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

WRIT PETITION NO.7683 OF 2024

Jawaharlal P. Deshlahra ... Petitioner
V/s.
Rajkumari B. Lakhani & Anr. ... Respondents

**WITH
WRIT PETITION NO.7684 OF 2024**

Jawaharlal P. Deshlahra ... Petitioner
V/s.
Deepak O. Saxena & Anr. ... Respondents

**WITH
WRIT PETITION NO.7691 OF 2024**

Jawaharlal P. Deshlahra ... Petitioner
V/s.
Bhupendrakumar Bhateja & Anr. ... Respondents

**WITH
WRIT PETITION NO.7694 OF 2024**

Jawaharlal P. Deshlahra ... Petitioner
V/s.
Sandhya Singh & Anr. ... Respondents

**WITH
WRIT PETITION NO.7693 OF 2024**

Jawaharlal P. Deshlahra ... Petitioner
V/s.
Harish Rajiv Sanil & Anr. ... Respondents

**WITH
WRIT PETITION NO.7685 OF 2024**

Jawaharlal P. Deshlahra	... Petitioner
V/s.	
Vadavathi P. Krishnan & Anr.	... Respondents

**WITH
WRIT PETITION NO.7692 OF 2024**

Jawaharlal P. Deshlahra	... Petitioner
V/s.	
Vikram D. Shah & Anr.	... Respondents

Mr. B. P. Pandey with Ms. Ridhima Mangaonkar i/by
Ms. Ridhima Mangaonkar for the Petitioner.

Mr. Kunal Bhanage with Mr. Akshay Pawar and Ms.
Priyanka Acharya i/by K. P. Tiwari for the respondents.

CORAM : AMIT BORKAR, J.

DATED : JULY 1, 2024

P.C.:

1. Since the facts and questions involved in all these writ petitions are common, all writ petitions are disposed of by this common judgment.

2. Considering the nature of the issue adjudicated in the present group of writ petitions, it is unnecessary to set out detailed facts of each case. Suffice it to state that the Petitioner claims to be Lessee of Plot No.1 bearing CTS No.377, Plot No.1A bearing CTS No.378 of Survey No.147 (part) of Goregaon, Mumbai. According to the Petitioner, Respondent No. 1, in all the petitions, encroached and carried out illegal construction over the land leased out to the Petitioner.

3. The issuance of notice under section 351 of the Mumbai Municipal Corporation Act, 1888 (hereafter referred to as the "MMC Act") to Respondent No. 1 in all petitions led to Respondent No. 1 filing suits claiming to be the owners of all the structures. The Petitioner claims to be the Lessee of land over which the structures have been built by Respondent No.1.

4. In exercise of his right as Lessee of the land, the Petitioner filed an application under Order 1 Rule 10 of the Civil Procedure Code, 1908, before the City Civil Court in each suit, which came to be rejected by the impugned order. The City Civil Court, relying on judgments of this Court and the Apex Court, recorded a finding that unless the title of the Petitioner is adjudicated in a competent suit, the Petitioner cannot be elevated to the status of owner of the suit property. The Trial Court held that the scope of the suit challenging notice under section 351 of the MMC Act is limited to adjudicating the illegality of the structures, which is the subject matter of the suit, and, therefore, a person claiming title over the property is not a necessary party.

5. The learned counsel for the Petitioner relying on the Division Bench judgment of this Court in the case of **Ashok Babulal Avasthi vs. Munna Nizamuddin Khan and Another** reported in 2023 SCC OnLine Bom 2559 in Writ Petition No.6933 of 2022, decided on 29 November 2023, submitted that this Court in paragraph No.28 to 30 of the said judgment held that even a landlord of a property occupied by tenant can be joined as a party to a suit challenging notice under section 351 of the MMC Act.

6. Per contra, learned advocate for Respondent No. 1 submitted that the Petitioner is not claiming to be the owner of the structures; its claim is restricted to the rights attached to the land. Therefore, considering the limited scope of the suit under section 351 of the MMC Act, the Petitioner is neither the necessary nor a proper party.

7. Having heard the advocates for the parties, in my opinion, the issue as to the adjudication of rights of a person claiming to be Lessee of land over which disputed structures stand is no longer res integra given the Division Bench Judgment in **Ashok Babulal Avasthi** (supra). This Court was considering a reference made by a learned single judge of this court, noticing a divergence of opinion between two single judges of this court and interpreting two judgments of the Supreme Court differently, the Division Bench in paragraphs Nos.28 to 30 observed as under:

“28. The pivotal issue for consideration is not whether a landlord is a necessary party in a tenant’s suit against the corporation from demolishing the property, treating the landlord a suit, but whether the trial court is empowered to direct impleadment of the landlord under Order I Rule 10(2) of C.P.C. as a proper party. This distinction must be borne in mind. It is clear, and it is not even argued by the counsel for the Petitioners, that if the landlord is not joined in such a suit by the tenant at the inception, the suit must be dismissed for non-joinder of the necessary party. Also, in such circumstances, the defendant Corporation may not be able to argue that the suit is bad for the non-joinder of the necessary party simply because the landlord is not joined as a necessary party, even if the landlord does not intend to. The question arises when the landlord applies to become a party

to such a suit and the power under Order I Rule 10(2) of C.P.C. is invoked. Order 1 Rule 10(2) of the CPC relates to the party whose presence enables the Court to adjudicate the questions involved in the suit effectively and completely. This provision grants discretion to the court to join those shown to have a direct interest in the property for the protection of which reliefs of injunctions are sought. In such cases, this Court has consistently exercised its discretion for the last five decades to allow such a joinder. This exercise of discretion has become a well-established practice.

29. While discretion inherently implies flexibility and adaptability, a level of predictability emerges if discretion is used in a particular manner, guided by specific considerations. Advocates and litigants then anticipate a particular approach by the court in similar cases. This can offer stability and clarity in how certain matters are handled within the legal system, providing a framework for litigants to understand how the court will likely exercise its discretion in specific circumstances.

30. There is a rationale to the consistent exercise of judicial discretion under Order 1 Rule 10(2) of C.P.C. in allowing the landlord's application for joinder in a tenant's suit in respect of demolition action of the Corporation treating the landlord as a proper party. That is because the impact of a notice for demolition issued by the Corporation extends beyond the tenant to fundamentally affect the property itself. It cannot be said that as a true owner of the property, the landlord holds no interest in any legal dispute regarding authorized or unauthorized construction. The intended action of demolition directly affects the owner of the property or the structure, who has a legitimate entitlement to maintain the identity of the property and integrity, safeguarding it from potential damage. The property occupied by the tenant ultimately belongs to the landlord. The tenant possesses only a derivative title through a lease or license, while the

landlord retains full ownership and all reversionary rights upon the lease or license termination. Secondly, the proposed demolition by the Corporation may entail legal entry onto the property to deal with the alleged unauthorized construction. Notices issued by the corporation direct its employees and agents to enter the premises to remove the disputed construction. If the Corporation exercises its legal authority to enter the premises, it would essentially be entering upon the property owned by the landlord. Given these factors, the landlord's legitimate concerns and interests cannot be overlooked or undermined. Thus, if the landlord seeks a joinder, it is appropriate for a proper party to be joined for a comprehensive and equitable resolution of the suit."

8. Applying the reasons assigned in the said judgment to the facts of the case, it appears that the Division Bench was considering the rights of a landlord who may or may not be the owner of the property. However, the Petitioner, in the facts of the case, is undisputedly Lessee of the land. Therefore, the structures constructed on the land, in all likelihood, affect the rights of a person claiming interest over the land. Therefore, in my opinion, in view of the reasons assigned by the Division Bench of this Court in paragraphs Nos.28 to 30, the impugned order passed by the Trial Court cannot be sustained.

9. Hence, the following order:

The impugned order dated 5 December 2022 passed by the Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Chamber Summons No.235 of 2024 in L.C. Suit No.298 of 2020, Chamber Summons No.238 of 2021 in L.C. Suit No.288 of 2020, Chamber Summon No.237 of 2021 in

L.C. Suit No.296 of 2020, Chamber Summon No.236 of 2021 in L.C. Suit No.297 of 2020, Chamber Summons No.229 of 2021 in L.C. Suit No.280 of 2020, Chamber Summons No.239 of 2021 in L.C. Suit No.287 of 2020, and Chamber Summons No.240 of 2021 in L.C. Suit No.279 of 2020 stands allowed.

10. At the request of the learned advocate for the respondents, the effect of this order is stayed for a period of four weeks from today.

11. For a period of four weeks, proceedings before the Trial Court shall remain stayed.

(AMIT BORKAR, J.)