

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2757 OF 2015
IN
WRIT PETITION NO.4523 OF 2014

Kapadia Development Co-operative

Housing Society Ltd.

... Applicant/Org.Petitioner

vs.

The State of Maharashtra & Ors.

... Respondents

Mr.A.Y.Sakhare, Senior Advocate a/w Mr.M.A.Ansari i/b Mr.R.K.Agarwal
for the Applicant/ Org.Petitioner.

Mr.R.M.Kadam, Senior Advocate a/w Mr.S.R.Nargolkar a/w Mr.Swapnil
Mohite i/b. Mr.S.G.Wadte for the Respondent No.3.

Mr.S.D.Rayrikar, AGP for State.

CORAM : A. K. MENON, J.
DATE : OCTOBER 13, 2015.

P.C.

. This Civil Application is taken out by the original Petitioner seeking an order striking out the defence of the Respondent No.3 Society under the provisions of Order 39, Rule 11 of the Code of Civil Procedure, 1908. It is the Petitioners case that the above petition alongwith Writ Petition No. 4667 of 2014 was listed for "admission" before a single Judge of this Court on 2nd May, 2014, when the learned counsel for the Respondent No.3 requested that the matter be adjourned. Accordingly, both petitions came to be stood over to 12th June, 2014. Till 12th June, 2014 the parties were directed to maintain Status-quo. The order of Status-quo dated 2nd May, 2014 appears at Exh.A to the Civil Application.

2] Mr.Sakhare, learned Senior Advocate for the Petitioner submits that the order of Status-quo dated 2nd May, 2014 continued to operate from time to time, till it was formally extended by an order dated 2nd September, 2014 and continues to operate till disposal of the petition. It is his case that in violation of the order of Status-quo the Respondent No.3 Society took steps in furtherance of the deemed conveyance granted to the Respondent No.3 and made the application contemplated under Section 149 of the Maharashtra Land Revenue Code before Court for recording its rights in respect of the plot of land.

3] At the time of making the said application, according to Mr.Sakhare, the Respondent No.3/ its representative had made an incorrect statement in the application as well as a separate affidavit as to the fact that no legal proceedings are pending in any Court. Mr.Sakhare, relied upon the documents annexed at Exh.D in the affidavit cum indemnity bond as well as the Exh.E being the submission of the Secretary of the Society dated 26th November, 2014, to the effect that no appeal, suit is pending nor any stay order of any Court is in operation. Not only did the Respondent No.3 apply under Section 149 and get the names of the Society entered in the record of rights but on 17th December, 2014, the Respondent No.3 Society entered into a development agreement with a third party, copy of which annexed at Exh.G to the Civil Application. These acts according to the Mr. Sakhare

are clearly in violation of the Status-quo contemplated in the order dated 2nd May, 2015, which order continues to operate from time to time.

4] While interpreting the order dated 2nd May, 2015, Mr.Sakhare relied upon the Judgment of single Judge of this Court (¹Govinda Bhagoji Kamable & Ors. Vs. Sadu Bapu Kamable & Ors.) and contended that while interpreting an order of Status-quo the Court had observed that whenever the Court intends that ad-interim relief should operate till a particular date the said relief will continue to operate only till the event mentioned in the order. In that case, the Court had issued notice and in the meanwhile, interim relief is granted. Accordingly, the Court found that the use of the words “in the meanwhile” means that the relief granted would continue to operate till the date mentioned and till the application was heard after service of notice. The Judgment also observed that when the Courts makes notice returnable after particular date, it can not be argued that on the dates mentioned in the notice, the application will positively heard alluding to the fact that the ad-interim order would continue.

5] I find that the present Judgment is of no assistance to the applicant, in the instant case since from a plain reading of the order dated 2nd May, 2014 it is evident that what had transpired was the Respondent No.3 sought some time and at their request the matter was

adjourned to 12th June, 2014. Paragraph 2 of the order recorded thus;

“2. Till then, parties are directed to maintain status-quo.”

The words in paragraph 2, my mind are clear viz. till the adjourned date i.e.12th June 2014, the parties were directed to maintain the Status-quo.

6] Mr.Kadam, Senior Advocate appearing for the Respondent No.3 submitted that the order meant the Status-quo order operated till the adjourned date i.e.12th June, 2014 and no further. He submitted that on 12th June, 2014 or immediately thereafter, the Petitioner made no efforts to have the said order continued. The Petitioner also not seek any further relief in terms of the interim relief sought in the petition. Mr.Kadam pointed out that in the affidavit in reply filed on behalf of the Respondent No.3 by one Mir Mozam Ali, in paragraph 8 the deponent stated that on 12th June, 2014 the matter was not listed and the Petitioner did not make any effort to take the matter on board and that the order of Status-quo lapsed on 12th June, 2014 itself. In an affidavit rejoinder filed on behalf of the Applicant/Petitioner, the deponent has denied the contents of his paragraph. How I have verified from the record of the petition itself that the matter was scheduled to be listed on 15th July 2014, but on 15th July, 2014 the matter did not reach due to paucity of time and was stood over to 20th August, 2014. This order is in the standard rubber stamped form duly authenticated by the Registrar and which also contains the following words;

“Ad-interim relief if any to continue till then”.

7] Thus, if any ad-interim relief was operating as on 15th July, 2014, the same would have continued by virtue of the noting made on the Roznama. It is the case of the Respondent No.3 that the Ad-interim relief came to lapse on 12th June, 2014.

8] Mr.Kadam further pointed out that the petition was thereafter listed on various dates i.e. 12th August 2014 and 28th August 2014 and even thereafter on various dates mentioned in paragraph 9. According to Mr.Kadam on 2nd September, 2014 the order copy appears at Exh.B to the present application reveals that the Ad-interim relief granted earlier would remain operated till the next date and the matter was adjourned to 9th September, 2014. According to the Mr.Kadam since no Ad-interim order was in operation on 2nd September, 2014, there was no restraint whatsoever on the Respondent and there was no obligation to maintain the Status-quo. It is pertinent to note that on 2nd September, 2014 the appearances reveals that only the Counsel for the Petitioner and the learned A.G.P. for the State were present. The Respondents were not represented on the said date. However, even on 13th January, 2015 when the matter was listed, no application was made for continuance of the ad-interim relief, which in any case according to the Respondents has lapsed on 12th June, 2014. Thereafter, it was only on 12th March, 2015, when the petitions came to be listed before a single Judge of this Court, the following order was passed;

“3. The interim order/protective order, if any, to continue till disposal of the writ petitions.....”

In the meantime, however the Respondents had already proceeded to take all consequential logical steps for entering their names in the record of rights and act in pursuance of the conveyance registered in their favour.

9] In my view having considered the factual aspects and on a fair and intelligible interpretation of the order dated 2nd May, 2014, it is not possible to accept the contentions of the Applicant/Petitioner to the effect that the ad-interim order of Status-quo continued to operate even after 12th June, 2014. In fact the Judgment of the learned Single Judge relied upon by the petitioner itself supports the view that I have now taken. In view of the said I find no merit in the Civil Application. Accordingly, I pass the following order;

- (i) Civil Application is dismissed.
- (ii) There will be no order as to costs.

(A. K. MENON, J.)