

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 958 OF 2026

Girish Narhar Bakare

...Petitioner

Versus

The Pune Municipal Corporation and others

...Respondents

SANTOSH
SUBHASH
KULKARNI

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Mr. Surel Shah, Senior Advocate, a/w Chaitanya Nikte, Prajit
Sahane and Shubhankar Kulkarni, for the Petitioner.

Mr. S. S. Kanetkar, a/w Aditya Bendre (through VC), for
Respondent No.3.

CORAM: N. J. JAMADAR, J.

DATED: 11th FEBRUARY, 2026

Order:-

1. This petition under Article 227 of the Constitution of India calls in question the legality and correctness of an order dated 20th November, 2025 passed by the learned Civil Judge, Pune, whereby an application preferred by respondent No.3 for impleadment as a party defendant to the suit under the provisions of Order I Rule 10(2) of the Code of Civil Procedure, 1908 ("the Code"), came to be allowed.

2. The petitioner claimed to be a lawful sub-lessee of a premises bearing CTS No.767/1, final Plot No.242/1, admeasuring 644.46 sq. mtrs., together with the building

constructed thereon situated at Bhandarkar Road, Shivajinagar, Pune, ("the suit premises").

3. The lessor refused to renew the leasehold rights. The predecessor-in-title of the petitioner instituted a suit bearing SCS/1217/2005 seeking specific performance of the renewal clause and execution of a fresh Lease Deed. The lessor, in turn, filed RCS/589/2006 for recovery of possession of the suit premises. By a judgment and decree dated 11th August, 2015, the Civil Court decreed SCS/1217/2005 and directed the lessors to execute a fresh lease.

4. In the year 2021, the predecessor-in-title of the petitioner applied for conversion of user of the ground floor of the building constructed on the suit premises from residential to commercial. Vide Commencement Certificate No.3767/2021, dated 3rd March, 2022, respondent Nos.1 and 2 granted permission for conversion of user of the said premises. Upon a complaint made by respondent No.3, the petitioner was served with a notice dated 9th July, 2025 to show cause regarding the alleged unauthorized alterations carried out in the building. Eventually, by an order dated 26th August, 2025, respondent Nos.1 and 2 revoked the permission granted vide Commencement Certificate No.3767/2021, dated 3rd March,

2022. Thus, the petitioner was constrained to institute RCS/1349/2025 for declaration and injunction.

5. In the said suit, respondent No.3 filed an application seeking impleadment as a party defendant. The application was resisted by the petitioner – plaintiff.

6. By the impugned order, the learned Civil Judge was persuaded to allow the application for impleadment of respondent No.3 as she was one of the owners of the suit premises. The notice dated 9th June, 2025 was issued by the Planning Authority to both the plaintiff and respondent No.3 – third party applicant. In the event, any decree was passed in the suit, it would affect the rights of respondent No.3, who is one of the owners of the suit premises.

7. Being aggrieved, the petitioner – plaintiff has invoked the writ jurisdiction.

8. Mr. Surel Shah, the learned Senior Advocate, for the petitioner, submitted that, this is not a case where respondent No.3 can be said to have a direct interest in the subject matter of the suit instituted by the plaintiff, assailing the legality and validity of the orders passed by the Planning Authority. Since the dispute between the petitioner and the Planning Authority

revolves around the conversion of the use of the suit premises on the ground floor, from residential to commercial, the landlord is neither a necessary nor a proper party. Therefore, the learned Civil Judge committed an error in allowing the application for impleadment, as with the impleadment of respondent No.3 – landlord, the entire nature of the suit would change.

9. To this end, Mr. Shah placed reliance on the judgments of the Supreme Court in the cases of *Mohamed Hussain Gulam Ali Shariffi vs. Municipal Corporation of Greater Bombay and others*¹, *Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and others*² and a judgment of the learned Single Judge of this Court in the case of *Nimesh J. Patel vs. Municipal Corporation of Greater Mumbai through Asst. Engineer and another*³.

10. Per contra, Mr. Kanetkar, the learned Counsel for respondent No.3, would submit that respondent No.3, being the owner of the suit premises, has a direct interest in the subject matter of the lis. Since the petitioner has obtained the commencement certificate by making positive

1 (2020) 14 SCC 392.

2 (1992) 2 SCC 524.

3 2021 SCC OnLine Bom 6588.

mis-representation as to the character of the petitioner qua the suit premises, the impleadment of respondent No.3 is necessary for a complete and effectual adjudication of the dispute.

11. Placing reliance on the Division Bench judgment in the case of *Ashok Babulal Avasthi vs Munna Nizamuddin Khan and anr.*⁴ and a judgment of a learned Single Judge of this Court in the case of *M/s. Venus Housing Enterprises vs. Parmy Manufactory Co. Pvt. Ltd. and anr.*⁵, Mr. Kanetkar would urge that, the learned Civil Judge was perfectly justified in directing the impleadment of respondent No.3 as a party defendant.

12. It is well recognized that, the impleadment of a party is not a matter of initial jurisdiction but judicial discretion to be exercised keeping in view all the relevant circumstances. Undoubtedly, the plaintiff is a *dominus litis*. However, where it could be demonstrated that a party is a necessary or proper party, the Court is not denuded of the power to implead such party even against the wish of the plaintiff. A necessary party is a party in whose absence no effective decree can be passed. A proper party is a party, in whose absence, though a decree can be passed, yet, for an effectual and complete adjudication of the

4 WP/6933/2022, dtd.29/11/2023.

5 1996 SCC OnLine Bom 633.

dispute, the Court considers the presence of such party necessary.

13. A useful reference in this context can be made to a judgment of the Supreme Court in the case of *Mumbai International Airport Pvt. Ltd vs Regency Convention Centra & Hotels & Ors*⁶, wherein the legal position was expounded as under:

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10. (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given

6 (2010) 7 SCC 417.

the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

14. In the case of *Ramesh Kundanmal* (supra), the Supreme Court observed that a clear distinction has been drawn between suits relating to property and those in which the subject matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

15. The Supreme Court further explicated that, the person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him a necessary witness and not merely that he has an interest in the correct solution of some question

involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectively and completely settled unless he is a party.

16. It would be imperative to note that in the case of ***Ashok Babulal Avasthi*** (supra), a Division Bench of this Court, on a reference, considered the question as to whether, in a suit filed by an occupant or tenant for the protection of a structure against demolition by the Authorities, whether the owner or the landlord is a necessary and proper party, and whether the Court has power under Order I Rule 10(2) of the Code, on an application or *suo moto* to join the landlord/owner as a party to such a suit.

17. After an elaborate analysis of the precedents including the judgments of the Supreme Court in the cases of ***Razia Begum v. Sahebzadi Anwar Begum***⁷, ***Mohamed Hussain Gulam Ali Shariffi*** (supra) and ***Ramesh Kundanmal*** (supra), the Division Bench answered the aforesaid question to the effect that, in a suit filed by the occupier/tenant/licensee seeking to restrain the

⁷ 1958 AIR 886

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 by exercising its power under Order I Rule 10(2) of the Code of Civil Procedure on the premise that the landlord/owner is a proper party. Such a direction by the Court in such 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.

18. Mr. Shah made an endeavour to urge that the aforesaid decision does not govern the facts of the case at hand, as in the instant case, only the issue of conversion of user of the premises is involved. Since the landlord had not constructed the building and sought possession of the open land only, the order which can be eventually passed by the Municipal Corporation would not bear upon the rights of respondent No.3 – land owner.

19. The material on record indicates that before revoking the permission for conversion of user, the petitioner – plaintiff was served with the notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966, calling upon him to

remove the structure unauthorizedly erected, apart from the unauthorized change of user of the premises. Secondly, it is imperative to note that, alongwith the application filed by the petitioner seeking permission for the change of user of the suit premises, the predecessor-in-title of the petitioner had affirmed an affidavit that she was the owner of the building as well as the plot of land bearing CTS No.767/1, Final Plot No.242/1, on which the building was erected.

20. Thirdly, the permission for change of user was revoked, *inter alia*, on the ground that the term of the lease had expired in the year, 2025, the lessee had signed the application and sworn an affidavit as the owner of the premises.

21. In the backdrop of the aforesaid hard facts, the endeavour of Mr. Shah to salvage the position by asserting that the action that may be taken by the Municipal Corporation would not have any bearing on the rights of the landlord does not merit acceptance. Where the occupant/lessee obtains certain permissions by making purportedly incorrect statements, it cannot be said that the landlord is not affected or has no interest in ensuring that the permissions are not obtained in regard to the property owned by such landlord on the basis of demonstrably incorrect statements.

22. Reliance placed by Mr. Kanetkar on a judgment of a learned Single Judge of this Court in the case of *M/s. Venus Housing Enterprises* (supra) appears to be well-founded as in that case as well the learned Single Judge has repelled submissions premised on the absence of claim of ownership over the superstructure in respect of which the Municipal Corporation had issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1988.

23. In these circumstances of the case, respondent No.3 landlord appears to have a direct and substantial interest in the subject matter of dispute. If not necessary, respondent No.3, who had lodged the complaint regarding the unauthorized change of user of the suit premises, is certainly a proper party. The learned Civil Judge, thus, committed no error in allowing the application for impleadment of respondent No.3 as a party defendant. In exercise of supervisory jurisdiction, no interference is warranted with the impugned order.

24. The petition stands dismissed.

[N. J. JAMADAR, J.]