

Ajay

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

WRIT PETITION NO. 3977 OF 2023

Sunil Subedar Singh

.. Petitioner

Versus

The Municipal Corporation of Greater Mumbai
and Ors.

.. Respondents

-
- Mr. Pradeep Thorat a/w. Ms. Aditi Naikare, Advocate for Petitioner.
 - Mr. Umair Ansari a/w. Mr. Mohsin Khan, Advocates i/by Akhilesh Yadav for Respondent Nos.2 and 3.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 25, 2024.

P.C.:

1. Heard Mr. Thorat, learned Advocate for Petitioner and Mr. Ansari, learned Advocate for Respondent Nos.2 and 3.

2. On 15.01.2024, this Court passed the following order:-

"1. Heard Mr. Patil, learned Advocate for Respondent No.1 and Mr. Ansari, learned Advocate for Respondent No.2.

*2. Mr. Ansari has drawn my attention to the order dated 29.09.2023 and also placed on record judgment of Division Bench of this Court in the case of **Ashok Babulal Avasthi V/s. Munna Nizamuddin Khan and Anr.**¹.*

3. In view of the order passed by the Division Bench, it is settled position that in a suit filed by the occupier/ tenant / licensee seeking to restrain Municipal Corporation from taking any action of demolition of any property, the owner or landlord of the property who seeks impleadment would have to be joined as a proper and necessary party. Division Bench has held that refusal to not accepting the landlord as proper party would be improper use of discretion and is liable to be set aside.

¹ Writ Petition No.6933 of 2022 decided on 29.11.2023.

4. *In the present Writ Petition, the impugned order dated 09.12.2022 which is at Exhibit-D, page No.62 of the Writ Petition allows Chamber Summons filed by Respondent Nos.2 and 3 who are landlord of the property for seeking impleadment. In view of the order of Division Bench, the said order is required to be upheld. However, Petitioner nor his Advocate who have challenged that order are present before the Court. In order to give one opportunity to the Petitioner, the Writ Petition is kept for orders and disposal on 19th January, 2024.*

5. *Copy of this order shall be served on the Advocate for the Petitioner by Mr. Ansari."*

3. Today, Mr. Thorat, learned Advocate appears for the Petitioner and would submit that the necessity of impleadment of the landlord to the Suit proceedings filed in the City Civil Court does not arise since the Suit does not concern with the right, title and interest in the Suit property and is only in respect of unauthorized construction for which a statutory notice has been received. These submissions are noted and considered by the Court.

4. In view of the decision of the Division Bench in the case of ***Ashok Babulal Avasthi Vs. Munna Nazimuddin Khan and Anr.***², the issue with respect to impleadment of the landlord / owner of the property as a proper and necessary party in proceedings rather Suit proceedings filed to challenge the BMC processes issued to the tenant in respect of unauthorized construction is now well settled and the Division Bench of this Court has held that if there is any refusal to implead the landlord as proper party then such refusal would be improper use of discretion and would be liable to be set aside.

2 WP No.6933 of 2022 decided on 29.11.2023.

5. In view of the aforesaid decision, the impugned order dated 09.12.2022 is upheld.

6. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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