



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3937 OF 2025**

Aftab Sattar Kachhi	...	Petitioner
versus		
The Collector, Ratnagiri and Ors.	...	Respondents

Mr. Balasaheb G. Ligade, for Petitioner.
Ms. Tejas Kapre, AGP for Respondent Nos.1 to 3
Mr. Sumit Kothari, for Respondent No.5.

CORAM: N.J.JAMADAR, J.

DATE : 7 APRIL 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 28 November 2024 passed by the learned Civil Judge, Sr. Division, Khed, Tal. Chiplun, whereby the Respondent No.5 came to be impleaded as a party defendant to the suit.
3. The Petitioner – Plaintiff has purchased the suit property bearing Gat No.46/8A/2 admeasuring 8.75 R situated at Pimpli Khurd, Tal Chiplun under the registered Sale Deed dated 14 May 2018. With a view to carry on the business of scrap, the Plaintiff erected structures over the suit property. Respondent No.5, Plaintiff asserts, started to make false and motivated complaints regarding the alleged unauthorized construction and the blocking of the flow of water on account of the construction carried out by the Plaintiff. Respondent No.5 allegedly made repetitive complaints with various

authorities, including the State Human Rights Commission, malafide and with an oblique motive to wreak vengeance.

4. By a notice dated 1 March 2024, Tahasildar, Chiplun – Defendant No.3 directed the Plaintiff to remove constructions within one month thereof, purportedly in exercise of the power under Section 45(1) and (2) of the Maharashtra Land Revenue Code, 1966 and Sections 18, 52, 53, 56 and 57 of the Maharashtra Regional and Town Planning Act, 1966. Specific reference was made to the complaint made to the Maharashtra State Human Rights Commission and the order passed by the said Commission. The Plaintiff, thus, instituted a suit seeking declaration that the notices issued by the Defendants were illegal, void and beyond the jurisdictional competence of the Defendant Nos.1 to 3 and the consequential relief that the construction carried out by the Plaintiff over the suit property was in accordance with the deemed permission.

5. In the said suit, Respondent No.5 filed an application to implead him as a party Defendant to the suit. Respondent No.5 contended that he was the principal complainant. Actions were taken pursuant to the complaints lodged by the Respondent No.5. On account of the unauthorized construction carried out by the Plaintiff, Respondent No.5 and other adjoining holders of Gat No.46/8B and 46/D suffered prejudice as their houses got flooded with water due to obstruction to the natural water channels. By the impugned order,

learned Civil Judge was persuaded to allow the application observing, inter alia, that the perusal of the averments in the complaint would indicate that the Plaintiff was more aggrieved by the action and conduct of the Respondent No.5 than the instrumentalities of the State. If not a necessary party, the Respondent No.5 was a proper party.

6. Learned Counsel for the Petitioner submitted that the Respondent No.5 has no direct interest in the subject matter of the suit. He is not the owner of the suit property. Nor Respondent No.5 has otherwise any concern with the suit property. Merely because Respondent No.5 had made complaints with the authorities does not cloth him with the necessary locus to get himself impleaded as a party Defendant to the suit.

7. To buttress this submission, Mr. Ligade placed reliance on the decisions of the Supreme Court in the cases of Mohamed Hussain Gulam Ali Shariffi V/s. Municipal Corporation of Greater Bombay and Ors.¹, Ravi Yashwant Bhoir V/s. District Collector, Raigad and Ors.² and a Division Bench judgment of this Court in the case of Ashok Babulal Avasthi V/s. Munna Nizamuddin Khan and Anr.³.

8. Learned Counsel for Respondent No.5 countered the submissions on behalf of the Petitioner. It was urged that a perusal of the averments in the plaint would indicate that all sorts of allegations have been made against

1 (2020) 14 SCC 392

2 (2012) 4 SCC 407

3 2023 SCC Online Bom 2559

Respondent No.5. In fact, Respondent No.5 and the holders of the adjoining properties are directly affected by the unauthorized development over the suit property. Respondent No.5 has consistently made grievances with the instrumentalities of the State regarding the said unauthorized development which affects the rights of Respondent No.5. In these circumstances, impleadment of Respondent No.5 as a party Defendant is necessary for a just decision of the case.

9. Mr. Kothari placed reliance on a judgment of the learned Single Judge of this Court in the case of Chandrakant Dharma Bhonu V/s. Pandurang Ramchandra Dandekar⁴ and an order in Ram Rudra Co-op. Housing Soc. Ltd. V/s. Mira Bhayandar Municipal Corporation and Ors.⁵ to buttress the submission that the adjoining land holder who has raised the grievances and on whose complaint, Municipal Corporation has initiated action, is a proper party.

10. The legal position as regards the addition of a party is absolutely clear. Addition or deletion of a party is not a matter of initial jurisdiction, but one of judicial discretion. Undoubtedly, the Plaintiff is the dominus litus. However, the said proposition is not absolute. If it can be shown that a party has direct interest as distinct from commercial or temporal interest, such party can be impleaded as a party Defendant to the suit. The distinction between

4 2004() Mh.L.J. 782

5 WP No.8691 of 2022 dt. 3 March 2023

necessary and proper party is also well marked. A person against whom no relief is claimed, can be impleaded as a proper party if the presence of such person promotes effective and complete adjudication of the dispute.

11. The submission of Mr. Ligade that in every matter where the adjoining land holder makes a grievance regarding the unauthorized development need not be impleaded as party Defendant to the suit, unless he / she has direct interest in the subject matter of the lis, carries some substance. However, in the facts of the case at hand, a bare perusal of the averments in the plaint would indicate that the Plaintiff has referred to the actions and conduct of Respondent No.5 umpteen times. The allegations of malafide and bias, on account of the multiple factors have been made against Respondent No.5. The tenor of the plaint is that the Respondent No.5 has made false and motivated complaints regarding the alleged unauthorized development and on account of such false, motivated and vexatious complaints, the authorities have proceeded against the Plaintiff. The Court cannot lose sight of the fact that it is not a stray allegation against the Respondent No.5. It is also imperative to note that the Respondent No.5 has alleged that on account of the unauthorized development over the suit property, Respondent No.5 and holders of adjoining properties have suffered damage as their houses were got flooded.

12. Prima facie, it cannot be said that the Respondent No.5 has no concern

whatsoever with the subject matter of the lis. In a sense, Respondent No.5 and the adjoining holders of the properties can be said to be directly affected by the alleged unauthorized development. Undoubtedly, the subject matter of the lis is the legality and validity of the action of the authorities of the State and the notices issued by them. However, in the case at hand, the actions and conduct of Respondent No.5 have been made a subject matter of the fierce criticism and a part of the cause of action for the institution of the suit, repetitively in the plaint. Thus, if not a necessary party, the Respondent No.5 is a proper party to the suit.

13. Reliance placed by Mr. Kothari on the decision of this Court in the case of Chandrakant Dharma Bhonu (supra), appears to be well founded. In the said Petition, the Petitioner therein and the Plaintiff were the owners of adjacent structures and on the basis of the complaint made by the Petitioner, Municipal Corporation had initiated action against the Plaintiff therein. This Court held that, in the backdrop of the facts of the said case, the Petitioner was directly and substantially concerned with and affected by the proceedings before the Court for more than one reason. The action of carrying out an allegedly unauthorized construction and the alleged encroachment by the Plaintiff directly affected the rights of the Petitioner. Secondly, it was at the behest of the Petitioner and, in view of the proceedings which were instituted, before High Court, that the Municipal Corporation had resorted to its statutory

powers under the Mumbai Municipal Corporation Act, 1888.

14. The aforesaid pronouncement appears to govern the facts of the case at hand with equal force. The alleged action of unauthorized development is claimed to have affected the rights of the Respondent No.5. On the basis of the repetitive grievances of the Respondent No.5, action has been initiated by the authorities of the State. Nay in the plaint, the Plaintiff has made serious allegations against the Respondent No.5, repetitively.

15. In these circumstances, the learned Civil Judge cannot be said to have committed any error in directing the impleadment of Respondent No.5.

16. Hence, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)