

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11224 OF 2022

Centre Point co-operative Housing Society Ltd. ...Petitioner

Versus

Hanmant Dyanu Jagdale & Ors. ...Respondents

Mr. Rushikesh S. Kekane for the petitioner.

Mr. Harish Pawar for Respondent Nos.6 to 12.

Mr. R. Y. Sirsikar for respondent Nos. 4 & 5, MCGM.

Coram : Sharmila U. Deshmukh, J.

Date : June 30, 2023.

P. C. :

1. Heard,
2. By the impugned order dated 19th March, 2022 the Trial Court permitted the impleadment of the applicants as necessary party. The suit in question i.e. L.C. Suit No. 183 of 2018 was instituted by the petitioner-plaintiff seeking execution of deed of conveyance in respect of their own plot of land as well as for a declaration that the plan sanctioned by the Municipal Corporation of Greater Mumbai in respect of construction of a building on the adjacent land on the basis of temporary access passing through suit property i.e. compound of the plaintiff society, is bad, null and void. In said proceedings an

application came to be filed bearing Chamber Summons No. 1453 of 2018 by applicants Nos. 6 to 12 who were the flat purchasers of the respective flats in the ongoing under construction building on the plot adjacent to the society.

3. The contention of the applicants in the Chamber Summons is that the building was on the verge of completion and the applicants were anticipating the handing over of the possession. As the suit in question would affect the right of the applicants, the applicants sought impleadment in the proceedings which came to be opposed by the petitioner-plaintiff on the ground that no relief was sought against the applicants.

4. Learned counsel appearing for the petitioner submits that it is open for the applicants to adopt independent proceedings to establish their right of way. He would further submit that no relief is claimed against the applicants and the plaintiff seeks to question the plan sanctioned by the corporation on the adjacent plot of land which gives a temporary access from the suit property. He would further submit that the applicants who are the flat purchasers in the building constructed on the adjacent plot have an alternate remedy and as such, their right would not be affected. In support of his submission he relied upon the decision of the Apex Court in **Moreskar S/O**

Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) Thr. LRS. And Others [In Civil Appeal Nos. 5755-5756 of 2011 decided on September 27, 2022].

5. *Per contra*, learned counsel appearing for the applicants submit that the outcome of the proceedings will affect the right of the applicants and as such the applicants are proper party in the proceedings. He would contend that pursuant to the permission and approval granted by statutory Authority, the building has been constructed in which the applicants have purchased their flats and by the suit, the petitioner seeks to challenge their sanctioned plans.

7. Considered the submissions of the learned counsel for the parties.

8. By the suit, the petitioner not only seeks mandatory injunction directing the defendant no. 1, i.e., their developer to execute the deed of conveyance to convey their own plot of land, but also seeks to challenge the plans which are sanctioned by the Municipal Corporation in respect of construction of building on the adjacent plot of land. In effect, what it is sought to be challenged is the temporary access which has been granted passing through the suit property. At this stage, it is not necessary for this Court to test the veracity of the rival claims but for the purpose of adjudicating the

issue it would be required to be seen whether the outcome of the proceedings will affect the rights of the applicants.

9. Admittedly, there is no society which has been formed of the flat purchasers of the building constructed on adjacent plot and as such it is an individual flat purchaser who will have to take their case forward and contest the suit in as much as if the challenge to the sanction plans results into a decree, their right of way temporary or otherwise will be affected.

10. Reliance placed by the learned counsel for the petitioner on the decision in the case of **Moreshtar S/O Yadaorao Mahajan (supra)** is misplaced as it was in the different factual context and in facts of that case, the Apex Court after considering the earlier decisions on the issue of proper party, has held that for being “a necessary party” the first test which is required to be satisfied is that there must be a right of some relief against such party in respect of the controversy involved in the proceedings, and, second one is that no effective decree can be passed in the absence of such a party. The said decision does not assist the case of the petitioner inasmuch as the Apex Court was not considering the issue as to whether the right of the parties proposed to be impleaded will be affected by the outcome of the proceedings before the Trial Court. In this context, it will be relevant

to consider the decision of the Apex Court in the case of ***Aliji Momonji & Co. Vs. Lalji Mavji*** , [(1996) 5 SSC 379] wherein the Apex Court has held that a party who has a direct and substantial interest in the subject matter is a proper party and has to be impleaded as such.

11. Considering the facts of this case and the relief sought is to challenge the plans sanctioned of the building in which the applicants had purchased their flats, in my opinion, the rights of the applicants will be directly affected and they will be bound by the outcome of the proceedings. The submission of the learned counsel appearing for the petitioner that the applicants can adopt appropriate proceedings can be answered in view of the legislative mandate of Order-1 Rule-10 which is to prevent the multiplicity of the proceedings.

12. In view of the above there is no merit in the writ petition. The Writ Petition stands dismissed.

[Sharmila U. Deshmukh, J.]