

Ajay

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

WRIT PETITION NO. 13994 OF 2023

Platinum Residency CHS Ltd.

.. Petitioner

Versus

Kennath Gonsalvis and Anr.

.. Respondents

-
- Mr. Pradeep J. Thorat, Advocate i/by Ms. Aditi Naikare, Advocate for Petitioner.
 - Mr. Manoj P. Mhatre, Advocate a/w. Mr. Manoj Pandey, Advocate for Respondent No.1.
 - Mr. R.Y. Sirsikar, Advocate for Respondent No.2 – BMC.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2024.

P.C.:

1. Heard Mr. Thorat, learned Advocate for Petitioner; Mr. Mhatre, learned Advocate for Respondent NO.1 and Mr. Sirsikar, learned Advocate for Respondent No.2 – BMC.

2. The present Writ Petition takes exception to the impugned order dated 07.07.2023 passed by the learned Trial Court in Chamber summons No.701 of 2023 filed by Platinum Residency Co-operative Housing Society Ltd. as an Applicant seeking impleadment in LC Suit No.1543 of 2023 filed by the Plaintiff against the Municipal Corporation for Greater Mumbai in respect of maintaining a challenge to notice under Section 351 of the Mumbai Municipal Corporation Act,

1888 (for short “**the said Act**”). The Respondent before me has averred that under Section 351 of the said Act notice issued by the Corporation was in respect of the Suit structure being ground + one storey situated on CTS Nos.513 and 516 at Village Oshiwara, Tal. Borivali, Mumbai.

3. The Applicant i.e. Petitioner before me in his Application filed before the learned Trial Court i.e. Chamber Summons No.701 of 2023 has in paragraph Nos.5 to 7 and 10 averred as under:-

- “5. I say that the Applicant society has gone under self redevelopment and all the old buildings existing on the plot of land bearing CTS no.502/3 have been demolished and as per the permission granted by the Municipal Corporation, the Applicant society is carrying on redevelopment on the said plot of land. I say that the Applicant is the owner of land bearing CTS no.502/3.*
- 6. I say that the Municipal Corporation has sanctioned the Plan of the proposed building to be constructed on the plot of land bearing CTS no.502/3. I say that in the said Approved Plan, some portion of the land bearing CTS no.502/3 is reflected as “Encrachment Area”. I say that the suit premises falls in the said Encroachment Area of CTS no.502/3. I crave leave to refer to and rely upon the said Approved Plan, when produced. Hereto annexed and marked **Exhibit – D** is the Xerox copy of the same.*
- 7. I say that the suit premises is situated on land bearing CTS no. 502/3. I say that the Applicant is the owner of the said plot of land and carrying out redevelopment. I say that the Plaintiff has illegally and unauthorizedly trespassed upon the land bearing CTS no. 502/3 and has carried out the illegal and unauthorized construction without the permission of the Municipal Corporation.*
- 10. I say that the suit premises is situated on land bearing CTS no. 502/3 and not CTS no. 516 and 513 as falsely claimed by the Plaintiff in the Plaint. I say that the suit premises is totally unauthorized. I say that the Plaintiff is trying to misguide the Hon’ble Court by relying upon documents in respect of some other property.”*

4. That apart, it is the case of the Applicant that assessment bills and claim of the Plaintiff i.e. Respondent pertains to some entirely different property and not the above reflected premises as averred in the Application.

5. In support of the Application, Mr. Thorat has drawn my attention to the property register card furnished by the Petitioner which is at page No.106 of the Writ Petition which reveals that CTS No.513 and 516 stand in the name of the Petitioner – Society.

6. **PER CONTRA**, Mr. Mhatre, learned Advocate appearing for the answering Respondent i.e. Plaintiff has vehemently opposed the impleadment of the Petitioner – Society as a Defendant in the Suit proceedings on the ground that there is a dispute with respect to ascertainment of the exact CTS numbers on which the contentions structure is standing.

7. Be that as it may, the issue before me is with respect to impleadment of the owner of the subject property in respect of which statutory notice under Section 351 of the said Act has been issued. The impugned order incidentally proceeds on the basis of it being covered by the judgment in the case of ***Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Mumbai***¹ which now no longer stands to test in view of the recent judgment of the Division Bench of

1 WP No.11707 of 2014, decided on 16.11.2016.

this Court in the case of *Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan and Anr.* ².

8. If the Petitioner is not the owner of the property, then the question which arises is as to who is the owner of the property? It is contended by Mr. Mhatre that in so far as CTS Nos.513 and 516 are concerned, Respondent No.1 is the owner of the property. If that be the case, then statutory notice issued by the Corporation which is at page No.75 of the Writ Petition should have been issued to Respondent No.1 in respect of CTS Nos.513 and 516. However perusal of the said notice do not reveal any CTS numbers, but the corresponding order which is at page No.81 is passed in respect of the structure on CTS No.502/3 which is stated below of the name of the Respondent No.1. CTS No.502/3 belongs to the Applicant / Petitioners Society.

9. A very limited and restrictive issue has arisen before me and though Mr. Mhatre raises vehement objection to impleadment of the Petitioner as Defendant in the Suit proceedings, I am not inclined to decide any disputed questions of fact with respect to ownership of the Suit structures as also the presence of the Suit structures on rival CTS numbers as claimed by the parties before me.

10. From the aforementioned pleadings and documents which have been referred by me, it is clear that in the statutory speaking

² WP No.6933 of 2022, decided on 29.11.2023.

order dated 14.06.2023 though name of the Respondent Mr. Kenneth Gonsalvis is stated, CTS Nos.502/3 is clearly referred to alongwith dimensions at atleast 4 different places in the order. This CTS number is of the Society i.e. Petitioner. Its PR card and Registration Certificate clearly proves the same. It claims to be the owner of CTS No.502/3.

11. In that view of the matter, the impugned order is not sustainable and deserves to be interfered with and more specifically in view of the recent judgment of the Division Bench of this Court in the case of *Ashok Babulal Avasthi (supra)*.

12. The impugned order is therefore quashed and set aside. Chamber Summons No.701 of 2023 stands allowed. Plaintiff is directed to carry out the amendment for impleadment of the proposed Defendant No.2 i.e. Petitioner before me within a period of two weeks from today. Re-verification stands dispensed with. Copy of the amended plaint shall be served on Defendant No.2.

13. It is clarified that, this Court has not opined on any of the merits pertaining to ownership of the Suit structure either on CTS No.502/3 or CTS Nos.513 and 516 and all contentions of the concerned respective parties are expressly kept open in the event if the learned Trial Court decides to frame an appropriate issue with reference to the same.

14. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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by AJAY
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Date: 2024.02.05
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