

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

**APPEAL FROM ORDER NO. 493 OF 2015
WITH
CIVIL APPLICATION NO. 632 OF 2015**

Mr. Mohan Bhim Solanki & Ors. ... Appellants.
V/s.
Mr. Prashant Humbir & Ors. ... Respondents

Ms. Sindha Sreedharan i/b Satyam Sreedharan for the appellants.
Ms. Deepti Panda i/b Rajesh Yadav for respondent no.1.
Mr. Rajan Pawar, AGP for respondent no.3.

**CORAM : K. K. TATED, J.
DATED : 27/04/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 This appeal is preferred by the plaintiffs challenging the order dated 05.03.2015 passed by Bombay City Civil Court at Dindoshi in Notice of Motion no. 1663 of 2013 and Notice of Motion no. 1670 of 2014 declining to grant any interim relief in favour of the appellants plaintiffs.

3 It is the case of the plaintiffs that plaintiffs are owners of the suit property bearing CTS No. 3133, 3133-1 to 7 admeasuring 410.6 sq. meters, which is situated at Village Kole-kalyan, Taluka – Andheri

alongwith structures standing thereon; known as Mohan Chawl at Manabawadi Vakola, Santacruz (E), Mumbai – 400 055. On that property alongwith other properties the SRA Authority started implementing the scheme and that scheme is challenged by the plaintiffs on the ground that without their consent the authority has no right to implement the SRA scheme. Hence, the plaintiff filed L. C. Suit no. 1605 of 2013 in the Bombay City Civil Court at Dindoshi for cancellation of Development Agreement dated 05.11.2008 and for revoking the Conveyance Deed dated 30.07.2009. In the said suit, the plaintiffs also prayed for setting aside the Annexure-II alongwith Notice dated 29.04.2013 under Section 33-38 issued by the Dy. Collector, Competent Authority, Encroachment/Removal Department of the suit property. In that suit, the plaintiffs preferred Notice of Motion no. 1663 of 2013 for restraining respondent no.1/defendant no.1 from developing suit property and dispossessing the plaintiffs.

4 Initially, the Trial Court declined to grant ad-interim relief by order dated 23.05.2013. That order was challenged by the plaintiffs preferring Appeal from Order no. 613 of 2013. The said Appeal from Order was rejected by this Court (Coram : Mrs. Roshan Dalvi, J) by order dated 04.07.2013. In the meanwhile, the plaintiffs challenged the order passed by the Addl. Collector (Encroachment/Removal)

under Section 35 of the Maharashtra Slum Area (Improvement, Clearance And Redevelopment) Act, 1971 (hereinafter will be referred as 'the said Act') .

5 The plaintiffs preferred Writ Petition (L) No. 2876 of 2014 in this Court challenging the order passed by the Add. Collector (Encroachment/Removal) dated 06.09.2014. That Writ Petition was rejected by this Court on 13.11.2014. Thereafter, the plaintiffs moved the matter before the Apex Court by preferring Special Leave Appeal No. 32587 of 2014. When matter was on board before the Apex Court, on 28.11.2014, the learned Counsel for the plaintiffs applied for withdrawal of petition with liberty to carry out appropriate amendment in injunction application in order to seek relief against second demolition notice dated 30.10.2014. Thereafter, the plaintiffs filed amended Notice of Motion no. 1670 of 2014. Both the notices of motion were rejected by the Trial Court. Hence, the present Appeal from Order.

6 The learned Counsel Ms. Sreedharan appearing on behalf of plaintiffs submits that the Court below failed to appreciate that the plaintiffs made out case for restraining the respondents from carrying out any development activity on the suit property. She further submits

that the plaintiffs being the owners of the suit property, the respondents have no authority to implement any SRA scheme under the said Act. She submits that the plaintiffs have not given their consent for SRA scheme. She further submits that the respondent no.1/defendant no.1 by fraud, obtained Development Agreement dated 05.11.2008 and thereafter, the Conveyance Deed dated 30.07.2009 in respect of the suit property. She submits that the plaintiffs have placed on record several documents to show that these two documents i.e. Development Agreement and Conveyance Deed were obtained by the defendant no.1 by fraud and those documents are not considered by the Trial Court properly at the time of passing the impugned order. She submits that the Conveyance deed dated 30.07.2009 was not signed by the plaintiff nos. 3 & 4 i.e. Jitendra Laxman Solanki and Mahendra Laxman Solanki. She further relied on several documents as well as the orders passed by the Competent Authority i.e. Collectors, Orders passed by this Court from time to time on several proceeding.

7 On the basis of these submissions, the learned Counsel for the plaintiffs submits that this Hon'ble Court be pleased to set aside the impugned order dated 05.03.2015 passed by the Trial Court and allow both the Notice of Motion nos. 1663 of 2013 and 1670 of 2014. She submits that if the impugned order passed by the Trial Court is not set

aside, irreparable loss and injury will be caused to the plaintiffs.

8 On the other hand, the learned Counsel Ms. Panda for respondent no.1 vehemently opposed the present Appeal from Order. She submits that basically the plaintiffs' case is that they are the owners of the suit property as described in paragraph 1 of the plaint and on the basis of those submissions, the plaintiffs want to restrain the defendant no.1 from implementing the SRA scheme which is already approved by the Authority on 01.12.2009 and thereafter, on 12.06.2012.

9 The learned Counsel for the defendant no.1 further submits that the Authority issued Annexure-II in which the Competent Authority held that only plaintiff no.2 Jaya Mohan Solanki is entitled for alternate occupation. She further submits that they executed Development Agreement dated 05.11.2008, subsequently, they executed Conveyance Deed dated 30.07.2009. She submits that the said conveyance is duly registered in the office of Sub-Registrar at Mumbai. She submits that as per Conveyance deed dated 30.07.2009, as on today the defendant no.1 is owner of the suit property. She further submits that out of 114 occupants, they already provided alternate accommodations to 110 occupants. She further submits that time and again, this Hon'ble Court specifically held that plaintiffs are not entitled to any relief in the

present proceeding. She further submits that this Court (Coram: Mrs. Roshan Dalvi, J) by order dated 04.07.2013 in Appeal from Order no. 613 of 2013 specifically held that defendants have not committed any fraud on the plaintiffs. On the basis of these submissions, the learned Counsel for the defendant no.1 submits that there is no substance in the present Appeal from Order and same to be dismissed with costs.

10 I heard both the sides at length. I have gone through the documents placed on record by both the parties. Even, during the course of arguments the Counsel for defendant no.1 produced the original copy of the Power of Attorney dated 03.10.2003 executed by plaintiff no.1 Mohan Bhim Solanki in favour of plaintiff no.2 Jaya Mohan Solanki. The learned Counsel for the defendant no.1 placed on record additional compilation of documents containing the orders passed by the Bombay City Civil Court at Dindoshi, this Court as well as the Apex Court from time to time in the present proceeding.

11 It is to be noted that in the present proceeding, it is the case of the plaintiffs that they are owners of the suit property and on the basis of that submission they proceeded with the matter for restraining the defendant no.1 from developing suit property. The contention of the plaintiffs is that being the owners, it is necessary for the Authority to

take their permission before implementing the SRA Scheme on the suit property. Time and again, the additional Collector issued notices to the plaintiffs for vacating the suit premises at the instance of Developer i.e. defendant no.1. It is to be noted that the plaintiffs executed the Conveyance Deed dated 30.07.2009 in favour of the defendant no.1. The same was duly registered in the office of Sub-Registrar at Mumbai. Till today, the said Conveyance deed is not set aside by any Competent Authority and/or Court. Therefore, the contention raised by the plaintiffs in their pleading particularly in paragraph 1 of the plaint that they are owners of the suit property is not acceptable.

12 As on today, the property stands in the name of defendant no.1. There is no question of any consent of the plaintiffs for implementing SRA scheme. Admittedly, except the plaintiffs near about 110 occupants have been shifted by the defendant no.1. If, at this stage any order is passed against the defendant no.1 restraining him from continuing SRA scheme that will affect more than 110 families, which are already shifted from the suit property. In any case, unless and until the Conveyance executed by the plaintiffs in favour of the defendant no.1 is set aside, they have no right to ask injunction against the true owner.

13 The Apex Court in the matter of *Remji Ratansey Shah V/s. Union of India, reported in (1994) 5 Supreme Court Cases 547* held that granting of injunction as a discretionary and equitable relief. No injunction can be issued in favour of a trespasser or a person who gained unlawful possession as against the true owner.

14 Even the orders passed by this Court from time to time i.e. order dated 04.07.2013 in Appeal from Order no. 613 of 2013 (Coram : Mrs. Roshan Dalvi, J), order dated 26.09.2014 in Appeal from Order (ST.) no. 20208 of 2014 (Coram: R.G.Ketkar, J), order dated 13.11.2014 in Writ Petition (L) no. 2876 of 2014 (Coram : M.S. Sanklecha, J) and order dated 13.01.2015 in Writ Petition No. 11581 of 2014 (Coram : R. M. Sawant. J) show that the plaintiffs have not made out case for protecting their possession in the suit property. Hence, I do not find any reason to interfere with the well reasoned order passed by the Trial Court.

15 Hence, Appeal from Order stands rejected.

16 In view of rejection of Appeal from Order, nothing survives in the Civil Application. Same stands dismissed as infructuous.

17 At this stage, the learned Counsel for the plaintiffs seeks stay of

this order for four weeks for proceeding the appropriate proceeding in the Apex Court. She submits that the stay is already running in favour of the plaintiffs. Hence, the same to be continued for four weeks.

18 On the other hand, the learned Counsel for the defendant no.1 vehemently opposed the same. She submits that as on today, more than 110 families are already shifted from the suit premises. Hence, if stay is continued, their interest will be affected in the present proceeding.

19 Considering the fact that more than 110 families are shifted except the plaintiffs, I do not find any reason to extend the stay.

20 Hence, the oral request of learned Counsel for the plaintiff is rejected.

(K.K.TATED, J.)