

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5 OF 2024

Harbhajan Singh Niranjana Singh Garcha and
Ors. .. Petitioners

Versus

Suresh Shivram Nirmal alias Dhobi and Anr. .. Respondents

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- Mr. Jay Sankhlecha a/w. Mr. Arun H. Mehta and Mr. Aniket Srivastava i/by Akshar Laws for the Petitioners.
 - Mr. V.R. Tripathi, Advocate i/by V.R.Tripathi Associates for Respondent No.1.
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CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2024.

P.C.:

1. Heard Mr. Sankhlecha, learned Advocate for Petitioners and Mr. Tripathi, learned Advocate for Respondent No.1.

2. On 12.04.2024, this Court had passed the following order:-

“1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 12.04.2024. Heard Mr. Mehta, learned Advocate for Petitioners.

*3. Present Writ Petition is squarely covered by the decision of this Court in the case of **Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan & Anr.**¹ which has been upheld by the Supreme Court on 12.02.2024. As held by this Court, the issue is no longer res integra and impleadment of owner of the property in Suit filed by tenant challenging statutory notices issued by the Corporation with respect to the tenanted premises is required to be allowed as an appropriate and proper party for a comprehensive and equitable resolution of the Suit. Refusal to permit such a joinder by not accepting the landlord / owner*

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as a proper party would be an improper use of discretion and will be liable to be set aside. In view of the fact that the decision of the Division Bench of this Court is upheld by the Supreme Court, the present Writ Petition is required to be decided accordingly.

4. Copy of this order is directed to be served on the Respondents by learned Advocate for Petitioners. Respondents are directed to take cognizance of this order and appear before this Court either through themselves or their Advocate on the next adjourned date failing which this Court shall pass appropriate orders for disposal of the present Writ Petition in their absence.

5. Stand over to 25th April, 2024 at 2:30 p.m.”

3. At the outset, Mr. Tripathi would submit that the observations made in paragraph No.10 of the impugned order dated 30.09.2023 be considered by the Court especially in view of the fact that the impleadment of party needs to be done from the point of view of the said party having a substantial interest in the property and more specifically in the subject matter of the Suit proceedings. He would submit that the subject matter of the Suit proceedings pertains to challenge maintained to the statutory process issued by the Corporation.

4. Mr. Tripathi is equally conscious of the fact that the Division Bench of this Court has passed the decision in the case of ***Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan and Anr.***² and the said decision has been upheld by the Supreme Court. Hence he leaves it to the Court to pass appropriate orders.

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5. In view of the above and more specifically in view of the Division Bench order of this Court, the impugned order dated 30.09.2023 stands quashed and set aside.

6. Impleadment of the Intervenor i.e. Writ Petitioner stands allowed in Long Cause Suit No.1013 of 2019. Amendment shall be carried out within a period of six (6) weeks from today by the Plaintiff to the Suit proceedings before the learned Trial Court. Copy of the amended Suit plaint shall be served on the Petitioner.

7. This Court appreciates the brief submissions made by Mr. Tripathi in the present case.

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

[MILIND N. JADHAV, J.]

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