



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 702 OF 2025

1. Pushpendrakumar Keshrilalji Sharma, Aged 58, Occ: Business R/o Shastri Nagar, Akola, Tq. & Dist. Akola.
2. Makarand Sharad Pande, Age 51, Occ: Business, R/o Rautwadi, Akola, Tq. and Dist. Akola.

PETITIONERS

VERSUS

1. Rajendra Onkarprasad Gautam, Age 62, Occ: Business, R/o Near Poddar Driving School, Vidya Nagar, Akola, Tq. and Dist. Akola.
2. The Commissioner, Akola Municipal Corporation, M.G Road, Akola, Tq. and Dist. Akola.

RESPONDENTS

Shri H.R. Gadhia with Aniket Sawal, counsel for the petitioners.
Shri S.A. Mohta, counsel, counsel for the respondent no.1.
Shri M.I. Dhatrak, counsel for the respondent no.2.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : NOVEMBER 12, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : DECEMBER 19, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. This petition takes exception to the order dated 18.04.2024 passed by the trial Court rejecting the petitioners' application under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') for addition of parties in Regular Civil Suit no.134 of 2023.

3. The respondent no.1 has filed the suit against the respondent no.2 seeking declaration and permanent injunction with respect to the notice of demolition dated 01.03.2023 with respect to unauthorised construction made by the respondent no.1. The respondent no.2-defendant in the suit filed his written statement and the suit was proceeded. During pendency

of the suit, the petitioners' filed application under Order I Rule 10 of the Code seeking their impleadment as parties to the suit by alleging that they are owners of the suit property. This application was opposed by the original plaintiff and it came to be rejected by order dated 18.04.2024 which is subjected to challenge by way of instant petition.

4. Assailing the impugned order, the learned counsel for the petitioners submitted that the petitioners are the owners of the suit property i.e. property bearing Nazul Plot Nos.6/1, 7/1, 12, 13, 14/109 by virtue of sale-deed dated 14.10.2022 and there are mutation entries in their names. He submitted that the suit although filed against the Municipal Corporation, being with respect to the property belonging to the petitioners, they are the necessary parties and their application for joining as parties to the suit ought to have been allowed. In support of his submissions, he relied upon the judgment of the Hon'ble Supreme Court in *Aliji Momonji & Co. Versus Lalji Mavji & Others* [(1996) 5 SCC 379], the judgment of the Division Bench of this Court in *Ashok Babulal Avasthi Versus Munna Nizamuddin Khan & Another* [(2024) 2 Mah.LJ 322] and the judgment of the Coordinate Bench of this Court in *Ashok Babarao Patil Versus The State of Maharashtra & Others* [Writ Petition No.10493 of 2022]. By relying on these judgments, he submitted that the petitioners are having interest as owners in the suit property and they ought to have been joined as parties to the suit since in the event of any order of demolition of the building, the right, title and interest of the petitioners will be directly affected. By referring to the judgment in *Aliji Momonji &*

Co. (supra), he submitted that the interest of the petitioners need to be protected since the Hon'ble Supreme Court has even protected the interest of the landlords therein.

5. Per Contra, Shri S.A. Mohta, counsel for the respondent no.1, the original plaintiff strongly opposed the petition and submitted that the petitioners cannot claim any right to be impleaded as party defendants in the suit as the plaintiff is the dominus litis and cannot be directed to add any person to the suit. He also submitted that the suit is with respect to the adjudication of the rights between the petitioner and the Municipal Corporation and there is no question of adjudication of any right between the original plaintiff and the interveners.

In support of his submissions, he relied on the judgment of the Hon'ble Supreme Court in *Mohamed Hussain Gulam Ali Shariffi Versus Municipal Corporation of Greater Bombay & Others* [(2020) 14 SCC 392] and submitted that the position of law is laid down that when the Court is not called upon to adjudicate the rights between two parties in relation to the suit property, any dispute amongst them can be decided by way of separate suit since the cause of action pleaded in the two suits would be essentially distinct.

6. In the wake of these arguments, rival contentions fall for my consideration.

7. The controversy in the petition is limited to the entitlement of the petitioners to be joined as party defendants in the suit challenging the

notice of demolition. A perusal of the plaint clearly shows that the suit is for declaration and permanent injunction based on the cause of action of the notice dated 01.03.2023 issued by the Corporation. The petitioners primary contention that they have become owners of the suit properties by virtue of separate sale-deeds in their favour although *prima-facie* creates an impression that they are likely to be directly affected by the outcome of the suit, however, it has to be seen that there is a dispute about petitioners' ownership with that of the original plaintiff. Undisputedly, in view of the notice of demolition, the plaintiff filed suit against the Akola Municipal Corporation only and the reliefs are claimed only against said local body. A perusal of the plaint clearly shows that the controversy involved in the suit can be adjudicated effectively in presence of only the Municipal Corporation. Mere pendency of an independent proceedings in between the plaintiff and the intervenors cannot be a reason to conclude that the presence of intervenors would be imperative for deciding the controversy against the Municipal Corporation.

8. As regards the judgments relied upon by the counsel for the petitioners, it has to be seen that the judgment of the Hon'ble Supreme Court in ***Aliji Momonji & Co.*** (supra) has considered the legal position with respect to the provisions of Order I Rule 10 of the Code and has held that in the matter of a dispute challenging demolition of a building by the Municipal Corporation, the landlord has a direct and substantial interest. Relevant paragraph 5 from the said judgment is reproduced below:-

“5. *The controversy is no longer res integra. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the disputes, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is: whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licences would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent off the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building.”*

9. In order to refute the contentions advanced by the counsel for the petitioners based on the judgment in *Aliji Momonji & Co.* (supra), the learned counsel for the respondent no.1 placed reliance on the judgment of the Hon’ble Supreme Court in *Mohamed Hussain Gulam Ali Shariffi* (supra) and submitted that the plaintiff being a Dominus litis cannot be forced to add any person as party to the suit unless the party claiming to be added as party is a necessary party and without its presence, no relief can be granted in the suit. He placed reliance on the position of law laid down in this judgment. Relevant paragraphs 12, 13 and 14 from the aforesaid judgment are reproduced below:-

“12. In our considered opinion, having regard to the nature of the controversy, which is the subject-matter of the suit, Respondents 2 and 3 are neither necessary nor proper parties. As would be clear from mere perusal of the plaint, the basic question, which is required to be decided in the suit is whether notice issued under Section 351 of the Act by Respondent 1 (Corporation) to the appellant is legally valid or not.

13. To decide this question, in our considered opinion, the only necessary and proper party to the suit is the Mumbai Municipal corporation, Greater Mumbai i.e. Respondent 1, who has issued such notice, and for deciding this question either way, the presence of Respondents 2 and 2 is not at all required. In other words, the suit can be decided even in the absence of Respondents 2 and 3.

14. It is a settled principle of law, which does not need any authority to support the principle, that the plaintiff being a dominus litis cannot be forced to add any person as party to his suit unless it is held keeping in view the pleadings and the relief claimed therein that a person sought to be added as party is a necessary party and without his presence neither the suit can proceed and nor the relief can be granted. It is only then such a person can be allowed to become party, else the suit will have to be dismissed for non-impleadment of such necessary party. Such does not appear to be a case here.”

10. In the wake of position of law laid down in above two judgments, the similar controversy fell for consideration before the Division Bench of this Court in **Ashok Babulal Avasthi** (supra) and after analysing the legal position, the Division Bench held in paragraph 23 as under:-

“23. The question is whether the view taken in *Aliji Momonji* is deviated from in *Mohamed Hussain Shariffi*. A careful analysis of the decision in *Mohamed Hussain Shariffi* would show that there is no conflict at all between the two decisions. Firstly, in *Mohamed Hussain Shariffi*, there is no reference to the decision in the case of *Aliji Momonji*. In paragraph 14 in *Mohamed Hussain Shariffi* quoted above, the Hon’ble Supreme Court reiterated the settled position of law that the plaintiff is a dominus litis and cannot be forced to add a party to his suit unless he is a necessary party and without whose

presence the suit cannot proceed or no relief can be granted and that only such person can be allowed to become a party. In Mohamed Hussain Shariffi, the same position of law as in Aliji Momonji was reiterated, and the Supreme Court, on facts, found that respondent Nos.2 and 3 therein were not necessary parties. This was so because those who sought impleadment were not the owners but had filed suit for specific performance, which was pending.”

11. While dealing with an identical fact situation, the Coordinate Bench of this Court in **Ashok Babarao Patil** (supra) observed that theory of Dominus litis cannot be overstretched in the matter of impleading parties, which results in ineffective decrees being passed in absence of necessary parties and observed in paragraph 20 as under:-

“20. The theory of dominus litis cannot be overstretched in the matter of impleading of parties, which results in ineffective decrees being passed in absence of necessary parties or where the theory is misused to deliberately obtain decree against non-interested persons/officials and then use it to assert rights of Plaintiff. It is also for the Court to ensure that the real matter in dispute is effectively decided by impleading all those who are necessary parties. Merely because plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. If the Court feels it appropriate that any particular party’s presence is necessary before the Court for adjudicating upon the issue involved in the suit, the Court has full power under Order I Rule 10(2) of the Code to direct addition of such party to the suit.”

12. Having regard to the legal position enunciated by the Hon'ble Supreme Court and this Court in various judgments, it has to be seen that undisputedly the plaintiffs are the dominus litis of his suit. Considering the prayer clause of the suit, it has to be seen as to whether the controversy involved in the suit could be adjudicated in absence of the party seeking impleadment and further whether the decree passed in their absence

would be ineffective. On consideration of the pleadings in the suit in the instant matter and by particularly considering the cause of action and the prayer classes, it has to be inferred that the suit filed by the original plaintiff can be decided even in absence of the intervenors being joined as party defendants. As such, the judgment in *Ashok Babarao Patil* (supra) would not be of any assistance to the petitioners. The position of law as laid down in *Aliji Momonji & Co.* and in *Mohamed Hussain Gulam Ali Shariffi* (supra) was scrutinised by the Division Bench in *Ashok Babulal Avasthi* (supra) and it is observed that there is no conflict between the two decisions (as mentioned in paragraph 23 from the said judgment). As such, the position of law as laid down in Mohd. Sharifee supra becomes applicable to the facts of the instant case. The fact situation dealt with by the Hon'ble Supreme Court in *Mohamed Hussain Gulam Ali Shariffi* (supra) is somewhat similar to the facts of the instant case. As such, I am of the opinion that the intervenors cannot claim entitlement to be impleaded as party defendants. Needless to state, the intervenors claiming independent right with respect to the suit property are entitled to get their rights adjudicated in separate suit which is allegedly pending.

13. Having regard to the above mentioned factual and legal position, I am of the firm opinion that the petitioners are not entitled to intervene and to be joined as party defendants in the suit filed by the respondent no.1. The trial Court has given due consideration to the relevant factual and legal aspects and no perversity is seen with the impugned order.

14. In view of the overall factual and legal aspects of the case, no indulgence is warranted under Article 227 of the Constitution of India with the impugned order. The writ petition is accordingly dismissed with no order as to costs. Rules stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE