



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1929 OF 2024

Sanjay K. Upadhyay

Aged 30 years, Occ.: -Service
an adults Indian Hindu Inhabitants
Residing at Ram Naresh Pandey Tabela,
Sambhaji Nagar, Ghatla Village,
Mumbai – 400 071.

...Petitioner

Vs.

**1. The Municipal Corporation Of
Greater Mumbai**

Having its Registered Office at
Mahapalika Bhuvan,
Mahapalika Marg,
Mumbai – 400 001.

2. The Assistant Municipal Commissioner

having his office at Municipal
M/W Ward, Sharad Acharya
Marg, Chembur, Mumbai – 400071.

3. Designated Officer

Assistant Engineer (Buildings and Factory
M/West Ward, Chembur, Mumbai – 400 071.

...Respondents

AND

Hitesh Kevalkumar Jain

Aged About 37 years; Occ.: Business
5 Queen Garden
Camp, Pune – 411 001.

...Applicant/
Intervenor

Ms. Geeta Shashtri i/by Mr. Mevalal Verma	Advocate for the Petitioner
Mr. Janay Jain i/by A and P Partner	Advocate for Applicant/Intervenor in WP 1929 of 2024.

**ALONGWITH
CIVIL WRIT PETITION NO. 1930 OF 2024**

Sanjay K. Upadhyay

Aged 30 years, Occ.:-Service
an adults Indian Hindu Inhabitants
Residing at Ram Naresh Pandey Tabela,
Sambhaji Nagar, Ghatla Village,
Mumbai – 400 071.

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Marg, Chembur, Mumbai – 400071.

3. Designated Officer

Assistant Engineer (Buildings and Factory
M/West Ward, Chembur, Mumbai – 400 071.

...Respondents

AND

Marigold Properties

A registered partnership firm
 Having office address at 2413
 East Street Kumar Capital
 1st floor, Camp, Pune – 411 001.

...Applicant/
 Intervenor

Ms. Geeta Shashtri i/by Mr. Mevalal Verma	Advocate for the Petitioner
Dr. Abhinav Chandrachud a/w Mr. Mithil Shah i/by Parinam Law Asso.	Advocate for the Applicant/Intervenor in WP 1930 of 2024 – Respondent No. 4

CORAM : S. M. MODAK, J.

DATE : 09th OCTOBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate Ms. Shastri for the Petitioner-Plaintiff and learned Advocate Dr. Chandrachud for Respondent No. 4- Intervenor and learned Advocate Shri Jain for the Respondent No. 4/ Intervenor.

2. The MCGM has issued a notice under Section 55 of the Maharashtra Regional and Town Planning Act to the Plaintiff on 24.06.2019. The legality of the said notice is challenged by the Plaintiff by way of suit filed before City Civil Court, Bombay. The Plaintiff contends that he is occupier of the structure standing on CTS No.

1505(A) (para no. 9).

3. The Plaintiff has averred in the rejoinder affidavit that he is in possession of the residential structure admeasuring 20X40 feet since last 60 years and since his father. They were using open space in front structure for tabela purpose.

4. In this suit there were two Chamber Summons filed. One is filed by M/s Mari gold Properties. It is Chamber Summon No. 442 of 2022. It was allowed by the trial Court as per Order dated 20.12.2023. Its correctness is challenged by the original Plaintiff in Writ Petition No. 1930 of 2024. Whereas second Chamber Summon bearing No. 443 of 2022 was filed by Hitesh Jain. It was also allowed as per Order of the same date. Its correctness is challenged by the Plaintiff in Writ Petition No. 1929 of 2024.

5. For deciding the correctness of these Orders, the same averments in the plaint and the rejoinder affidavit are to be considered. Whereas the factual aspect in respect of the both the Chamber Summons are little bit different. Though they claimed intervention on the basis of various sale deeds and the conveyance deed, according to learned Advocate Ms. Shastri both the intervenors have not succeeded in showing the land beneath the suit structure was purchased by them.

She invited my attention to the averments in the affidavit filed in the support of both the Chamber Summons. Both intervenors also pleaded the same background facts in respect of the ownership of this land.

6. Only their averment in respect of their sale deed/conveyance are different. Both of them have pleaded one Ramnaresh Pandey was owner of the larger piece of land bearing C.T.S. No. 1505 admeasuring 3864.6 sq. mtrs. There was suit filed before City Civil Court, and then there was partition into Plot nos. (A) to (F). Plot Nos. C and D were kept common and other plots were divided in between heirs of the Ramnaresh Pandey. These are common facts pleaded by both the intervenors.

7. Furthermore, they have made averments as to how both of them individually have acquired right title and interest in plot nos. E and F and right title and interest in common in respect of plot nos. E and F.

8. The contention of the Plaintiff is, be that it may these averments never shows that land purchased by them is the land none other than the land on which the suit structure stands. She has also invited my attention to the photographs filed alongwith petition so also alongwith affidavit-in-reply. She is not disputing ratio laid down in case of Ashok

Babulal Avasthi Vs. Munna Nizamuddin Khan and Anr.¹.

9. Learned Advocate Dr. Chandrachud relied upon the observations in case of following judgments:-

(i) **Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan and Anr.**²

(ii) **Bhavyanidhi Enterprises Private Limited Vs. Municipal Corporation of Greater Mumbai and Others**³

10. Whereas learned Advocate Shri Janay Jain has relied upon observations in case of **Gaspar Fernandes since deceased through legal heirs and Anr. Vs. Smt. Fatima S. Barreto and Others**⁴ and more specifically para no. 7.

11. According to learned Advocate Dr. Chandrachud scope of the inquiry in deciding such intervention application is limited. The Court is not expected to inquire whether the title of intervenors is legal and perfect and if there is semblance of the title, intervention can be permitted.

12. I have gone through these observations, it is true that in case **Ashok Babulal Avasthi (supra)** learned Single Judge of this Court held

1 2023 SCC Online Bom 2559

2 2023 SCC Online Bom 2559

3 2016 SCC Online Bom 2016

4 1999 SCC Online Bom 169

that landlord/owner of the property can seek impleadment in a suit filed by occupier/tenant/licensee against the local authority. The earlier controversy was resolved by the Division bench.

13. Whereas in case of *Bhavyanidhi Enterprises Private Limited (supra)* learned Single Judge of this Court was dealing with the Order passed on chamber summons filed by the owners of the land. The chamber summon filed by the Developer was rejected. The Chamber summon filed by the owners of the land was allowed and objection was taken that they have agreed to sale the land hence they cannot be impleaded. It was turned down, and it was observed, 'if there is semblance of the title and interest in the property in dispute impleadment can be allowed'.

About Writ Petition No. 1930 of 2024

14. So far as the intervenor M/s Marie gold Property is concerned in the plaint in para no. 9, the Plaintiff has averred about CTS No. 1505-A. Furthermore, the Plaintiff has averred about making false complaint by owner Kumar properties (not clear about connection with Mari gold Property). The plaintiff has averred that their representative Piyush Mahajan is filing the complaint to the Police.

15. In support of the chamber summons, the Mari gold property

have filed CTS extract. Their name is shown on CTS bearing No. 1505-A, page no. 105. It is true that they have not come with the case about exact location of the area purchased by them. But it is very well true that the Plaintiff has averred about the filing of the complaint by this Company. It is also clear that the Plaintiff has averred about the identity of the land on which their structure stands. It is nothing but CTS No. 1505-A.

16. It is true that in the suit, the trial Court expected to inquire whether the notice given by the Corporation is proper or not or whether procedure is followed or not. I think the trial Judge has rightly allowed the chamber summons of M/s Mari gold properties. The facts stated above are sufficient to justify their opinion.

17. When the suit will be tried, the Court can inquire whether these intervenors purchased the land on which suit structure stands. This can be inquired, when the suit will be tried. But at this stage their impleadment is justified. So I am not inclined to allow the Writ Petition No. 1930 of 2024 and I am dismissing it.

About Writ Petition No. 1929 of 2024

18. So far as the impleadment of Hitesh Jain is concerned, it is true that they have filed copy of city survey extract in respect of CTS 1505-

A , at page no. 125. It is true their name is entered on City survey extract and area shown is 322.05 square meters. It is true that they are not in a position to point out the exact location of that area. They contend that yet partition is not affected.

19. Now the issue is whether these materials are sufficient to allow their impleadment.

20. As said above at the time of the deciding impleadment, the Court is not supposed to inquire about title of the Parties. The Court has to see *prima-facie* whether impleadment is justified or not. I do find there are certain lacunae in the claim of this intervenor. It can certainly be said that this intervenor is owner of part of the area of the land bearing no. CTS 1505-A. The Plaintiff has pleaded the location of their suit structure, it is on 1505-A.

21. I think even though for this intervenor this much material is sufficient for impleadment. When the suit will be inquired, the Court can decide whether this intervenor is the owner of that piece of land on which the suit structure stands.

22. It is true the Plaintiff does not claim the two intervenors are owners of the land on which suit structure stands. Plaintiff has not pleaded these two intervenors have purchased the land from legal

representatives of Ramnaresh Pandey. It is also true till this time even the intervenors do not claim that they are owners of the land beneath the suit structure. They only contend they are owners of some part of CTS No. 1505-A. Yet they are not aware about exact location of the land purchased by them.

23. I have maintained the orders only for the reason, they are owners of part of CTS No. 1505A and the suit structure also stands on CTS No. 1505A. At least during trial they have to show the land beneath the structure is part of land purchased by them. All contentions of both parties are kept open.

24. So for these reasons, I am not inclined to interfere in the impugned order.

25. With these observations Writ Petition No. 1929 of 2024 and Writ Petition No. 1930 of 2024 are dismissed. Parties to bear their own costs.

[S. M. MODAK, J.]