

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

WRIT PETITION NO. 8256 OF 2025

Tarique Munawwar Rizvi ...Petitioner

Versus

The Mumbai Municipal Corporation
through The Designate Officer And Anr ...Respondents

AND

WRIT PETITION NO. 8257 OF 2025

Samira Maaz Ismail Patel Through Ca. ...Petitioner
Mohd Maaz Ismail

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

AND

WRIT PETITION NO. 8259 OF 2025

Maaz Ismail Patel ...Petitioner

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

AND

WRIT PETITION NO. 8260 OF 2025

Qais Abdul Hamid Patel ...Petitioner

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

AND

WRIT PETITION NO. 8262 OF 2025

Al Marjaan Tower Co Operative Housing
Society Ltd ...Petitioner

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

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**AND
WRIT PETITION NO. 8263 OF 2025**

Abdul Hamid Patel Through Ca. Oves
Abduln Hamid Patel ...Petitioner

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

**AND
WRIT PETITION NO. 8265 OF 2025**

Aamir Abdul Hamid Patel Throu. Ca. Oves
Abdul Hamid Patel ...Petitioner

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

**AND
WRIT PETITION NO. 8434 OF 2025**

Dilaver Khan ...Petitioner

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

**AND
WRIT PETITION NO. 8538 OF 2025**

Oves Abdul Hamid Patel ...Petitioner

Versus

The Mumbai Municipal Corporation
Through Designated Officer And Anr ...Respondents

Mr. Pradeep Thorat, a/w S. N. Trivedi, for the Petitioner.
Mr. Rahul Soman, i/b Vivek Pandey, for Respondent No.2.
Mr. Santosh Mali, for the BMC.

**CORAM: N. J. JAMADAR, J.
DATED: 24th FEBRUARY, 2026**

Oral Order:-

1. Heard the learned Counsel for the parties.

2. The challenge in these petitions is to the orders passed by the learned Judge, City Civil Court, Dindoshi, whereby the Chamber Summons taken out by respondent No.2, to implead respondent No.2 as party defendant in the suits, instituted by the petitioners, came to be allowed.

3. The petitioners have instituted the respective suits against respondent No.1 – Municipal Corporation seeking a declaration that, the notice issued by the Municipal Corporation under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 and the speaking orders dated 22nd October, 2024 and 28th October, 2024 are null, illegal and bad in law and the consequential relief of injunction.

4. Respondent No.2 took out the Chamber Summons with the assertions that respondent No.2 is one of the co-owners of the properties over which the buildings have been constructed, in which the plaintiffs own the respective apartment wherein unauthorized construction/development has been carried out. Respondent No.2 had lodged numerous complaints with the planning authority regarding illegal and unauthorized construction. As no action was taken by the authorities, respondent No.2 has filed writ petition before the High Court and pursuant to the orders passed by the High Court in the

said writ petition, respondent No.1 – Corporation has initiated the action under Section 53 of the MRTP Act. Respondent No.2 was, thus, a necessary party to the said suit.

5. The Chamber Summons were resisted by the plaintiffs. The status of respondent No.2 as the owner of the subject property was put in contest.

6. In the intervening period, the Housing Co-operative Society, formed by the apartment owners, filed an application for Deemed Conveyance before the Competent Authority under the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (“MOFA”). Respondent No.2 was also impleaded as a party respondent to the said application. By an order dated 19th March, 2025, the Competent Authority has granted certificate of Unilateral Deemed Conveyance. Pursuant to the said certificate, the Deed of Conveyance has been executed and registered. The said fact was brought to the notice of the learned Judge by filing an additional affidavit-in-reply.

7. By the impugned order, the learned Judge, City Civil Court, was persuaded to allow the Chamber Summons primarily on the ground that the name of respondent No.2 finds mention in the property card of the subject property and the

petitioner had filed WP/1068/2023 and pursuant to the directions therein, respondent No.1 – Corporation had initiated the impugned action: the legality and validity which has been assailed in the suits.

8. The legal position as regards the addition or deletion of a party in exercise of the power under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (“the Code”) is fairly crystallized. It is not a matter of initial jurisdiction but that of judicial discretion. In cases, where the notices issued by the Municipal Corporation with regard to the unlawful construction are challenged, by the tenant/licensee, a Division Bench of this Court in the case of *Ashok Babulal Avasthi vs Munna Nizamuddin Khan and another*¹ has held that, it would be a better exercise of discretion to implead the owner of the property, as a party defendant to such suit, as such discretion has been consistently exercised by this Court.

9. In the case at hand, the claim of respondent No.2 that, she is one of the co-owners is put in contest. Moreover, with the execution of Deed of Conveyance in favour of the society different consideration come into play. The learned Judge, City Civil Court, has not at all adverted to the import of the order

¹ 2023 SCC OnLine Bom 2559.

passed by the Competent Authority, whereby the Deed of Conveyance has been executed in favour of Housing Co-operative Society. What impact the said order will have on the respondent No.2's claim of title over the suit property and, resultantly, the status of respondent No.2 as a necessary or proper party, has not at all been examined by the learned Judge, City Civil Court.

10. In the aforesaid view of the matter, the impugned order which does not delve into this material issue of the status of respondent No.2 qua the subject property, in the light of the Unilateral Deemed Conveyance having been executed in favour of the Society, cannot be sustained. Thus, it would be expedient to remit the Chamber Summons back to the learned Judge, City Civil Court, for afresh decision in accordance with law after hearing the parties on the aspect of the implications of the Deemed Conveyance.

11. Hence, the following order:

: O R D E R :

- (i) The petitions, thus, stand partly allowed.
- (ii) The impugned orders stand quashed and set aside.

- (iii) The Chamber Summons stand restored to the file of the learned Judge, City Civil Court.
- (iv) The learned Judge, City Civil Court, is requested to hear and decide the Chamber Summons afresh after considering the import and implications of the order passed by the Competent Authority granting a certificate of Unilateral Deemed Conveyance and resultant execution of the Deemed Conveyance in favour of the Housing Society, after providing an opportunity of hearing to the parties.
- (v) Save and except, the aforesaid aspect of non-consideration of the effect of the Deemed Conveyance in favour of the Society, this Court has not entered into the merits of the matter and all contentions of all the parties are kept open and the learned Judge, City Civil Court, shall not be influenced by any of the observations made by this Court in the aforesaid order.
- (vi) The parties are permitted to file additional affidavit.
- (viii) Hearing in the Chamber Summons stands expedited.

[N. J. JAMADAR, J.]