

WRIT PETITION NO. 5084 OF 2024

Versus

- Mr. Pradeep J. Thorat i/by Mr. Aditi S. Naikare a/w. Mr. Rushikesh Kekane, Advocates for Petitioner.

DATE : APRIL 08, 2024.

P.C.:

1. Heard Mr. Thorat, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 20.01.2024 passed in Chamber Summons No.1518 of 2021 which is at Exhibit “F” - page No.175 of the Writ Petition. By virtue of the said orders, Chamber Summons No.1518 of 2021 has been rejected.
3. It is contended by the Petitioner – Society that they are concerned with the Suit property in respect of which Respondent No.1 landlord has filed a Suit in the Bombay City Civil Court seeking to challenge a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short “**MMC Act**”) issued by the Corporation. The facts in the present case are peculiar and clearly derivate the interest of the Writ Petitioner – Society in the Suit

property. The Petitioner – Society was in occupation of the Suit property since long until the year 2013, when it was dispossessed from the landlord's land, leading to filing of the Suit seeking declaration of possession of the said property under Section 6 of the Specific Relief Act, 1963 being RAD Suit No.1272 of 2013. A *status quo* order dated 07.03.2016 is passed in the RAD Suit No.1272 of 2013.

4. I am informed by Mr. Thorat that as a consequence of breach of the *status quo* order, contempt proceedings are also pending against Respondent No.1.

5. In the above background, Respondent No.1 despite the *status quo* order demolished the Suit structures completely but after some time he once again proceeded to construct unauthorized structures thereon. On the Petitioner – Society filing appropriate complaints, these unauthorized structures were demolished by the Corporation. However, Respondent No.1 did not stop here and constructed another structure afresh on the Suit property. The Corporation took cognizance and issued a statutory notice to Respondent No.1 under Section 351 of the MMC Act in respect of this structure.

6. Respondent No.1 filed Suit challenging the statutory notice and on Application seeking impleadment as party in the Suit made by the Society in view of its direct interest in the Suit property, the

Application was dismissed by the impugned order. *Prima facie*, I am of the opinion that impleadment of the Society is clearly required to be done in the facts and circumstances of the present case.

7. In view of the above, an arguable case has been made out by Mr. Thorat for issuance of notice.

8. Issue notice to Respondents. Humdast permitted.

9. In addition to Court notice, Petitioners are permitted to serve a copy of the Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

10. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocates.

11. After receiving the notice, Respondents are directed to file its Affidavit-in-Reply on or before the next date.

12. It is clarified that, the present Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

13. Stand over to **18th April, 2024 at 02:30 p.m.**

[MILIND N. JADHAV, J.]