IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12711 OF 2019

M/S. Raviraj Developers **... Petitioner**

Versus

Shri. Mahesh Laljibhai Poriya And Anr. **... Respondents**

Mr. Nakul Jain *a/w Mr. Nivit Srivastava, Ms. Sneha Patil and Mr. Bhavya R. Shah i/b Maniar Srivastava Associates for Petitioner.*

Ms. N. Goradia *for Respondent No.1.*

Mr. Santosh Mali *for Respondent No.2-BMC.*

CORAM : SANDEEP V. MARNE, J.

DATE : 1 OCTOBER 2026.

P.C. :

1) The Petitioner is aggrieved by rejection of the Chambers Summons for his impledment in the suit filed by the Plaintiff challenging the notice issued by the Minister Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888.

2) The law appears to be now well settled on account of judgments of Division Bench of this Court in ***Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan & Anr.***[1] and ***Raj Garden Co-operative Housing Society Limited Vs. Mahendra Arjun Shinde & Anr.***[2]**.**

MANE SONALI DILIP
Digitally signed by MANE SONALI DILIP
Date: 2026.10.06 11:02:29 +0530

1 2024 (2) Mh.L.J. 322.

2 Writ Petition No. 9697 of 2026 decided on 7 September 2026

In ***Raj Garden Co-operative Housing Society Limited*** (supra), this Court has held in paragraph Nos. 15, 16 and 17 as under:

> **15.** It is well-recognized that where the owner or landlord of the premises over which the offending structure is stated to be situated approaches the Court seeking impleadment, ordinarily the Court shall exercise the discretion to implead such owner/landlord as a party defendant to the suit wherein the legality and validity of the action of the Municipal Corporation in regard to the offending structure is questioned. In such a situation, the landlord/owner can be said to have a direct interest in the subject matter of the suit, and not a commercial interest. The order that may be passed by the Civil Court in regard to the legality and validity of the notices issued by the Municipal Corporation and the action sought to be initiated by the Municipal Corporation qua the purported offending structure would affect the rights of the owners/landlord.
>
> **16.** A profitable reference, in this context, can be made to a judgment of a Division Bench of this Court, in the case of Ashok Babulal Avasthi vs. Munna Nizamuddin Khan and anr. 3, wherein, on a reference, the Division Bench has held that in a suit challenging the legality and validity of a notice issued by the Municipal Corporation instituted by the tenant, the exercise of discretion by the Court to implead the owners/landlord would be in consonance with law. 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)

> 17. In the case at hand, the description of the property given in the impugned notices issued by the Municipal Corporation, as well as the speaking order, clearly reveals that the alleged offending structure is situated on the property bearing CTS No. 128A/40 now further subdivided into CTS Nos. 128A/40/1 and 128A/40/2. And those properties belong to Raj Garden Co-operative Housing Society Limited, the petitioner.

3) In my view, therefore, the Petitioner has a right to get himself impleaded in the suit in his capacity as the owner of the property. In that view of the matter, the impugned order dated 28 August 2019 is set aside and Chamber Summons No. 660 of 2015 is made absolute in terms of prayers made in therein.

4) The Writ Petition is allowed in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]