



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.470 OF 2025**

Vigneshwar Co-op. Hsg. Soc. Ltd. ... Petitioner
versus
Lawrence Jokim D'Souza and Ors. ... Respondents

Mr. Niranjan Mogre for Petitioner.
Mr. Atul Damle, Sr. Advocate with Mr. Ajay Yadav, for Respondent No.1.
Mr. Sandip Babar, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 17 MARCH 2025

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 5 November 2024 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, whereby the Chamber Summons taken out by the Petitioner to implead it as a party in Suit No.1796 of 2023, instituted by Respondent Nos.1 and 2 against Respondent Nos.3 to 5, came to be rejected.
3. The Plaintiffs are carrying on their business under the name and style of M/s. Super Auto Garage from CTS No.16/2 situated at Vile Parle, Mumbai, admeasuring 1310.1 sq. meters (larger property). Vide Government Resolution dated 17 June 1993, the State of Maharashtra – Defendant No.3 had allotted land admeasuring 500 sq. meters out of the larger property to the

Petitioner Society. As the said allotment was subsequently revoked, the Petitioner had filed Writ Petition No.2090 of 1997, wherein an ad-interim order was passed on 11 September 1997. The Petitioner claims, in flagrant violation of the said order, the State of Maharashtra – Defendant No.3, allotted 704 sq. meters of land out of the larger property to the Plaintiff No.1 on the condition of surrender of the balance land admeasuring 606.1 sq. meters to the State. As the said order was passed in breach of the ad-interim order passed by the High Court, the State Government vide Resolution dated 17 August 2004, decided to allot 826.8 sq. meters of land out of the larger property to the Petitioner's Society. By an order dated 8 December 2005, the Collector – Defendant No.2 allotted land admeasuring 826.8 sq. meters to the Petitioner Society on the condition that the Petitioner would withdraw WP No.2090 of 1997. Thus, the said Petition was not pursued and, eventually, dismissed for default on 25 July 2011.

4. Respondent Nos.1 and 2 instituted a suit seeking a declaration that Defendant Nos.1 to 3 were not entitled to interfere with the Plaintiffs peaceful use and occupation of 606 sq meters land out of the larger property i.e. the suit property, and to restrain the Defendants from causing obstruction to the possession and enjoyment of the Plaintiffs over the suit property. In the said suit, the Plaintiffs sought interim injunction and, by an order dated 21 July 2023, ad-interim protection came to be granted.

5. The Petitioner took out Chamber Summons seeking to implead the Petitioner as a party Defendant to the suit. The learned Judge, City Civil Court was of the view that having regard to the nature of the suit, which was primarily for injunction simplicitor, the Petitioner was neither necessary nor proper party. The Petitioner could work out its remedies as available in law in an independent action.

6. Mr. Mogre, learned Counsel for the Petitioner, submitted that the Petitioner has a direct interest in the subject matter of the suit. The Plaintiffs are in unauthorized occupation of the portion of the land which has been allotted to the Petitioner by the State Government. The authorities of the State have failed to discharge their duties to get the encroachment removed. When an action for removal of encroachment was initiated by the Defendants, the Plaintiffs have approached the the City Civil Court and obtained injunctive reliefs. Therefore, the Petitioner, being a directly affecting party, is entitled to be impleaded in the suit. Mr. Mogre further submitted that, if not a necessary party, the Petitioner is definitely a proper party. No prejudice would be caused to the Plaintiffs if the Petitioner is impleaded as party Defendant to the suit.

7. I find it difficult to accede to the submissions of Mr. Mogre. Few principles are well settled. Addition of a party is not a matter of initial jurisdiction, but one of judicial discretion to be exercised having regard to all the relevant circumstances. Necessary party is one in whose absence no

decree can be passed. Proper party is a person against whom though no relief is claimed, yet, the presence of the such person would assist the Court in a complete and effectual adjudication of the dispute. The Plaintiff is a *dominus litus* and cannot be compelled to litigate against a party, unless the latter has a direct interest in the subject matter of the suit, as distinct from a commercial interest.

8. On the aforesaid touchstone, if the facts of the case are appreciated, it becomes evidently clear that the Petitioner claims that, it is entitled to a part of the suit property on the basis of the allotment made by the State Government. The material on record indicates that an area admeasuring 483.30 sq. meters, out of the larger property has been allotted to Plaintiff No.1 by the District Collector on 18 February 2010. The Plaintiffs claim to be in long standing possession of the suit property. The suit has been instituted seeking injunctive reliefs to restrain the authorities of the State from dispossessing the Plaintiffs without following the due process of law.

9. Evidently, the title in the suit property does vest in the State. The Petitioner's claim is contingent upon the State Government succeeding in removing the encroachment and handing over possession of the alleged encroached portion to the Petitioner pursuant to the allotment made in favour of the Petitioner.

10. The aforesaid being the nature of the claim of the Petitioner, the

learned Judge, City Civil Court was justified in taking a view that the Petitioner can work out its remedies as available in law. As noted above, the Petition filed by the Petitioner seeking enforcement of the order of allotment came to be dismissed for want of prosecution. Nonetheless, the Petitioner can avail remedies, as available in law, to seek fruition of their claim which is in an inchoate state. But, the impleadment of the Petitioner in the instant suit for injunction would substantially alter the character of the suit.

11. For the foregoing reasons, I am not inclined to interfere with the impugned order.

12. The Writ Petition stands dismissed.

13. Needless to clarify that the aforesaid observations are confined to determine the aspect of impleadment of the Petitioner in the suit and these observations may not be construed as an expression of opinion on the merits of the claim of the Petitioner and would not bear upon the rights of the Petitioner in the event it institutes an independent proceeding for enforcement of its rights.

(N.J.JAMADAR, J.)