

AGK

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

**WRIT PETITION NO.15030 OF 2022**

Asha Ramantal Kothari

... Petitioner

**V/s.**

Thane Municipal Corporation & Anr.

... Respondents

Digitally  
signed by  
ATUL  
GANESH  
KULKARNI  
Date:  
2023.12.20  
17:51:54  
+0530

**WITH**

**WRIT PETITION NO.15420 OF 2022**

Ashmin Products, through its partners

... Petitioner

**V/s.**

Thane Municipal Corporation & Anr.

... Respondents

Mr. Pritesh Burad with Ms. Nrutp Savla i/by M/s.  
Pritesh Burad Associates for the petitioner in both the  
WPs (through V.C.)

Mr. Jagdish G. Aradwad (Reddy) with Ms. Ashwini  
Jadhav for respondent Nos.1 & 2.

Ms. Sneha B. Pandey with Ms. Shweta R. Rathod i/by  
Elixir Legal Services for respondent No.3.

**CORAM : AMIT BORKAR, J.**

**DATED : DECEMBER 20, 2023**

**P.C.:**

**1.** The petitioners are original plaintiffs in a suit seeking declaration that the order passed by the Municipal Corporation directing plaintiff to vacate the suit premises for the purpose of road widening be declared as not binding on the plaintiff and injunction not to disturb their possession over the suit property without following due process of law under Section 126 of the Maharashtra Town & Regional Planning Act, 1966.

2. In such suit, third party (owner) of the structure filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908. The Trial Court by the impugned order allowed the application holding that owner is proper party to such suit.
3. The Division Bench of this Court in **Ashok Babulal Avasthi v. Munna Nizamuddin Khan & Anr.**, Writ Petition No.6933 of 2022 delivered on 29 November 2023 hold that in such a suit challenging order under Section 351 or 354 of the Mumbai Municipal Corporation Act, 1949.
4. Learned advocate for the petitioner relied on the judgment in **Mohamed Hussain Gulam Shariffi v. Municipal Corporation of Greater Bmbay & Ors.** reported in (2020) 14 SCC 392.
5. On perusal of the said judgment, it appears that the person who applied for impleadment had filed a suit for specific performance of agreement to sale. Such suit for specific performance was pending on the date when the applicant therein filed application for impleadment. Therefore, in absence of title to such person, the Apex Court held that such person cannot be held necessary party in a suit challenging notice under Section 351.
6. Learned advocate for the petitioner further submitted that the plaintiff being *dominus litis*, it is the discretion of the plaintiff who he wants to make party to the suit. Generally it is true that the plaintiff is *dominus litis* and it is the plaintiff who decides who should be made party to the suit. However, such general principle is subject to the power of Court under Order 1 Rule 10 (2) of the

Code of Civil Procedure, 1908. Sub-rule (2) of Order 1 Rule 10 confers discretion on the Court subject to fulfillment of its ingredients to add a person either as a necessary or property party. It is well settled that a person can be said to be necessary party if no relief can be granted without his presence and a person can be said to be proper party if without his presence the issue involved in the suit cannot be completely and effectually adjudicated.

7. In the facts of the case, the result of the decision in the suit would affect rights of owners of the structure as plaintiff's failure to prove the case may entail consequence of demolition of the suit property. Therefore, the Trial Court rightly held that owner of such structure is property party to the suit. Therefore, no interference under Article 227 of the Constitution of India is called for.

8. Both the writ petitions stand disposed of in above terms. No costs.

9. It is made clear that the observations made in the present order shall not influence the Trial Court while deciding the suit/s on merits.

**(AMIT BORKAR, J.)**