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

WRIT PETITION NO. 701 OF 2024

Galaxy Promoters and Builders

.. Petitioner

Versus

Mahendra Narsingh Loankar and Ors.

.. Respondents

-
- Mr. Ruchir Tolat a/w. Mr. Vipul Shah i/by L.C. Tolat & Co. for Petitioner.
 - Mr. S.H. Katkar i/by Mr. Vishwanath Patil, Advocate for Respondent No.3.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 01, 2024.

P.C.:

- 1.** Heard Mr. Tolat, learned Advocate for Petitioner and Mr. Katkar, learned Advocate for Respondent No.3.
- 2.** Perused the order dated 30.10.2023.
- 3.** The Petitioner before me is agitating his substantive rights emanating from a Development Agreement executed with the Plaintiffs in the year 1999. Suit is filed in the year 2022 by the Plaintiffs to challenge statutory notices of the Corporation issued to the Plaintiffs with respect to construction of 20 tin shades in 401 square meters area out of the entire larger property in respect of which Petitioner claims to have a Development Agreement.

4. Mr. Tolat has fairly informed the Court that with respect to the balance 17,200 square meters area out of the larger property, litigation is infact pending and one Civil Revision Application is pending before this Court.

5. Be that as it may, in the Suit challenging the notices issued under the Maharashtra Regional and Town Planning Act, 1966 (for short “**MRTP Act**”) at that time of hearing of Exhibit “5” on 12.04.2022, Plaintiffs showed their willingness and readiness to regularize the disputed structures namely the 20 tin shades and sought to make an Application under Section 53(3) of the MRTP Act for regularization, rather it was submitted before the Court that such an Application was already made and was pending before the Defendant No.1 – Municipal Corporation.

6. In that view of the matter, on 12.04.2022, the learned Trial Court passed ad-interim order issuing notice to the Defendants. That order is appended at page No.48 – Exhibit “C” to the Petition.

7. The learned Trial Court while considering the Application for impleadment of the Petitioner on the basis of its substantive rights emanating from the Development Agreement of the year 1999 has returned reasoned findings in paragraph Nos.6 to 8 of the impugned order.

8. The learned Trial Court has held that considering the cause of action in the Civil Suit filed by the Plaintiffs concerning itself only with the issue of validity and legality of the statutory notices issued by the Corporation, the presence of the Petitioner is not essential to decide the *lis* between the parties. In so far as these findings and propositions is concerned, it is clear that for deciding the same presence of the Petitioner would not be required and the same can be decided in the absence of the Petitioner also. I agree with these findings.

9. Mr. Tolat has drawn my attention to page No.61U of the Writ Petition to the list of documents submitted by the Petitioner for seeking impleadment in the Suit proceedings. It is seen that Petitioner is seized with the Development Agreement dated 06.02.1999 and several other incidental documents in the nature of possession affidavit, mutation entry, notices, commencement certificate in favour of the Petitioner issued in the year 2001, NA permission, settlement agreement etc. pertaining to the larger Suit property. Perusal of this list and the Application filed by the Petitioner would certainly reveal one thing that the Petitioner may have a substantial right in the property considering the Development Agreement, but the same will have to be tested on merits and the timeline in case in question. The next question that would therefore arise before the Court is whether

the Petitioner would be entitled to intervene in Regular Civil Suit No.881 of 2022 in which the impugned order is passed. Considering the limited aspect for which the aforesaid Suit has been filed and juxtaposed with the alleged substantive right of the Petitioner in respect of the entire larger property the answer is a clear “no”. However, it shall be open to the Petitioner to agitate its substantive right in the Civil Court having Original Civil Jurisdiction strictly in accordance with law.

10. In view of the above, I do not find any reason to interfere with the impugned order dated 30.10.2023 and the same is resultantly sustained.

11. Mr. Tolat has also made one more submission that in the interregnum, portion of the said property stands acquired for a 24 meter wide D.P. Road. If on the basis of the Development Agreement, the Petitioner is aggrieved by the same, it shall be open to the Petitioner take out appropriate proceedings in that regard in the appropriate forum / Court, but strictly in accordance with law, and only if permissible.

12. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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