



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

60 CRA NO. 161 OF 2024

GOVIND DIGAMBAR DESHMUKH AND ANOTHER
VERSUS
NITIN GANESH PHUKE AND OTHERS

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Advocate for Applicants : Mr. Sonpethkar Aniket P.
Advocate for Respondent Nos.1 to 6 : Mr. Jadhav Chetan T.
Advocate for Respondent No.7 : Mr. Ameet R. Vaidya.

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CORAM : SHAILESH P. BRAHME, J.
DATE : 25.02.2026

PER COURT :-

1. Heard both sides.
2. Revision application is directed against the order dated 23.08.2024 below Exh.41 passed in Regular Civil Suit No.12 of 2024.
3. Application Exh.41 was filed by the present applicant before the Trial Court under Order VII Rule 11 on the ground that there was non-compliance of Section 487 of Maharashtra Municipal Corporations Act (hereinafter referred to as "Act") in a suit filed by respondent Nos.2 to 6 for declaration in respect of communication dated 18.01.2024 and injunction.

4. Learned counsel for the applicants submits that Trial Court committed error of jurisdiction in rejecting the application because the objection was not raised by defendant/Corporation or its Officers. It is submitted that applicants are also defendant Nos.1 and 2 and entitled to raise objection and the application should have been allowed. It is further submitted that the cause of action and the relief pertain to the Act done by the Corporation and the notice under Section 487 was mandatory.

5. Per contra, learned counsels for the respondents supports the impugned order. It is submitted that it has been pleaded specifically in the plaint that application was made by the plaintiffs to the Corporation which is produced at Exh.R-1. It is further submitted that application Exh.8 was submitted for seeking exemption from notice under Section 80 as well as 487 of the Act which was allowed partly.

6. I have considered rival submissions of the parties. The controversy between the parties pertains to the reserved open space in the sanctioned layout which is purported to have been encroached by defendant Nos.1 and 2 who are illegally constructing the open space. Respondent No.3/Corporation is

alleged to be acting in collision with them. The communication dated 18.01.2024 is sought to be challenged in the suit.

7. I have gone through Section 487 of the Act. It is specifically stated in the plaint that application was made to the Corporation. Thereafter, the suit was instituted. It is further contended that exemption was solicited from notice under Section 80 and 487 vide application Exh.8. It was allowed partly to the extent of Section 80. It is not possible at this stage of the proceeding to hold that the suit is liable to be dismissed for want of compliance to Section 487.

8. A careful reading of Section 487 shows that all the actions and the reliefs are not subjected to the compliance of notice to the Corporation or its Officers. There is room to plead and argue that notice in given facts and circumstances may not be required. The reliefs claimed in the suit are multiple in nature. An objective scrutiny is required to examine as to whether compliance of 487 is mandatory or not in the context of the facts of the case.

9. The view taken by the Trial Court cannot be branded as perverse or patently illegal. The party who could have a grievance for the notice under Section 487 does not have

grievance. In the given facts and circumstances of the case, I do not find that any interference is called for.

10. Another aspect of the matter is that even if it is held that suit is not maintainable for want of notice under Section 487 to the extent of particular parties or to the extent of particular reliefs, right law is that partial rejection of the plaint is impermissible. A useful reference can be made to the judgment of the Supreme Court in ***Central Bank of India and another Vs. Prabha Jain and other ; (2025) 4 SCC 38.***

11. My attention is adverted to the judgment rendered by the Single Judge in the matter of ***Sakharam G. Mahadik Vs. Swagat Builders and Developers ; AIR OnLine 2023 Bom. 1522.*** Facts of that case are distinguishable. The view taken by the Court cannot enure to the benefit of the applicants. In that view of the matter, I am not inclined to cause any interference in the impugned order.

12. Civil revision application is rejected.

(SHAILESH P. BRAHME, J.)

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vmk/-