

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

WRIT PETITION NO.8492 OF 2023

Swamikrupa Developers thr. Its Partner Petitioner

Vs.

Diwakar Laxman Gondane & Anr. Respondents

Ms. Anjali Helekar for the Petitioner.

Mr. R. Y. Sirsikar for Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 7 JULY 2023.

P. C.

1. Mentioned. Not on board. Taken on board.

2. Heard.

3. The challenge in the petition is to the order dated 30/6/2023 rejecting the petitioner's application for impleading the petitioner as defendant No.2 in Suit No.1433/2023.

4. The suit was instituted by the petitioner seeking to challenge the notice issued by the Corporation under the provisions of section 351 of MMC Act. In these proceedings the petitioner sought impleadment by filing application under Order 1 Rule 10 of CPC, which came to be rejected giving rise of the present petition.

5. Heard Ms. Anjali Helekar for the petitioner and Mr. R. Y. Sirsikar for Respondent No.2.

6. Learned counsel appearing for the petitioner has invited attention of this Court to the order passed by this Court in Appeal From Order No. 60 of 2008 which arose out of S.C. Suit No.203/2007 and would contend that *vide* order dated 22/1/2008 this Court had protected her possession. She would further contend that there is registered conveyance in her favour and as such she has right in the property for which separate proceedings are initiated and are pending.

7. The proceedings are instituted to challenge notice issued under section 351 of the MMC Act and in the said suit adjudication will be restricted to the validity of the notice. The petitioner-applicant claims that by way of registered conveyance she is the owner of the property. However it is not disputed that in the earlier proceedings S.C. Suit No.203/2007 there are findings recorded against the applicant as regards the ownership and possession. The City Civil Court has decreed the suit in favour of

the plaintiff. In that view of the matter, the trial Court has held that the applicant is not a necessary party to the proceedings and as such remedy of agitating his right is by way of a separate suit.

8. Considering the decision of the Apex Court in the case of *Mohamed Hussain Gulam Ali Shariffi v. Municipal Corporation of Greater Mumbai & Ors., 2017(6) ALL MR 420 (SC)*, it is settled that the right of ownership of applicant which is not yet crystallized cannot be permitted to be agitated in a suit filed challenging the notice under section 351 of the MMC Act.

9. Plaintiff is neither a necessary party nor proper party and as such requirement of Order 1 Rule 10 of C.P.C. are not satisfied. There is no infirmity in the order passed by the City Civil Court.

10. The writ petition is devoid of merits. Hence dismissed.

SHARMILA U. DESHMUKH, J.