr. Bhanu Chopra i/b
Trupti Shetty and Ms. Aishwarya Chemburkar for the petitioner.*

*Mr. G. S. Godbole, Senior Advocate along with Mr. Jaydeep Jeo for respondent
Nos.1 and 2.*

Coram : Sharmila U. Deshmukh, J.

Date : October 23, 2023.

P. C. :

1. The petitions arise out of three different orders passed by
the Appellate Bench of Small Causes Court at Mumbai in proceedings

[This is the corrected order pursuant to speaking to the minutes order dated 2nd Nov. 2023.]

initiated by the landlord – owner against three different tenants. Learned counsel appearing for the respective parties submit that although the proceedings arise from three different eviction proceedings, identical orders are passed by the revisional Court. In view thereof, the petitions were heard together and are being disposed of by this common order.

2. By these petitions filed under Article 227 of the Constitution of India, the challenge is to the order dated 7th June 2023 passed by the Appellate Court allowing the revision applications preferred by respondent nos.1 and 2, directing the Plaintiffs, who are petitioners herein, to implead the intervenors as defendants in the respective suits. For the sake of brevity and convenience, the facts of Writ Petition No. 7465 of 2023 are being discussed herein.

3. The proceedings in question have been filed by the petitioners herein against respondent nos.3 and 4, being RAE & R Suit No. 270/480 of 2012, seeking eviction on various grounds including the ground of arrears of rent. In these proceedings respondent nos.1 and 2 filed an application seeking intervention, the right being claimed on the basis of a development agreement dated 15th April 2010 entered into between the plaintiff and the intervenors wherein intervenor were granted redevelopment right in relation to the

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building in which the tenant occupy the premises which are subject matter of the suits. The trial Court by order dated 27th February 2023 dismissed the intervention application by holding that the dispute between the plaintiff and intervenors is in respect of development agreement, that the applicants are claiming rights as landlord of the premises on the basis of development agreement, the right to negotiate with the tenants, and, to collect the rent from tenants. The trial Court held that there is a dispute between the plaintiff and intervenors about the right of intervenors in the suit property. By holding that the dispute in respect of development agreement cannot be adjudicated in the proceedings before the Small Causes Court, the application was rejected.

4. In the revision filed by intervenors, the revisional Court took into consideration the fact that under the development agreement certain amounts have been paid by the intervenors, that there is no specific notice of termination given by the original plaintiff to the intervenors, that the interest of intervenors in evicting the tenant is common with the interest of original plaintiff and as the interest appears to be common, the intervenors are necessary and proper party. The revisional Court also took into consideration various clauses of development agreement under which the developer was

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entitled to deal with tenants and also the fact that in the civil proceedings certain amount was given by the developer for final settlement on behalf of the plaintiff, which has been accepted by the plaintiff.

5. Heard Mr. Mayur Khandeparkar and Mr. Kamath, learned counsel appearing for the petitioners and Mr. G. S. Godbole, learned senior counsel appearing for respondent nos. 1 and 2.

6. Mr. Khandeparkar, learned counsel for the petitioner submits that the revisional Court has failed to take into consideration the jurisdictional issue which arises in the present case in as much as in the eviction proceedings, the only consideration for adjudication will be whether the tenant is liable to be evicted on the grounds which are set out in the plaint. He would further submit that there is a dispute as regards subsistence of development agreement. He has taken this Court to the various clauses of development agreement and would submit that by efflux of time, the development agreement has expired in the year 2012. He would further submit that by subsequent negotiations the time was extended, however, as the conditions of further payment were not complied with, there was no extension of the development agreement. He would point out that in the eviction proceedings, intervention application has been filed only

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on the basis that certain amounts have been paid under the development agreement and if the intervenors are not allowed to intervene, irreparable loss and injury would be caused to the applicants. He would further submit that for the purpose of adjudicating the dispute as regards the eviction of tenant, the intervenor is neither a necessary nor a proper party.

7. *Per contra*, Mr. Godbole, learned senior counsel for respondent nos.1 and 2 (intervenors) submits that the development agreement is subsisting as on date, as there are no proceedings adopted by the plaintiff for crystallizing the issue of termination. He points out that the development agreement provides for arbitration clause which has not been invoked. He would further submit that under the development agreement, apart from various amounts which have been paid, the civil proceedings have been settled by the developer on behalf of the plaintiff, which fact has been accepted by the plaintiff. He has taken this Court through the various clauses of development agreement and would submit that under those clauses, the developer is entitled to the acquisition of premises in event of certain contingencies mentioned therein, viz., the surrender of premises by tenants. He would submit that there is no prejudice which will be caused to the petitioners in event the developer is

permitted to be impleaded as party as there will be no opposition to the eviction of tenant. He would further submit that the presence of developer is necessary to ensure that there is no collusive decree. He would further submit that the issue of development agreement subsisting or termination thereof will not arise in these proceedings and, if during the pendency of present suit, development agreement is adjudicated to be terminated in any parallel proceedings, he can be deleted from the present suit. He places reliance on section 33 of the Maharashtra Rent Control Act, 1999, which deals with the jurisdiction of Small Causes Court and would submit that the Small Causes Court would have the jurisdiction to deal with the claim or question which is enumerated in section 33.

8. I have considered the submissions and perused the record. The issue which arises for consideration before this Court is whether the respondent-intervenors are necessary or proper party to the suit so as to be impleaded. The application has to be adjudicated on the touchstone of Order I Rule 10 of CPC. It is settled that a necessary party is one without whom no order can be made effectively and proper party is one in whose absence, an effective order can be made but whose presence is necessary for complete and final decision on the issue involved in the proceedings. If the party seeking

impleadment is directly affected by the outcome of proceedings, it would be a necessary party. At the same time, it is also necessary to be borne in mind that the proceedings in question are eviction proceedings initiated under the provisions of Maharashtra Rent Control Act, 1999. It is in such proceedings that the developer pursuant to a development agreement of the year 2010 is seeking to intervene on the ground that certain rights have accrued to him under the said development agreement to negotiate with the tenants, to collect rent from the tenants as also certain rights to acquire the premises in case of surrender of tenancy.

9. The issue as regards subsistence or termination of the development agreement is not an issue which is required to be gone into in the present proceedings. Admittedly, there are no proceedings initiated by either party either seeking a declaration that development agreement is subsisting or a declaration seeking termination thereof. The development agreement also provides for arbitration clause, which has not been invoked by either of the party. Assuming for the purpose of present proceedings that the development agreement is subsisting, even in that event whether the developer in such proceedings will be a necessary party will have to be considered. The suit filed under the provisions of Maharashtra

Rent Control Act, 1999 seeks eviction of tenant. The plaintiffs are the landlord and the eviction has been sought on certain grounds. Even though certain rights are given to developer under the development agreement, in my opinion, the developer cannot step into the shoes of landlord and dictate the manner in which the proceedings can be conducted. At the most, the developer can initiate the proceedings on behalf of the owner based upon power of attorney. However, in the present proceedings, it is the landlord who as the original owner, has initiated the proceedings for eviction of tenant. In such a case, considering that there appears to be a dispute between the parties as regards the development agreement, in case contrary stands are taken by the plaintiffs and intervenors in respect of eviction of tenant or in respect of settlement of tenancy, the trial Court will be required to adjudicate upon such issue which is not within the jurisdiction of Small Causes Court. The issue before the Small Causes Court is limited as regards the eviction of tenant and whether the grounds sufficient for eviction have been established by the landlord. Even if the apprehension expressed by Mr. Godbole is taken into consideration that the presence of developer is necessary to ensure that there is no collusive decree, the decree, if any can only be in respect of either surrender of tenancy or continuation of tenancy. In the event of continuation of tenancy, the defendant – tenant will be a

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tenant for all purposes of development agreement and the developer will have to deal with the tenant as other tenants of the premises. In event of surrender of tenancy, the rights under the development agreement will be enforceable in civil Courts. In my opinion, the impleadment of intervenor-developer as party to the proceedings would amount to expanding the scope of proceedings. It is no doubt true that dispute *qua* the development agreement cannot fall for consideration before the Small Causes Court but it would lead to a complex scenario in event different stands are adopted by the landlord-owner and the developer.

10. Another aspect which will have to be borne in mind is that under the development agreement, certain rights would accrue to the benefit of developer in case there is surrender of tenancy. The contention of Mr. Godbole is that these rights will be affected in event there is a collusive decree. The decree if any passed in this suit and in event the developer is not a party will not bind the developer. These rights *qua* the development agreement can be enforced in the civil proceedings between the developer and the applicant and for that purpose the presence of developer in the eviction suit is not necessary.

11. Reliance placed by learned counsel for the petitioners on the

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decision of this Court in *Samir Narain Bhojwani v. Yusuf Khan @ Dilip Kumar* [dated 26th March 2028 in Writ Petition No. 2893 of 2018] which follows the decision of the Apex Court in *Kanaklata Das v. Naba Kumar Das* [(2018) 2 SCC 352] is squarely applicable to the facts of the present case.

12. In view of the above, the impugned orders dated 7th June 2023 are unsustainable and are hereby quashed and set aside. Resultantly, the intervention applications of developer stand dismissed.

[Sharmila U. Deshmukh, J.]