

Ajay

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

WRIT PETITION NO. 3942 OF 2024

Sushila Mahesh Vira

.. Petitioner

Versus

Municipal Corporation of Greater Mumbai and
Ors.

.. Respondents

- None for Petitioner.
- None for Respondents.

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 18, 2024.

P.C.:

- 1.** None appears for the parties.
- 2.** The order impugned in the present Writ Petition is passed on 31.07.2023. It challenges the impleadment of Respondent No.3 as a proper and necessary party to the Suit proceedings. Respondent No.3 is the Society and owner of the premises. At the behest and on the complaint of Respondent No.3, Municipal Corporation has initiated proceedings against the Petitioner with respect to certain construction carried out by the Petitioner in the area adjoining the open terrace space. Petitioner is the member of the Society. It is claimed by the Petitioner that the Petitioner is the owner of the flat which is adjacent to terrace and had also purchased the open terrace space which was covered with AC sheet roof alongwith glass partition.

3. In view of the decision of the Division Bench in the case of *Ashok Babulal Avasthi Vs. Munna Nazimuddin Khan and Anr.*¹, the issue with respect to impleadment of the landlord / owner of the property as a proper and necessary party in proceedings, rather Suit proceedings filed to challenge the BMC notices issued to the tenant in respect of unauthorized construction is now well settled and the Division Bench of this Court has held that if there is any refusal to implead the landlord as proper party, then such refusal would be improper use of discretion and would be liable to be set aside. The said decision of this Court has also been upheld by the Supreme Court by its order dated 12.02.2024.

4. In view of the above, the impugned order dated 31.07.2023 of impleadment of Respondent No.3 - Society as a proper and necessary party to the Suit proceedings, is therefore required to be sustained.

5. Today, when the Writ Petition is called out, none appears for the parties before me.

6. One final chance is given to the Petitioner to remain present on the next date.

7. Stand over to **26th March, 2024 at 02:30 p.m.**

[MILIND N. JADHAV, J.]

¹ WP No.6933 of 2022 decided on 29.11.2023.