

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12369 OF 2024

Kalawant Shantaram Bhopi

...Petitioner

Versus

1. Chandrakant Anant Vedak
2. Vandana Ashok Singh
3. Rahul Shankar Pawar
4. Akshay Vilas Chaudhari
5. Hareshwar Shantaram Gharat
6. Prashant Maruti Kadam
7. Bhaskar Ramji Ganekar
8. Maruti Laxman Dabhrkak
9. Rekha Suresh Rithe
10. Shel Ajinkya Ramesh Lepkar
11. Manoj Madhukar Ubhare
12. Prabhakar Madhukar Nakti
13. Anant Ramchandra Bhayde
14. Kalpesh Bhagoji Teigure
15. Amol Pandit Patil
16. Madhukar Janardan Biradi
17. Priyanka Dilip Mhatre
18. Vaibhav Vilas Pawar
19. Dinesh Rama Bhayde
20. Abhay Chandrakant Ambekar
21. Pradeep Tukaram Mhaskar
22. Prashant Vilas Dawle
23. Pramanand Maniram Wasnik
24. Srikrishna Dattaram Sagawkari
25. Navi Mumbai Municipal Corporation
26. The Controller of Unauthorized
Construction (CIDCO)

...Respondents

Adv. Prabha Badadare, for the Petitioner.

Mr. Sachin Dhakephalkar, for the Respondent Nos.1, 2, 4, 6
to 14, 18 to 20, 22 to 24.

Mr. D. A. Athavale, for Respondent No.26 – CIDCO.

Mr. Tejas Dande, for Respondent No.25.

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CORAM: N. J. JAMADAR, J.

DATED: 7th MAY, 2025

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.
2. The challenge in this petition is to an order dated 23rd February, 2024, whereby an application (Exhibit-20) preferred by the petitioner to implead him as a party defendant to the suit, being Regular Civil Suit No.183 of 2023, came to be rejected.
3. Respondent Nos.1 to 24 instituted the suit seeking a declaration that the notices dated 14th March, 2025 and 17th March, 2023 issued by Navi Mumbai Municipal Corporation - respondent No.25 are bad in law, illegal, void and inoperative and for the consequential relief of injunction to restrain respondent No.25 and its officers and servants from demolishing or pulling down or removing the suit structures, without following due process of law.
4. In the said suit, the petitioner preferred an application to implead himself as a party defendant to the suit asserting that the alleged illegal structures have been erected on the common

areas and any order that may be passed in the said suit may adversely affect the proprietary rights of the petitioner.

5. The application was resisted.

6. By the impugned order the learned Civil Judge was persuaded to reject the application observing *inter alia* that the suit was instituted primarily for declaration and injunction qua the notices issued by respondent No.25 and questions of legal right or title of the parties to the subject structures do not arise for determination. Therefore, it was not necessary to implead the petitioner as a party defendant to the suit.

7. The learned Counsel for the petitioner submitted that, in fact, the Municipal Corporation had issued the notices to respondent Nos.1 to 24 on the basis of the complaints of unauthorized development made by the petitioner. The suit notice, the legality and validity of which has been assailed, referred to the said complaint addressed by the petitioner. Any order that may be passed in the said suit will have a direct bearing on the proprietary rights, asserted by the petitioner. Therefore, it cannot be said that the petitioner is not a necessary party to the suit.

8. The learned Counsel for the petitioner placed reliance on a decision of the Supreme Court in the case of *Aliji Momonji & Co. vs. Lalji Mavji and others*¹, and a Division Bench judgment of this Court in the case of *Ashok Babulal Avasthi vs. Munna Nizamuddin Khan and anr.*².

9. Mr. Dhakephalkar, the learned Counsel for respondent Nos.1, 2, 4, 6 to 14, 18 to 20, 22 to 24, resisted the submissions on behalf of the petitioner. It was submitted that the trial court has correctly exercised the discretion not to implead the petitioner as a party defendant to the suit. Mr. Dhakephalkar further submitted that respondent Nos.1, 2, 4, 6 to 14, 18 to 20, 22 to 24 are disputing the claim of title of the petitioner to the subject property. Therefore, the petitioner cannot be added as a necessary or proper party.

10. I have perused the material on record and the impugned order. The material on record indicates that the petitioner had made grievances with the authorities that unauthorized development is being carried out over the subject property. The petitioner claims a right over the area of the land over which structures have been erected. It appears that, respondent No.25, on the basis of the said complaints, issued notice to respondent

1 (1996) 5 Supreme Court Cases 379.

2 2024(1) ALL MR 50.

Nos.1 to 24 under Section 54(1) of the Maharashtra Regional and Town Planning Act, 1966 (“MRTP Act”). Undoubtedly, in the suit instituted by respondent Nos.1 to 24 for declaration regarding the legality and validity of the suit notices, the question of title may not directly arise for determination. However, it cannot be said that the petitioner has no direct interest in the subject matter of the suit.

11. A useful reference, in this context, can be made to a decision of this Court in the case of *Chandrakant Dharma Bhonu vs. Pandurang Ramchandra Dandekar and antoher*³, wherein in an identical fact-situation, where the petitioner had made grievances to the Municipal Corporation regarding the unauthorised development and on the strength of the said complaint, the Municipal Corporation had issued notices under Mumbai Municipal Corporation Act, 1888, this Court held that having regard to the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 (“the Code”), it cannot be said that the application for impleadment that was moved on behalf of the petitioner was misconceived. The petitioner is directly and substantially concerned with and affected by the proceedings before the City Civil Court for more than one reason. The action

3 2004 SCC OnLine Bom 152.

of carrying out an allegedly unauthorized construction and the alleged encroachment by the first respondent directly affect the rights of the petitioner. Secondly, it was at the behest of the petitioner and, in view of the proceedings instituted before the High Court, that the Municipal Corporation has almost grudgingly resorted to its statutory powers under the Mumbai Municipal Corporation Act, 1888. This Court was thus persuaded to allow the chamber summons for impleadment of the petitioner therein as a party defendant to the suit.

12. The aforesaid decision is on all four with the facts of the case at hand. In the instant case as well, the petitioner had filed writ petition being WP/8346/2021 seeking action against the alleged illegal and unauthorized construction by respondent Nos.9 to 16 therein. Thereupon, this Court directed respondent Nos.2 and 5 to 7, therein, CIDCO and its authorities to take appropriate steps against the illegal and unauthorized construction. Pursuant to the said order, it appears notices have been issued.

13. Even otherwise, when the petitioner claims that he has ownership rights over the subject premises, the principles enunciated in the cases of *Momonji* (supra) and *Ashok Avasthi* (supra) come into play. In the case of *Ashok Avasthi* (supra) the

Division Bench has, in terms, observed that this Court has consistently exercised its discretion for the last five decades to allow such a joinder of the owner of the premises where notices have been issued under the municipal legislation. This exercise of discretion has become a well-established practice. In the instant case, as the petitioner asserts ownership over a portion of the suit premises and the petitioner had filed writ petition before this Court and also made the complaints with the authorities about the alleged unauthorised and illegal development, the petitioner, in the least, appears a proper party. Thus, the impugned order deserves to be quashed and set aside.

14. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The application for impleadment (Exhibit-20) stands allowed.
- (iv) The plaintiff shall carry out the necessary amendment in the plaint so as to implead the petitioner as a party defendant to the suit within a period of six weeks from the date of uploading of this order and serve the summons on

the petitioner – newly impleaded defendant within a period of one month thereafter.

- (v) Rule made absolute in the aforesaid terms.

No costs.

[N. J. JAMADAR, J.]