

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 831 OF 2025

Jaavi Infra Pvt Ltd

..Petitioner

Versus

Chandu Kanji Gada

...Respondent

WITH

WRIT PETITION NO. 832 OF 2025

WITH

WRIT PETITION NO. 833 OF 2025

WITH

WRIT PETITION NO. 834 OF 2025

WITH

WRIT PETITION NO. 835 OF 2025

WITH

WRIT PETITION NO. 837 OF 2025

WITH

WRIT PETITION NO. 836 OF 2025

WITH

WRIT PETITION NO. 838 OF 2025

ARUN
RAMCHANDRA
SANKPAL

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Date: 2025.02.20
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Mr. Karl Tamboly, with Aadil Parsurampuriah & Rutuparn Deo, i/b
Aditya Lele, for the Petitioner.

Mr. Rohit Gupta, with Pariket Shah, for Respondent No.1 in
WPs/831/2025, 832/2025, 833/2025, 834/2025, 835/2025,
836/2025 and 837/2025.

Ms. Surabhi Agrawal, with Tejas Agarwal & Harsh Shah, i/b LC Legal,
for Spotted Trading LLP/Owners.

CORAM: N. J. JAMADAR, J.

DATED : 18th FEBRUARY 2025

P.C.:

- 1.** Heard learned Counsel for the parties.
- 2.** The challenge in this Petition is to an Order dated 4th May 2024 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, whereby the Chamber Summons taken out by the Petitioner to implead the Petitioner in a Suit instituted by the Respondent assailing the notice under Section 351 of the Mumbai Municipal Corporation Act, came to be rejected.
- 3.** When the matter was heard on 12th February 2025, this Court was informed that the original owner of the suit property, that is Kamlesh H. Saigal had executed Deed of Conveyance of the suit property in favour of transferees, in the month of August 2023. Thereupon the Petitioner had sought time to place the instruments on the record of Court on an Affidavit.
- 4.** Mr. Tamboly, the learned Counsel for the Petitioner, tenders an Affidavit on behalf of the Petitioner; to which a copy of Deed Conveyance executed between the original owner and Spotted Trading LLP, the transferee, is annexed.
- 5.** A perusal of the said Deed of Conveyance dated 28th August 2023 indicates that, the Conveyance has been executed subject to the development rights in favour of the Petitioner.
- 6.** A submission was also made on behalf of the Petitioner that the subsequent transferee is willing to file an Affidavit before this Court in

support of the Application of the Petitioner to implead the Petitioner as a party to the suit.

7. Mr. Gupta, learned Counsel for the Respondent would urge that the Petitioner ought to have brought these facts before the learned Judge, City Civil Court. The impugned order cannot be now interfered with on the basis of the subsequent material brought on record of this Court, of which there was no reference whatsoever in the proceedings before the learned Judge, City Civil Court.

8. The primary reason which weighed with the learned Judge to reject the Application of the Petitioner to implead the Petitioner as party to the suit was that the Petitioner had limited interest in the subject matter and the owner had not approached the Court. *Prima facie* it appears that, before the Application for impleadment was filed, the erstwhile owner had divested his interest in the suit property in favour of the transferees. However, the Deed of Conveyance also indicates that the transfer was effected subject to the development rights in favour of the Petitioner and with the consent of the Petitioner.

9. In these circumstances, it may not be appropriate for this Court to delve into the material of which the learned Judge, City Civil Court had no benefit. It would be in the fitness of things that this material is placed before the learned Judge, City Civil Court and the fact that the transferees have no objection to implead the developer as party to the

Suit is brought to the notice of the learned Judge by filing appropriate affidavit, and, thereafter, the learned Judge decides the application for impleadment afresh in accordance with law.

10. I am, therefore, inclined to remit the Chamber Summons back to the City Civil Court, with liberty to the Petitioner to produce documents and affidavit on the record of the City Civil Court.

11. The impugned order dated 4th March 2024 stands quashed and set aside.

12. The Chamber Summons stands restored to the file of learned Judge, City Civil Court.

13. The Petitioner is at liberty to file additional documents and Affidavits in the said Chamber Summons.

14. It is hereby made clear that this Court has not delved into the merits of the matter, as to whether the Petitioner deserves to be impleaded as a party to the suit. The said issue be decided by the learned Judge, City Civil Court afresh on its own merits and in accordance with law, after providing an opportunity of hearing to the parties.

15. All rights and contentions of the parties are kept open for consideration.

16. The Petitioner shall provide the copies of the documents and Affidavits to be filed in the Chamber Summons, in advance to the Respondents.

17. Petition disposed.

[N. J. JAMADAR, J.]