

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2917 OF 2026

Aaditya Pearl Co-op. Housing Society Ltd. ..Petitioner
Versus
Municipal Corporation of Greater Mumbai
& ors. ...Respondents

AND

WRIT PETITION NO. 2918 OF 2026

Aaditya Pearl Co-op. Housing Society Ltd. ..Petitioner
Versus
Municipal Corporation of Greater Mumbai
& ors. ...Respondents

AND

WRIT PETITION NO. 2919 OF 2026

Aaditya Pearl Co-op. Housing Society Ltd. ..Petitioner
Versus
Municipal Corporation of Greater Mumbai
& ors. ...Respondents

Mr. Atul Damle, Senior Advocate, a/w Mr. Suresh Sabrad,
Mr. Amey C Sawant, Mr. Pratik Sabrad, Ms. Eshwaree
Kudalkar, for the Petitioner in all.
Mr. Santosh Mali, for Respondent No. 1 - BMC.
Mr. Satyajeet P Dighe, for Respondent No. 2 – MHADA in all.
Mr. Prashant P Kulkarni, a/w Ms. Rachna Mamnani, for
Respondent Nos. 3 to 6 in WP/2919/2026
Ms. Pranita Saboo i/b Kush Shah, for Respondent Nos. 3 & 4
in WP/2917/2026

CORAM : N. J. JAMADAR, J.

DATE : 2nd APRIL 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. These petitions under Article 226 of the Constitution of India call in question the legality, propriety and correctness of identical orders dated 09th February, 2026, passed by the learned Judge, City Civil Court, whereby the Chamber Summons taken out by the private respondents to implead them as party defendants in L.C. Suit No. 192/2026 instituted by the petitioner, came to be allowed.
3. The petitioner is a co-operative housing society of the owners of the flats in the building “Aaditya Pearl”, a 21 – storied residential building constructed on land bearing City Survey No. 1844 and 1845.
4. On 23rd June, 2025, the Municipal Corporation of Greater Mumbai (MCGM) – Respondent No. 1/Defendant No. 1 issued a notice to the owner/occupier and Chairman and Secretary of the petitioner - Society purportedly under Section 53(1) r/w Section 52 of the Maharashtra Regional and Town Planning Act, 1966 (“the MRTP Act”) contending that, there were unauthorized additions, alterations and change of user of the flats in the

Aaditya Pearl building from residential to commercial in contravention of the occupation certificate. The owner/occupiers and the office bearer of the petitioner - Society were thus called upon to take the remedial action and, in the event of default, the Defendant No.1 would remove the unauthorized development. The list of the flats wherein the unauthorized addition/alteration and change of user were made, was annexed to the said notice.

5. Asserting that the members of the petitioner Society have been using their respective flats only for incidental and ancillary administrative activities in connection with their Pearl, Diamond, Gold and Silver business and highlighting the infirmities in the notice and the speaking order, the petitioner instituted a suit seeking a declaration that, the use of the respective flats by the members of the petitioner - Society for incidental administrative work does not amount to change of user of the premises from residential to commercial, and, the notice and the speaking order issued by the Respondent No. 1 were illegal, null and without jurisdiction.

6. In the said suit, the private respondents i.e. Respondent Nos. 3 and 4 in Writ Petition No. 2917/2026, Respondent no. 3

in Writ Petition No. 2918/2026 and Respondent Nos. 3 to 6 in Writ Petition No. 2919/2026 filed Chamber Summons seeking their impleadment as party defendants to the said suit. The petitioner resisted the prayer of impleadment of the private respondents.

7. By the impugned order the learned Judge, City Civil court was persuaded to allow the Chamber summons opining that, the applicants in the chamber summons, who were also the members of the petitioner – Society, appeared to be the proper parties to the suit.

8. Being aggrieved, the petitioner has invoked the writ jurisdiction.

9. Mr. Atul Damle, the learned Senior Advocate for the petitioner, submitted that, the view of the learned Judge, City Civil Court that, the private respondents are the proper parties to the suit is clearly erroneous. The petitioner - Society has assailed the legality and validity of the notice and speaking order issued by the Planning Authority (R-1) under Section 52 and 53 of the MRTP Act, 1966. In the said suit, the petitioner is espousing the cause of all the members of the petitioner - Society. Thus, the private respondents who are the members of

the petitioner - Society cannot assert any independent right nor can they take stand in derogation of the case of the petitioner. If they are aggrieved by the action of the Society, they need to work out their remedies before the appropriate forum in appropriate proceedings.

10. Mr. Damle further submitted that, the impugned order proceeds on a wrong premise that, the private respondents would be affected by the outcome of the suit. The alleged alteration/addition and change of user are within the flats of the members of the petitioner - Society and, thus, neither the private respondents right of ingress or egress is affected, nor they are otherwise prejudiced by the alleged change in user of the premises. It was urged that, the plaintiff being a dominus litus cannot be compelled to implead the parties to the suit, when the learned Judge, City Civil Court has categorically recorded that the private respondents are not the necessary parties.

11. To lend support to these submissions, Mr. Damle, placed reliance on the judgments of the Supreme Court in the cases of ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of***

*Greater Bombay & ors.*¹, *Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay & ors*². Mr. Damle further submitted that, the reliance on the decision in the case of *Arun R Singh & anr. Vs. Municipal Corporation of Greater Mumbai & ors.*³, by the learned Judge, City Civil Court was wholly misplaced. The fact-situation therein, according to Mr. Damle, was completely different.

12. In opposition to this, Ms. Pranita Saboo, the learned Counsel for the Respondent Nos. 3 and 4 in WP/2917/2026 and Mr. Prashant Kulkarni, the learned Counsel for the Respondent Nos. 3 to 6 in WP/2919/2026, stoutly supported the impugned order. Ms. Saboo submitted that, the petitioner has obtained interim protection in Appeal from Order (stamp) No. 4314/2026 on a clear understanding that, the private respondents herein would be provided an opportunity to file an affidavit-in-reply to Notice of Motion No. 633/2026 and would be heard in the said Notice of Motion. Having obtained the interim relief by making the said concession, it was not open for the petitioner to turn around and oppose the impleadment of the private respondents.

1 (1992) 2 SCC 524

2 2017 (6) ALL MR 420 (S.C.)

3 2018 SCC OnLine Bom 20349

13. Ms. Saboo further submitted that, the private respondents in the affidavit in support of the Notice of Motion have clearly spelled out how they are vitally interested in the subject matter of the lis. In fact, the MCGM (R-1) was propelled to initiate action in respect of the unauthorized construction and change of user, only upon the complaints lodged by the private respondents. At any rate, the large scale use of the apartments in Aaditya Pearl for commercial purpose adversely affects those members of the Society who have been using their respective flats for residential purpose in accordance with the occupation certificate.

14. Mr. Kulkarni, the learned Counsel for the Respondent Nos. 3 to 6 in WP/2919/2026, supplemented the submissions of Ms. Saboo. It was urged that, the rampant change in user of the apartments in Aaditya Pearl is in flagrant violation of the conditions of the occupation certificate.

15. It is trite, the matter of addition or deletion of a party to the suit is not one of the initial jurisdiction, but that of judicial discretion. Such discretion to add or delete a party to the suit is required to be exercised keeping in view the object of the

enabling provision. The distinction between a necessary and a proper party is well marked.

16. If the Court finds that a party is a necessary party, then the impleadment of such a party becomes imperative, lest, the court cannot pass any effective decree. In a case where the impleadment of a party is sought as a proper party, then the Court has to pose unto itself a question, as to whether the presence of such person is warranted for an effectual and complete adjudication of the dispute, though such person is not a necessary party.

17. In the case of *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. & ors*,⁴ the Supreme Court expounded the distinction between necessary party and proper party, as under:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence not 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 matter in dispute 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.”

4 (2010) 7 SCC 417.

18. In the case at hand, the learned Judge, City Civil Court was persuaded to allow the Chamber Summons by holding that, the private respondents appear to be the proper parties.

19. In the case of *Mumbai International Airport Pvt. Ltd. (Supra)* the Supreme Court expounded the considerations which ought to weigh with the Court in exercising the discretion to implead a proper party. The observations in Paragraph Nos. 24.4 and 25 are material and hence extracted below :-

“24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non- party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if D claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-

share, the court may permit the other co-owner who contends that *D* has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party."

(emphasis supplied)

20. The Supreme Court has, in terms, observed that, if a person seeks impleadment as a proper party and the Court

finds that the addition will alter the nature of the suit and introduce a new cause of action, it may dismiss the application even if he is found to be a proper party where the Court does not want to widen the scope of the suit.

21. On the aforesaid touchstone, reverting to the facts of the case, there does not appear much controversy over the character in which the private respondents sought impleadment. Indisputably, the private respondents appeared to be the members of the petitioner - Society. Incontrovertibly, Aaditya Pearl was planned and constructed as a residential building and the occupation certificate has been granted for residential use. The developer had addressed a notice to the members of the petitioner - Society that, the inspection revealed that, there were various structural additions and alterations in the building and on account of those additions and alterations, the developer may not be held responsible for the damage. In contrast, the petitioner claims that, the flats are being used for incidental and ancillary administrative activities in relation to the members businesses and that does not constitute a change of user.

22. Evidently, the private respondents are the members who are using their respective premises for residential purpose in conformity with the regulatory approvals. Taking umbrage at the additions and alterations, the private respondents addressed notices to the Respondent No. 1 to take appropriate action for the alleged unauthorized addition, alteration and change of user.

23. In this backdrop, the submissions of Mr. Damle that, the private respondents would not be affected by the outcome of the suit, cannot be accepted unreservedly. The members of the Society who use their apartments for which the user is permitted have an abiding interest in ensuring that, their co-members also put their respective apartments for the permitted user. The large scale addition, alteration and change of user of the flats from residential to commercial, with all attendant consequences that commercial use of the premises entails, would prejudicially affect the rights, enjoyment and comfort of the compliant members. Since the action by MCGM (D-1) has been initiated at the instance of the private respondents, it cannot be said that, the private respondents have no stake in the matter.

24. In the context of the facts of the case at hand the reliance by Mr. Damle on the judgments in the cases of *Ramesh Hirachand Kundanmal (supra)* and *Mohamed Hussain Gulam Ali Shariffi (supra)*, does not seem to be well-placed.

25. In the case at hand, the learned Judge, City Civil Court has correctly exercised the discretion to implead the private respondents as the party defendants to the suit, in view of the stand taken by the petitioner, which essentially espouses the cause of the members who have allegedly carried out unauthorized additions/alterations and made change of user. The facts of the case appear to be governed by the judgments of this Court in the cases of *Lodha Properties Development Pvt. Ltd. Vs. Kedia Holdings Pvt. Ltd.*⁵, and *Arun R Singh (supra)*, in which the Court exercised the discretion to implead the person at whose instance the action was initiated by the Municipal Corporation.

26. A useful reference, can also be made to a decision of this Court in the case of *Chandrakant Dharma Bhonu vs. Pandurang Ramchandra Dandekar and another*⁶, wherein in a somewhat similar fact-situation, where the petitioner had made

5 2015 (5) Bom 231

6 2004 SCC OnLine Bom 152.

grievances to the Municipal Corporation regarding the unauthorised development and on the strength of the said complaint, the Municipal Corporation had issued notices under Mumbai Municipal Corporation Act, 1888, this Court held that having regard to the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 ("the Code"), it cannot be said that the application for impleadment that was moved on behalf of the petitioner was misconceived. The petitioner is directly and substantially concerned with and affected by the proceedings before the City Civil Court for more than one reason. The action of carrying out an allegedly unauthorized construction and the alleged encroachment by the first respondent directly affect the rights of the petitioner. Secondly, it was at the behest of the petitioner and, in view of the proceedings instituted before the High Court, that the Municipal Corporation has almost grudgingly resorted to its statutory powers under the Mumbai Municipal Corporation Act, 1888. The Court was thus persuaded to allow the chamber summons for impleadment of the petitioner therein as a party defendant to the suit.

27. The upshot of the aforesaid consideration is that, the presence of the private respondents appears essential for a complete and effectual adjudication of the dispute. Thus, the

exercise of discretion the learned Judge, City Civil Court, does not warrant interference in exercise of the supervisory jurisdiction which is essentially corrective in nature.

28. The Writ Petitions thus stand dismissed.

[N. J. JAMADAR, J.]