

Nikita

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

WRIT PETITION NO.12563 OF 2022

Vijay Kunj Co-operative Housing Society
Limited ... Petitioner

V/s.

Ankur Maternity and Surgical Nursing
Home and Ors. ... Respondents

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Mr. Chandrakant P., Deogirikar, for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2023

P.C.:

1. Challenge in this petition is to the order passed by the City Civil Court, rejecting application by Cooperative Housing Society, claiming to be a owner of the building. Wherein, the plaintiff had allegedly carried out unauthorized construction.

2. Respondent No.1, herein filed LC Suit No.334 of 2018 challenging notice issued under Section 53(1) of Maharashtra Regional and Town Planning Act, 1966 and injunction against planning authority, restraining them from demolishing the structure covered by the notice.

3. The applicant filed an application to add it as defendant on the ground that notice under Section 53(1) was issued in furtherance of a decree passed in a suit filed by the applicant.

Moreover, the building wherein, alleged authorized construction is situated, and is owned by the Housing Society. The Trial Court rejected the chamber summons holding that the applicant's presence is not required for effective adjudication of issues involved. The applicant, therefore, challenge the order by way of present writ petition. This Court by order dated 18th October 2022, after hearing learned advocate for the original plaintiff, granted time to Respondent No.1, to file reply. Till today, no reply is filed by respondent No.1.

4. On last occasion, when the matter was called out, this Court has passed following order:

“1. None appears for the contesting respondent (original plaintiff).

2. As a last chance stand over to **22 August 2023**.

3. It is made clear, if the Advocate for the plaintiff fails to remain present on the next date, the writ petition will be decided finally.”

5. Today also the learned advocate for the respondent No.1 is absent. Therefore, considering the issue involved, the petition needs to be decided on merits.

6. Insofar as rights of owner of a building to intervene in a proceedings challenging notice under Section 53 of M.R.T.P. Act are concerned, same is no longer res-integra in view of the judgment of Apex Court in the case of **Aliji Monoji & Co. V. Lalji Mavji** reported in (1996) 5 SCC 379 : AIR 1997 SC 64.

7. The said judgment is followed by single Judge of this Court

in the case of **Dunhill Dome Co-op. Hsg. Society Ltd. Vs. Manuel Mergulhao and Others** Reported in 2020 SCC OnLine Bom 10596.

8. It is not in dispute that the applicant is the Cooperative housing society and the premises of plaintiff is situated in the society. Therefore, presence of the applicant is necessary for effective adjudication of the suit. Hence following order.

- a) Impugned order dated 4th April 2022, in LC Suit No.334 of 2018 in chamber summons No.6 of 2019 is quashed and set aside.
- b) Chamber Summons No.6 of 2019 is allowed.
- c) Respondent No.1 is directed to carry out necessary amendment in the plaint within four weeks from today.

9. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)