

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15914 OF 2022

Hamju Alisher Shaikh
Age: 72 years, Occ. Business,
R/o at 159/1, Railway Lines,
Solapur.

....Petitioner

V/S

1 Akil Abdul Kadar Munshi
Age: 70 years, Occ. Business,
R/o at H.No.159/1, Railway Line,
Solapur
Also at Vireshwar Residency,
3rd Floor, C/o Adil Munshi,
Near Lokmat Press, Solapur.

2 Solapur Municipal Corporation,
Solapur, having its address at
Indrabhuvan, Park Chowk,
Solapur.

3 The City Engineer,
Solapur Municipal Corporation,
Solapur

4 Assistant Engineer Town Planning,
Solapur Municipal Corporation.

....Respondents

...
Mr. Surel Shah i/b Mr. Swaroop M. Karade for Petitioner.

...

CORAM: SANDEEP V. MARNE, J.
DATE : JULY 28, 2023.

JUDGMENT:

1 **Rule.** Rule made returnable forthwith.

2 By this Petition, Petitioner challenges order dated 26 September 2022 passed by the 4th Joint Civil Judge Senior Division, Solapur, allowing application filed by Respondent No.1 to seek impleadment in the suit filed by Petitioner-Plaintiff.

3 Petitioner-Plaintiff has instituted Regular Civil Suit No.749 of 2021 in the Court of Civil Judge Senior Division, Solapur against Solapur Municipal Corporation and its two officials challenging notice dated 31 August 2021 issued under the provisions of section 478 of the Maharashtra Municipal Corporations Act, 1949. The notice alleges unauthorized construction on the part of Petitioner-Plaintiff.

4 On 16 April, 2022, the Trial Court has passed an order of interim injunction in favour of Plaintiff-Petitioner restraining the Municipal Corporation from demolishing the construction.

5 Respondent No.1 (Akil Abdul Kadar Munshi) filed an application on 10 June 2022 seeking impleadment as Defendant No.4 to the Suit filed by Petitioner-Plaintiff. Respondent No.1 described himself as the owner of the suit property and Plaintiff as his tenant. That unauthorized construction carried out by Petitioner-Plaintiff in a capacity as tenant was brought to the notice of Municipal Corporation by Respondent No.1 and the notice impugned in the suit was issued by the Municipal Corporation acting on the complaint filed by Respondent No.1.

6 The Application filed by Respondent No.1 was resisted by Petitioner-Plaintiff by filing Reply. The Trial Court proceeded to allow the Application of Respondent No.1 by order dated 26 September 2022 directing impleadment of Respondent No.1 as Defendant No.4.

7 Mr. Suresh Shah, the learned Counsel appearing for Petitioner-Plaintiff would submit that the Trial Court has committed an error in directing impleadment of Respondent No.1. He would submit that the notice alleging unauthorized construction issued by the Municipal

Corporation to the Plaintiff-Petitioner and that the Plaintiff-Petitioner will have to demonstrate before the Trial Court that the construction is authorized. The Respondent No.1 has no *locus* in the *lis* between Petitioner-Plaintiff and the Municipal Corporation. He would submit the issue of alleged ownership of the suit property by Respondent No.1 is inconsequential to the issue of validity of notice issued by the Municipal Corporation under section 478 of the Maharashtra Municipal Corporation Act, 1949.

8 The issue involved in the present Petition is no more *res integra* and is squarely covered by judgment of this Court in ***Nimesh J. Patel vs. Municipal Corporation of Greater Mumbai & Anr.***, 2021 SCC OnLine Bom 6588. In that case, Petitioners therein claimed themselves to be owners of the property on which the Plaintiffs had constructed some illegal/unauthorized structure. Petitioners therein therefore complained to the Municipal Corporation and requested for demolition of illegal/unauthorized structures. Acting on complaints filed by the Petitioners therein, the Municipal Corporation issued notices under section 55 of the Maharashtra Regional and Town Planning Act, 1966 to

the Plaintiffs. Plaintiffs filed suit challenging the notice. In that suit Petitioners therein, in their capacity as owners of the property, sought impleadment. The Application for impleadment was rejected by the Trial Court and the matter was carried before this Court. This Court in paras 29, 30 and 31 ***Nimesh J. Patel*** (*supra*) held as under:

“29. The bone of contention between the parties being whether the owner of the suit property was a necessary party in the suit filed by a trespasser/tenant being aggrieved by the notices received by him from the Corporation. The question will have to be determined in the backdrop of the provisions revolving around the impleadment of a necessary or proper party to the suit.

30. The said issue is no more *res integra* and the authoritative pronouncement of the Apex Court as well as this court, time and again have settled the law to the effect, where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is claimed, against him, he is a proper party. The necessity to join the parties to a suit would definitely depend upon the relief that has been claimed. Under sub-Rule (2) of Rule 10 of Order 1 of the CPC, a person, whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate and settle all the questions involved in the suit, will be necessary party and he shall be added in the proceedings.

31. In the wake of the aforesaid, the main consideration seems to be whether or not the presence of the petitioner is necessary to enable the court to effectually and completely adjudicate upon and settle the question involved in the suit. A party may be eventually affected by the final outcome of the decision of the court and he shall then become a necessary party. Referring to the decision of the Apex Court in the case of *Aliji Momonji & Co.* (*supra*), the terminology invoked is "having interest in the property". The Apex Court, in a dispute between the Municipal Corporation and the lessees, revolving around demolition of a portion of the building on account of unauthorized construction has held that the landlord seeking his impleadment under Rule 10 of Order 1 of the CPC on the ground of having interest in the property as in the event of demolition of building, his right, title and interest would be directly affected and, therefore, he was a proper party though no relief is sought against him. This decision has been followed by the Bombay High Court in the cases of *Dunhill Come Co-op, Hag. Soc, Ltd.* and *Arun R. Singh* (*supra*)."

9 Considering the ratio of the judgment in *Nimesh J. Patel* (supra), I do not find any error in the order passed by the Trial Court. Writ Petition being devoid of merits is dismissed without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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