

Santosh

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

WRIT PETITION NO. 7143 OF 2025

Shivashankar Govind Swami

...Petitioner

Versus

The Mumbai Municipal Corporation of Greater
Mumbai and anr.

...Respondents

Mr. Mohit Jadhav, a/w Kajal Chourasia and Khushboo Singh,
for the Petitioner.

Mr. Santosh Mali, i/b Komal Punjabi, for Respondent No.1 -
BMC.

Mr. Manoj Mahatrey, a/w Ishani K., i/b Vaibhav Shah, for
Respondent No.2.

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**CORAM: N. J. JAMADAR, J.
DATED: 4th NOVEMBER, 2025**

Order:-

1. The challenge in this petition is to an order dated 2nd December, 2024 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai, in Chamber Summons No.348 of 2024 in LC Suit No.402 of 2023, whereby the Chamber Summons taken out by respondent No.2 to implead him as a party defendant in the suit instituted by the petitioner – plaintiff came to be allowed and the petitioner was directed to amend the plaint so as to implead respondent No.2 as party defendant No.2.

2. The petitioner claims to be in the exclusive use, occupation and possession of a two-storied premises forming part of CTS No.1603 situated at Philip Misquitta Chawl, Milan Subway Road, Vile Parle (W), Mumbai (“suit shop”). The petitioner asserts he is carrying on the business of sale of granites and ceramic tiles under the name and style of ‘M/s. Western Granites’.

3. Respondent No.1 – defendant No.1 Municipal Corporation addressed a notice on 11th November, 2022 purportedly under Section 351 of the Mumbai Municipal Corporation Act, 1888 (“MMC Act, 1888”) alleging that the petitioner has carried on an unauthorized development over the suit premises, and called upon the petitioner to remove the unauthorized structure. A Speaking Order was passed on 9th January, 2023.

4. Asserting that the notice under Section 351 was *mala fide*, illegal and invalid and the Speaking Order also suffered from the vice of illegality and non-application of mind, the petitioner instituted a suit seeking declaration that the notice dated 11th November, 2022 and the Speaking Order dated 9th January, 2023 are illegal, bad in law, void and unenforceable and for consequential reliefs.

5. In the said suit, respondent No.2 filed an application to implead him as a party defendant claiming that he is the owner of the land on which the petitioner had carried out unauthorized construction. A reference was made to the fact that the petitioner has challenged a prior notice under Section 354A in LC Suit No.3951 of 1999; which was dismissed by the City Civil Court, and the appeal thereagainst also did not succeed. Thereupon defendant No.1 Corporation had demolished the unauthorized structure. However, the plaintiff has again erected unauthorized structure without the permission of the Planning Authority. The act of erection of unauthorized structure has caused serious prejudice to respondent No.2 and, therefore, respondent No.2 was a necessary party to the suit.

6. By the impugned order, the learned Judge, City Civil Court, was persuaded to allow the Chamber Summons observing *inter alia* that there was material to indicate that the name of respondent No.2 was mutated to the property card of the suit property. It appeared that respondent No.2 would suffer grave prejudice in the event the suit proceeded without impleading respondent No.2 as a party to the suit.

7. Mr. Mohit Jadhav, the learned Counsel for the petitioner, submitted that the learned Judge, City Civil Court, committed an error in allowing the impleadment of respondent No.1 as a party defendant solely on the basis of an entry in the property card. Such entries do not make or unmake title. Respondent No.2 has not instituted any proceeding to establish his title over over portion of the suit property. It was submitted that an entry in the revenue record is of no use in establishing the title. Reliance was placed on a decision of the Supreme Court in the case of *Jitendra Singh vs. State of Madhya Pradesh and ors.*¹, wherein it was enunciated that entries in the revenue records or jamabandi have only “fiscal purpose” and no ownership is conferred on the basis of such entries.

8. In opposition to this, the learned Counsel for respondent No.2, submitted that in the previous suit, Mrs. Magaret Hubert Pareira, the predecessor-in-title of respondent No.2, was impleaded as a party defendant on the basis of an order passed in the Chamber Summons. The said suit i.e. LC Suit No.3951 of 1999 was dismissed by the City Civil Court and First Appeal No.174 of 2025 was also dismissed by this Court by a judgment and order dated 6th September, 2023. In this view of the matter,

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the resistance to the impleadment of respondent No.2 as the party defendant is unsustainable.

9. Mr. Jadhav attempted to salvage the position by canvassing a submission that the underlying instrument on the basis of which respondent No.2 claims to have acquired interest in the suit property has not been registered and, therefore, there can be no conveyance of title thereunder.

10. At the outset, it is necessary to clarify that the essential challenge in the instant suit is to the legality and validity of the notice issued by defendant No.1 Municipal Corporation purportedly under Section 351 of the MMC Act, 1888. The question of title of respondent No.2 is not required to be adjudicated in the said suit. In contrast, it has to be seen whether respondent No.2 satisfies the essential qualification of being either a necessary or proper party to the said suit. A party seeking impleadment in the suit, must have a direct interest in contrast to a commercial interest.

11. Respondent No.2 claims ownership over a portion of the suit property. A declaration as to the legality and validity of the impugned action on the part of respondent No.1 Corporation may bear upon the proprietary rights of the owner over the suit property.

12. In this context, a useful reference can be made to a Division Bench judgment of this Court in the case of *Ashok Babulal Avasthi vs. Munna Nizamuddin Khan and anr.*², wherein the Division Bench, on a reference, considered the question, whether the owner of the premises is a necessary or proper party in a suit instituted by the licensee against the Municipal Corporation. It was enunciated that, where a landlord applies to become a party to a suit wherein the legality and validity of a notice issued by the Municipal Corporation is called in question, the aspect of exercise of discretion under Order I Rule 10(2) of the Code of Civil Procedure, 1973 crops up for consideration. This Court has consistently exercised its discretion for last five decades to allow such a joinder. This exercise of discretion has become a well established practice. The Division Bench concluded as under:

“32. Answering the question, we hold that in a suit filed by the occupier/ tenant/ licensee seeking to restrain the local authority from taking action of demolition against the property, where the landlord/ owner of the property seeks impleadment, the Court is empowered to permit the same exercising the power under Order I Rule 10(2) of Code of Civil Procedure on the premise that the landlord/ owner is a proper party. Such a direction by the court in this fact situation would be a sound exercise of discretion consistent with the long-standing use of discretion in this manner. Refusal to permit such a joinder by not accepting the landlord/owner as a proper party would be an improper use of discretion and be liable to be set aside.”

(emphasis supplied)

13. Mr. Jadhav submitted that, in the case at hand, the status of respondent No.2 as the owner of the part of the suit premises is in serious doubt. Therefore, respondent No.2 could not have been impleaded as a party defendant. Incontrovertibly, the predecessor-in-title of respondent No.2 was impleaded as a party defendant in the previous suit instituted by the plaintiff challenging the legality and validity of the notice under Section 354A of the MMC Act, 1888. In the instant suit, the question of title of respondent No.2 would not be as important as the legality and validity of the impugned notice and the Speaking Order and the effect thereof on the rights of respondent No.2.

14. In this view of the matter, this Court finds that the learned Judge, City Civil Court, has exercised the discretion to implead respondent No.2 as a party defendant in consonance with the law enunciated by the Division Bench in the case of *Ashok Avasthi* (supra). This Court, therefore, does not find any justifiable reason to interfere with the exercise of discretion.

15. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]