

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2571 OF 2009

Neeta D/o.Late Shri.Mathuresh  
Goswami ...Petitioner

V/s.

Municipal Corporation of Greater  
Mumbai & Ors. ...Respondents

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Mr.Dharam Sharma with Uma Sharma i/b Dharam & Co.  
for Petitioner.

Mr.M.M.Malvankar for Respondent No.1.

Mr.N.D.Jaywant for Respondent No.3.

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**CORAM: A.M.KHANWILKAR, J.**

**MARCH 31, 2009.**

P.C.

1. Leave to amend to mention the correct name  
of Respondent No.3. Amendment be carried out in  
the course of the day.

2. Heard Counsel for the parties.

3. Rule. Rule made returnable forthwith, by consent. Mr.Malvankar waives notice for Respondent No.1. Mr.Jaywant waives notice for Respondent No.3.

4. As short question is involved, Petition is taken up for final disposal forthwith, by consent.

5. This Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order dated 29th January 2009 passed by the Assistant Sessions Judge, City Civil Court, Greater Mumbai in Chamber Summons No.414/2007 in L.C. Suit No.5176/2006. It is not in dispute that the said Suit has been filed to question the validity of action initiated by the Corporation in respect of the suit premises by issuance of notice under Section 353 of the Maharashtra Regional and Town Planning Act, 1971 (hereinafter referred to as the "M.R.T.P. Act") on the ground that the designated structure in the said notice is unauthorised. Significantly, in the said Suit, the Plaintiff has already impleaded the landlord or the owner of the suit property as party-Defendant.

During the pendency of the said Suit, the Respondent No.3 filed the abovenumbered Chamber Summons praying that he may be joined as Defendant No.3 in the said Suit. The case of the Respondent No.3 is that he is one of the beneficiary of the property of the Defendant No.2 trust. Besides, it is at his instance the Corporation initiated action against the Plaintiff in respect of the suit premises. The Respondent No.3 has also relied on the proceedings filed by him being Writ Petition No.589 of 2008 in this Court for direction against the Corporation praying that the action of Respondents 13 to 16 in the said Writ Petition in carrying out alterations and/or changes to a heritage structure known as "*Annakut Kotha*" and also known as "*Hari Baba Ki Bangli*", which according to him is integral part of Mota Mandir the oldest and most important Mandir of Pushti Margiya, Vallabha Sampradaya and governed by the principles of Vallabha Sampradaya established by Jagatguru Shrimad Vallabhacharya, being illegal and that no action was being taken by Respondents 1 to 5 in that regard. It is the case of the Respondent No.3 that on account of the said Writ Petition,

directions were issued and the Corporation has eventually initiated action against the Plaintiff in respect of the suit structure. The Trial Court impressed by the argument of the Respondent No.3, has allowed the said Chamber Summons and ordered impleadment of Respondent No.3 as Defendant No.3 in the pending Suit by the impugned Judgment and Order. The Plaintiff being dissatisfied by the said orders had approached this Court.

6. After hearing Counsel for the parties, the question is: whether the Respondent No.3 can be said to be necessary party? Even the Counsel appearing for the Respondent No.3 is not pitching the case of the Respondent No.3 that he should be treated as necessary party. According to the Respondent No.3, however, he is a proper party in the pending Suit, for which reason, no fault can be found with the conclusion reached by the lower Court in allowing his application. Even this argument will have to be stated to be rejected. Inasmuch as, it is common ground that Respondent No.3 is neither the owner nor the landlord of the suit property. On the other hand, the owner and

the landlord of the suit property has already been impleaded as Defendant No.2. The argument of the Respondent No.3 that he is beneficiary of the property of the Trust clearly overlooks the fact that the trust, which is the owner of the property has been impleaded as Defendant No.2 in the said Suit. The trust would espouse the cause of the beneficiary. If the argument of the Respondent No.3 was to be accepted, all beneficiaries of the trust will have to be treated as proper parties and if multiple applications were to be filed, the same would protract the proceedings and defeat the proposed action of the Corporation.

7. The question is: whether the Respondent No.3 having filed Writ Petition or for that matter, complaint with the Corporation in respect of the unauthorised construction in the suit structure can be said to be a proper party? The fact that the Respondent No.3 had filed complaint or action initiated by the Corporation on the basis of his complaint, cannot be the sole reason to permit Respondent No.3 to be impleaded as party-Defendant in the Suit. The apprehension of the Respondent

No.3 is that the Trust is in collusion with the Plaintiff. The apprehension will have to be stated to be rejected for the simple reason that the relief claimed in the Suit is in relation to action initiated by the Corporation. The Corporation has proceeded in respect of the suit structure on account of unauthorised construction therein. Such a dispute would be essentially between the Plaintiff and the Corporation. The Respondent No.3, however, contends that the Trust may concede the claim of the Plaintiff that the suit structure in the present form was in existence prior to the datum line. It is not the stand of the Defendant No.2 Trust that would be determinative of the matter on the issue. It is the Corporation which has to deal with that assertion. The Corporation would take a stand on the basis of the official record maintained in the Corporation. That is a matter which will have to be specifically dealt with by the Corporation in the written statement. Counsel appearing for the Corporation submits that the assertion made by the Plaintiff in this behalf will be specifically dealt with in the written statement to be filed by the Corporation.

Moreover, the apprehension of the Respondent No.3 can be addressed if the Corporation were to examine him as their witness. Counsel appearing for the Corporation submits that even this condition can be conveniently complied with by the Corporation. In that, the Corporation will examine Respondent No.3 as their witness in support of their case. Once the Corporation examines the Respondent No.3 as its witness, it will be open to the Respondent No.3 to depose on matters which he would be able to substantiate and support the claim of the Corporation in relation to the suit structure being unauthorised one. That is the limited issue that needs to be addressed in the present Suit.

8. In this view of the matter, presence of Respondent No.3 in the Suit filed against the proposed action initiated by the Corporation in respect of the suit structure, would neither be necessary nor proper. In the circumstances, the Court below has committed manifest error in allowing the application preferred by the Respondent No.3 especially when he can neither be said to be necessary nor proper party in the Suit

filed by the Plaintiff against the Corporation and the public trust questioning the proposed action under Section 53 of the M.R.T.P. Act. Accordingly, the impugned Judgment and Order is set-aside and instead, the Trial Court is directed to proceed with the Suit in accordance with law. The assurance of the Corporation through Counsel as recorded earlier, shall be borne in mind by the Trial Court.

9. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.