

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

***CIVIL APPLICATION NO. 610 OF 2013
IN
APPEAL FROM ORDER NO. 279 OF 1994***

M/s.Nalanda Enterprise ... Applicant
v/s
Mr.Mohan Bhikaji Dongre & anr. ... Respondents

Mr.R.G.Bhat i/by Lata Wadhwani for the applicant.

Mr.K.K.Malpathak for respondent No.1.

Mr.Shreepad Murthy with Mr.Abhijeet Singh i/by Pinky Bhansali for respondent No.2.

CORAM: K.K.TATED, J.

DATED : 21 JANUARY 2015

P.C.:

Heard learned counsel for parties.

2 This application is preferred by the original defendant for setting aside the order dated 12 April 2014 passed by this Court as minutes of order and consent term filed in Appeal from Order No.279 of 1994. The learned counsel for the applicant submits that during the trial of Special Civil Suit No.595 of 1992 and on the basis of the application made by them, under the Right of Information Act they learnt that the documents placed on record by the respondents/original plaintiffs showing them as owners are not correct. He submits that the respondents/plaintiffs shown them as

owners of the suit property and on that basis the applicant agreed for consent order dated 12 April 2014. The advocate for the applicant placed on record the additional compilation of documents including the development agreement, letters addressed to the Thane Municipal Corporation, Indemnity bond executed by the respondents, 7/12 extract and other documents. On the basis of these facts, the learned counsel appearing on behalf of the applicant submits that the order dated 12 April 2014 was passed by this Court as the minutes of order and consent terms filed in Appeal from Order No.279 of 1994 be set aside.

3 On the other hand, learned counsel Mr.Malpathak appearing on behalf of respondent No.1 submits that, as in development agreement dated 30 April 1990 it is specifically stated in paragraphs 22 and 23 that owner declared that they have good, clear and marketable title for the said property. It is stated in development agreement that the applicant shall investigate and shall satisfy themselves for the title of the owners to the said property within a period of one month from the date of execution of these documents. Clauses 22 and 23 of development agreement read thus –

“(22) The owners declare that they have good, clear and marketable title to the said property. The Developers shall investigate and satisfy themselves about the title of the owners to the said proeprty within a period of one month from the date of execution of these presents. If any defect is found in the title during the said period of one, the owner shall cause

the same to be removed at their own costs. However, if no such defect is found within the said period of one month, it shall be treated that the developers have accepted that the title of the owners to the said proeprty is clear and marketable and the owners shall not be responsible for curing the defect if any, which may be found after expiry of period of one month stipulated above.

(23) The owners have already taken inspection of zerox copies of the documents of title and the owners shall deliver within 3 days hereof certified copies of all such documents.”

Learned counsel Mr.Malpathak appearing for respondent No.1 submits that, in clause 23 in first line, instead of owner it should be developer.

4 Learned counsel for respondent No.1 further submits that the Special Civil Suit No.595 of 1992 filed by them in the Court of Civil Judge, Sr.Divn., Thane, is pending for hearing and final disposal. All these facts can be decided by the Trial Court after considering the evidence on record. Hence, there is no substance in the present civil application.

5 These submissions are also adopted by the learned counsel appearing for and on behalf of respondent No.2.

6 I have heard the learned counsel at length.

7 It is to be noted that the present application is for setting aside the order passed by this Court on 12 April 2014 on the basis of subsequent development and information obtained by the

applicant / original defendant under the R.T.I. Act. In any case, the suit filed by the respondents is pending for hearing and final disposal on its own merits. All these facts can be considered by the Trial Court. Hence, I do not find any substance in the present civil application.

8 Civil application stands dismissed with cost of Rs.25,000/- to each respondent. Cost to be paid within four weeks from today.

(K.K.TATED, J.)