



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.8148 OF 2023

PETITIONERS :

1. Shri Kamal s/o Rambalak Verma,
Age:81 years, Occupation: Business,
2. Shri Prashant s/o Suresh Jaiswal,
Age: 52 years, Occupation: Business,
Both residents of Plot No.14, Central
Excise Colony, Ring Road, Chatrapati
Square, Nagpur-440015.
[ORIGINAL PLAINTIFFS]

-VERSUS-

RESPONDENT:

1. Nagpur Municipal Corporation,
through its Municipal Commissioner,
Office at Civil Lines, Nagpur.
**[ORIGINAL DEFENDANT NUMBER
1]**
2. Assistant Commissioner, Laxmi
Nagar Zone No.1, Nagpur Municipal
Corporation, Office Near Water Tank
Laxmi Nagar, Nagpur.
**[ORIGINAL DEFENDANT NUMBER
2]**
3. Shri Mohan s/o Laxmanrao
Samarth, Through his Power of
Attorney M. Kulkarni Builders &
Infrastructure Pvt.Ltd., through
Director Shri Milind Madhukar
Kulkarni, Aged about 57 years,
Occu- Business, R/o. Plot No.168,
Chhatrapati Nagar, Nagpur-440015.
[INTERVENOR]

Mr.Karan Singh Gour, counsel for the petitioners.
Mr.J.B.Kasat, counsel for the respondents-Corporation.
Mr.R.Vaidya, counsel for the respondent No.3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 19/12/2023

ORAL JUDGMENT

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

3. In a suit filed by the petitioners, i.e. Regular Civil Suit No.418 of 2023, challenging the notice dated 10/03/2023 (pg.38) issued by the respondent No.2 under section 53(1) of the Maharashtra Regional and Town Planning Act (hereinafter referred to as “MRTP Act”) to the respondent No.3, an application for impleadment was filed by the respondent No.3, who is the owner of the property in question in which the petitioner is a tenant on the ground floor. This application is at Ex.19 and has been allowed by the learned Trial Court by the impugned order dated 21/11/2023 (pg.92).

4. Mr. Gour, learned counsel for the petitioners, submits that the impugned order is unjustified inasmuch as, it does not consider the parameters of Order I Rule 10(2) of the Civil Procedure Code (for short “CPC”) and specifically the position that the presence of the respondent No.3 is not necessary for the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, on account of which, the impugned order is liable to be quashed and set aside. He also contends that since the petitioners are *dominus litis*, the application cannot be permitted against the will of the plaintiff. In support of his contention, Mr. Gour, learned counsel for the petitioners, placed reliance on **Mohamed Hussain Gulam Shariffi v. Municipal Corporation of Greater Bombay**, reported in (2020) 14 SCC 392, **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay** reported in (1992) 2 SCC 524, *Kishor Chandrkant Urane v. City of Nagpur Corporation and others in Writ Petition No.937 of 2017 and connected petitions decided on 04/04/2018*, **Sulbha Devendra Kokate v. Surekha Kokate**, reported in 2022 (1) ALL MR 152, *Chouhan Builders India Housing Development Pvt.Ltd. v. BMC & Anr. Writ Petition No.4265 of 2014 decided on 15/07/2016*, **Shyam Fatechand Shende v. Alka**,

reported in 1998 (1) **Mh.L.J. 410**, **Sudhamayee Pattnaik v. Bibhu Prasad Sahoo** reported in **AIR OnLine 2022 SC 120**, **Santosh Hanumant Salunkhe v. Municipal Commissioner, Ahmednagar Municipal Corporation**, reported in 2018 (4) **ABR 414**, **Khader Khan M. Khan v. Bombay Municipal Corporation**, reported in 1993 (3) **SCC 644** as well as *Deju Somaya Salian v. Municipal Corpration of Greater Mumbai, Writ Petition No.7123 of 2018, decided on 24/09/2018.*

5. Mr.Vaidya, learned counsel appearing for the respondent No.3, supports the impugned order, contending that it is the respondent No.3, who is the owner of the property, to whom the notice has been addressed, which is not only in respect of the portion of the property occupied by the petitioners as a tenant, but is also in respect of other portion of the upper floors with which the petitioners have no concern. He therefore, contends that since the respondent No.3 is the owner of the property, he has every right to be impleaded in the suit filed by the tenants/ petitioners questioning the legality and validity of the notice under section 53(1) of the MRTP Act. He places reliance upon **Adam A. Sorathia v. Municipal Corporation of Greater Bombay** reported in 2001 (3) **Mh.L.J. 288**, **Mulraj Khatau and Sons Ltd. Mumbai v. Nagesh**

Samar Bahadur Singh, reported in **2018 (3) Mh.L.J. 54** and **Aliji Momonji v. Lalji Mawi and others**, reported in **(1996) 5 SCC 379**.

6. Mr. Kasat, learned counsel for the respondent Nos.1 and 2, supports the impugned order, relying upon the provisions of section 53(1) of the MRTP Act which require a notice to be issued to the owner regarding unauthorized construction.

7. It is not in dispute that the petitioners are the tenants on the ground floor occupying three rooms block; one room admeasuring 20 ft. x 18 ft. and the other two rooms admeasuring 12 ft. x 15 ft. each, along with toilet and bathroom under the agreement of tenancy dated 01/08/1994. It is also not in dispute that there are litigation pending between the petitioners on the one hand and the respondent No.3 on the other for eviction, instituted by the respondent No.3 and the petitioners against each other. It is also not in dispute that the notice under section 53(1) of the MRTP Act dated 10/03/2023 (pg.38) has been issued by the respondent Nos.1 and 2, to the respondent No.3. The contents of the notice, further indicate, that the notice alleges unauthorized construction, contrary to the sanction plan dated 08/01/1985, as indicated in the table in para-2 of the said notice (pg.40), which is as under:

:०:अनुसुची:०:

मंजूर नकाशा क्र. CS/494/15431 दि. ०८.११.१९८५ विरुद्ध असलेले अनधिकृत बांधकाम
खालीलप्रमाणे

मजला	दिशा	अनाधिकृत बांधकामाचे मोजमाप (चौरस मीटर मध्ये)	शेरा
तळ मजला	दक्षिणेस	16.46X9.14=150.44 चौ.मी.	समासिक अंतरात टिनाचे पक्के शेड
	पुर्वेस	21.33X3.00=63.99 चौ.मी.	समासिक अंतरात टिनाचे पक्के शेड
	पश्चिमेस	21.33X 3.00=63.99 चौ.मी.	समासिक अंतरात टिनाचे पक्के शेड
	एकुण:-	278.42 चौ.मी.	
पहिला मजला	उत्तरेस	11.35X10.65=120.87 चौ.मी.	आर.सी.सी. स्लॅबचे पक्के बांधकाम
	एकुण:-	120.87 चौ.मी.	
दुसरा मजला	उत्तरेस	11.35X4.90=55.61 चौ.मी.	आर.सी.सी. स्लॅबचे पक्के बांधकाम
	एकुण:-	55.61 चौ.मी.	

This would demonstrate that the notice, is not only in respect of illegal construction alleged to have been made on the ground floor to the extent of 278.42 sq.mtrs, but also on the first and second floors. It is not in dispute by Mr.Gour, learned counsel for the petitioners, that except for the property, which is the subject matter of the agreement of tenancy dated 01/08/1994, the petitioners have no concern whatsoever with the other construction, including the construction, which is alleged to have

been illegally made, as shown in para-2 of the notice dated 10/03/2023.

8. In a case where illegal construction is noticed by the Planning Authorities, they, in exercise of the powers under section 53(1)(a) of the MRTP Act, are required to serve a prior notice on the owner, developer, occupier of 24 hours requiring him to restore the land to condition existing before the unauthorized development has taken place and under section 53(1)(b) of the MRTP Act, if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority is empowered to immediately take steps to demolish such development.

9. The provisions of Order I Rule 10(2) of the CPC have therefore to be construed, in light of the above factual position. The petitioners have challenged the notice dated 10/03/2023 addressed to the respondent No.3 in their suit as indicated above. The contention that the respondent No.3 has no concern with the grounds of challenge raised in the suit, cannot be a question, which can be looked into at the stage of considering an application under Order I Rule 10(2) of the CPC for the reason that the stage of addressing the challenge posed by the petitioners/plaintiffs in a

suit by the respondent No.3 would only arise, after the respondent No.3 is added as a party defendant and files a written statement addressing the allegations made in the plaint. The application under Order I Rule 10(2) of the CPC is not the one, where such challenge is required to be addressed, all that is required to be shown, for the purpose of being added/impleaded as a party defendant to the suit, is that the person sought to be added has a vital interest, in the subject matter of the suit, which would entitle him to be impleaded to either oppose, defend the suit or if he choose it to support the plaintiff.

10. In the instant matter, the factual position, that the respondent No.3 is the owner of the property in question is not disputed, nor is it disputed that the notice under section 53(1) of the MRTP Act has been addressed to the respondent No.3, calling upon him to demolish the unauthorized construction. In view of the statement of Mr.Gour, learned counsel for the petitioners, as recorded above, the petitioners/plaintiffs/tenants in light of the description of the property, as contained in the agreement of tenancy dated 01/08/1994, has nothing to do with anything other than the tenanted premises. A perusal of the notice dated 10/03/2023, would indicate, that it is in respect of illegal

construction, which is claimed to be over and above the sanctioned plan dated 08/11/1985. It is also not the case of the plaintiffs/petitioners that they are in occupation of any of the portions as indicated in the table in para-2 of the notice dated 10/03/2023, as admittedly, the tenancy under the agreement dated 01/08/1994 is not created in respect of these portions, as is indicated from a perusal of the description of the tenanted property as given in the said agreement, which are all constructed portions within the building. The above position, would indicate that the respondent No.3 has a vital interest in the property, which is the subject matter of the notice dated 10/03/2023, and therefore, would be not only a proper, but a necessary person to say anything about the notice dated 10/03/2023. Since the same has been challenged by the petitioners in the suit, considering the factual position as narrated above, the presence of the respondent No.3, therefore, has to be construed to be necessary for deciding the controversy, which is sought to be raised by the petitioners/plaintiffs in the suit filed by them, as even the locus of the petitioners/plaintiffs to file the suit would be a matter, which can be agitated by the respondent No.3, considering the factual position as narrated above.

11. In **Mohamed Hussain Gulam Ali Shariffi** (supra) the impleadment was denied on account of the fact that the persons sought to be impleaded were claiming ownership rights on the basis of an agreement, for the specific performance of which they had filed a civil suit in the Court in the context of which, it was held that they were neither proper nor necessary parties. **Ramesh Hirachand Kundanmal** (supra) has been considered in **Adam A. Sorathia** (supra) (para-17), and has been distinguished on the ground that the notice in that case did not relate to the structure, but two chattels which were movable on wheels and plates where servicing and/or repairs were done and used for storing implements of the mechanics, with which admittedly the owner had no concern and the demolition of the same in pursuance of the notice was not a matter which would affect the legal rights of the landlord in that case. **Kishor Chandrakant Urane** (supra) relies upon **Mohamed Hussain Gulam Ali Shariffi** (supra), which has already been discussed above, apart from which, it is necessary to note that the notice in the present case is not addressed to the petitioners, but is addressed to the respondent No.3. In **Sulbha Devendra Kokate** (supra), the rights available to the owner of the

property, who has received the notice for demolition of the same from the Planning Authority have not been considered.

12. **Khader Khan M. Khan** (supra) is on the principle of *dominus litis*. It is however, necessary to note that the provisions of Order I Rule 10(2) of the CPC empowers the Court to transgress this principle once it finds that the person sought to be impleaded is a proper and necessary party. In **Chouhan Builders India Housing Development Pvt.Ltd.** (supra), the notice for removal of the unauthorized construction was issued to the tenant, who was claimed to have made the same, in which factual position, it has been held that the owner would not be a necessary party as the issue would be between the plaintiff and the corporation. In the instant case, the petitioners, do not claim any tenancy in respect of the unauthorized construction made on the ground floor, nor do they claim to have made it, considering which it would be apparent that they are in no way concerned with the unauthorized construction in respect of which the notice under section 53(1) of the MRTTP Act has been issued, which is issued to the respondent No.3.

13. **Shyam Fatehchand Shende** (supra) is also on the same principle, where in a suit filed by the plaintiff/owner for a declaration that the plan submitted by her to the Planning Authority was deemed to have been sanctioned by the corporation and the construction therefore was not unauthorized in which case the complainant was held not to be a necessary party, and therefore would not be applicable to the facts of the present case.

14. **Sudhamayee Pattnaik** (supra) was a case in which in a suit for declaration, permanent injunction and recovery of possession impleadment was sought of subsequent purchasers as defendants on the ground that the plaintiffs had illegally and unlawfully alienated some parcels of the disputed land in their favour. Relying upon the principle of *dominus litis*, it was held that they need not be impleaded as defendants against the wish of the plaintiff. This, however, was stated to be at the risk of the plaintiff that apart since they were subsequent purchasers during the pendency of the litigation of the portions of the suit property, they would be bound by the principle of *lis pendens*. **Santosh Hanumant Salunkhe** (supra), is also on the principle of *dominus litis* under which an application by a complainant to the Municipal Corporation which was instrumental in initiating demolition

proceedings against the plaintiff was rejected. **Deju Somaya Salian** (supra), also relies upon **Mohd. Hussain Gulam Ali Sharifi** (supra). In view of the factual position discussed above, I therefore, do not find that these judgments are of any assistance to the learned counsel for the petitioners/plaintiffs in their challenge to the impugned order, which permits impleadment.

15. The principle of *dominus litis*, is always subject to a finding being rendered by the Court in exercise of the power under Order I Rule 10(2) of the CPC, that a person is a proper and necessary party to the suit. This is also indicated from the position that Order I Rule 10(2) of the CPC also permits the Court at any stage of the proceedings, either upon or even without the application of either party, even *suo motu* to add persons as parties/defendants to the suit, which it considers to be necessary for the adjudication of the issue in the suit. At the cost of repetition, in the instant matter, the notice is addressed to the respondent No.3 and admittedly, the petitioners/plaintiffs have nothing to do with the unauthorized construction as indicated in the said notice. It is the respondent No.3 landlord who is going to be affected by the notice of demolition and therefore, would be a

person, who can be termed as not only a proper, but also necessary party to the suit.

16. The issue, in my considered opinion, is covered by the judgment of the Hon'ble Apex Court in **Aliji Momonji & Co.** (supra) in which, in a similar circumstance, where the notice issued by the Municipal Corporation for demolition of the building was in question, in a suit filed by the lessee against the said notice of demolition, this is what the Court had to say –

“5. The controversy is no longer res integra. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the disputes, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is: whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licences would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent off the landlord or the lessor.

But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances, the question of the commercial interest would not arise. In *Ramesh Hirachand Kundanmal's* case [supra], this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances, it was held that the second respondent has no direct interest in the subject matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled, It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest

or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in *New Redbank Tea Co. Pvt. Ltd. vs. Kumkum Mittal & Ors. (1994) 1 SCC 402* has pointed out that respondent 11 who filed a suit for specific performance in the High Court was sought to come on record in the suit in which he had no direct interest in the pending matter. Under those circumstances, this Court had held that respondent 11 was neither necessary nor proper party in the lease-hold interest involved in the suit. In *Union of India & Anr. vs. District Judge Udhampur & Ors. (1994) 4 SCC 737* the Union of India who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10, CPC for determination of the compensation in respect of the acquired land. In *Bihar State Electricity Board vs State of Bihar & Ors. (199) 4 Supp. 3 SCC 743* the same question was also reiterated and it was held that the Electricity Board was a person interested and also a necessary party. In *Anil Kr.Singh vs. Shivnath Mishra (1995) 3 SCC 147* similar question was answered holding that the respondent was a necessary party.”

17. In the instant matter, the respondent No.3 being the owner of the property would undoubtedly be a person whose rights to property would be materially affected. The said principle has been followed in **Adam A. Sorathia** (supra) as well as **Mulraj Khatau and Sons Ltd., Mumbai** (supra)

18. In view of the above position, I do not see any reason to interfere in the impugned order, which permits impleadment of the respondent No.3 landlord as a party defendant No.3, in the suit filed by the petitioners/plaintiffs challenging the notice under section 53(1) of the MRTP Act. The petition is therefore, dismissed.

19. Rule stands discharged. No costs.

(AVINASH G. GHAROTE, J.)