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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 10457 OF 2013

1 Harilal Patel and anr. Petitioners
vs
1 Shri Kamlesh J. Patadia and 25 ors. Respondents

ALONG WITH
CIVIL APPLICATION NO. 300 OF 2015
IN
WRIT PETITION NO. 10457 OF 2013

1 Mrs. Rita Nathani and 14 ors. ... Applicants
vs.
1 Harilal Patel and 26 ors. Respondents

ALONG WITH
WRIT PETITION NO. 545 OF 2014

1 Kamlesh J. Patadia and 19 ors. ... Petitioners
vs.
1 New Chandraoday Co-op. Hsg.Soc
Ltd. and 7 ors. Respondents

ALONG WITH
CIVIL APPLICATION NO. 301 OF 2015
IN
WRIT PETITION NO.545 OF 2014

1 Mrs. Rita Nathani and 14 ors. .. Applicants
vs.
1 Shri Kamlesh J. Patadia & 19 ors. ... Respondents

Mr. Vaibhav Sugdare i/by Mr. S.P. Suryawanshi for Petitioners in Writ
Petition No.10457/2013

Mr. Atul G. Damle with Ms.Prachi Tatke, Savita Sawalkar, Aashish
Ghadge i/by A.C. Tamhane for the Petitioner in Writ Petition

No.545/2014 and for Respondents 1 to 20 in Writ Petition No.10457/2013.

Mr. N. N. Bhadrashete for the Applicants in Caw/300/2015 and CAW/301/2015.

Mr. A.R. Metkari, AGP for the State.

Mr. K. S. Tambe i/by M. S. Nalawade for Respondent No. 8.

CORAM: ANOOP V. MOHTA, J.

DATE : February 04, 2015

P.C.:

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 As common issues are involved so also the parties are also common dealing with the property and its development basically Building No. C and further in both the Petitions, common orders are passed and further Writ Petition No.545/2014 is filed by the members of the Society, whereas Writ Petition No.10457/2013 is filed by two partners of the firm, I am inclined to dispose of the present writ petitions by this common order.

3 Pending Case No. CC/II/249 of 2005 before the Cooperative Court No. II, Mumbai, the society members and two

partners – Harihar Developers have filed Consent Terms stating it to be Consent Terms between the disputants and opponents 4 and 5 – partners of opponents 3 – Harihar Developers) dated 15.10.2012 and thereby basically intend to declare the agreement for development dated 4.12.2013 and all documents executed pursuant thereto as illegal and void and also the construction based upon the same by the developers (Building No.C) one partner, however, has opposed the same. By order dated 8.11.2012, the learned Judge of Cooperative Court, refused to accept the Consent Terms and rejected by observing as under:

“In view of this I had perused the Consent Terms and also the dispute. After going through the dispute, it is in respect to challenge to redevelopment. Admittedly the Opp. No. 3 is the appointed developer. So also it is admitted that opp. No. 3 is a partnership firm. It is also admitted that opp. No. 4 and 5 are partners of opp. No. 3 firm. Therefore I am of the view that, in view of the provisions of Partnership Act, all partners are agents to the partnership firm and have to work to the greatest common advantage of the firm. Therefore the opp. No. 4 and 5 keep back the firm cannot file these Consent

Terms or act separately from the firm. Therefore by these act of opp. No. 4 and 5 the rights of opp. No. 3 will be affected. As such I am of the view that the Consent terms cannot be accepted and are rejected.”

4 The Appeals were preferred before the Maharashtra State Cooperative Appellate Court at Mumbai. The learned Member, Maharashtra State Cooperative Appellate Court by order dated 3.05.2013 dismissed both the Appeals principally holding for the first that the Cooperative Court, under Section 91 of the Maharashtra Cooperative Societies Act, 1960 (for short, “Act of 1960”), has no jurisdiction to entertain and/or decide and/or accept such Consent Terms by observing specifically as under :

“12) Furthermore, if you go through the Consent Terms one of the Consent Terms i.e. being sought in point No. 6 is as follows, “Agreed, declared and confirmed that the Opponent Nos. 4 and 5 as the Partners of M/s. Harihar Developers have not retired from the Partnership Firm and the said firm is not dissolved and the same is subsisting.”. Giving declaration that the firm is not dissolved or that Opponents No. 4 and 5 are not retired from Partnership, cannot be said to be coming within

jurisdiction of Co-operative Court to pass any such Award.

13) Furthermore, the other points sought for in the Consent Terms are regarding civil contract which is in the nature of civil dispute and also beyond terms of original dispute. Consequently I therefore hold that such Consent Terms which are beyond scope of Co-operative Court cannot be accepted nor Award can be passed in this regard by the Cooperative Court. Hence I hold that for the reasons stated above the Consent Terms deserves to be rejected. Hence I hold that order of the Trial Court rejecting Consent Terms deserves to be confirmed, though I have rejected the same on different grounds. Hence I hold that A.O. Deserves to be dismissed. Hence the order .

O R D E R

Both A.O. No. 151 of 2012 and A. O. No. 152 of 2012 stand dismissed.”

5 At the time of final hearing, the two Civil Applications of intervention filed by the persons who are in possession of the property/flat of Building “C” in question and they also, in a way, for the first time, by these applications opposed the Consent Terms by supporting minority partner who, since beginning has opposed the

Consent Terms.

6 Considering the averments made in the applications filed by the intervenors and also Consent Terms, I am inclined to remand the matter for re-consideration on the following aspects :

(1) The issue of jurisdiction and power of Cooperative Court under Section 91 of Maharashtra Cooperative Societies Act, 1960 to deal and decide and/or interfere with any development agreement and specifically in the present case dated 4.12.2003 and/or power of Court to permit the parties to settle and/or file Consent Terms and pass orders on Consent Terms as contemplated under Order 23 of Code of Civil Procedure (CPC).

(2) The effect of declaring development agreement dated 4.12.2003 as prayed, as illegal, void, ab-initio, bad in law and to demolish stated illegal construction of Building No. C inspite of the rights created in favour of the intervenor and/or such related persons, as admittedly they are in possession of the property based

upon the basic agreement dated 4.12.2003 till this date as the consent terms itself could not be implemented for want of sanction/approval from the Courts.

(3) The scope and power of Section 91, in the present facts and circumstances, including clauses so mentioned in the Consent Terms, to accept and/or admit the Consent Terms by permitting the parties to add more clauses and/or modify the clauses so mentioned in the Consent Terms, specifically when the main dispute between the parties is still pending revolving around the development agreement itself.

(4) The Court also need to consider the joining and/or permitting the third persons/parties who are connected with the developed property based upon the development agreement in question while passing the order on Consent Terms in question and/or by taking consents of all the parties including the intervenor before passing final order on the Consent Terms and/or modify the Consent Terms.

(5) The Court also to consider whether such terms are beyond the scope of Cooperative Court or whether

can be accepted and/or award and/or order can be passed in this regard by considering the scope and purpose of Order 23 of CPC for want of specific bar under the Cooperative Societies Act.

7 I have noted all the above points as the same are relevant for adjudication from inception of the proceedings itself and basically by the Cooperative Court which, as recorded above, are definitely missing in both these orders. Therefore, in the interest of justice and to give opportunity to all the parties, it is desirable that the Cooperative Court to decide the issues and/or related and/or connected matters and/or additional issues, if any, framed and/or decided by the parties which require consideration from the Cooperative Court to decide as early as possible and preferably within four months.

8 It is made clear that all the parties are at liberty to file additional material, if any, in support of their rival contentions.

9 Therefore, the following order :-

O R D E R

- (i) Order dated 3.05.2013 passed by the Maharashtra State Cooperative Appellate Court and earlier order dated 8.11.2012, by the Judge of Cooperative Court are quashed and set aside
- (ii) The Cooperative Court to decide all the issues as recorded above and/or after reframing it in accordance with law by giving opportunity to all the parties.
- (iii) All points are kept open for all the parties.
- (iv) The writ petitions are disposed of accordingly in the above terms.
- (v) Rule is disposed of accordingly in both the matters.
- (vi) In view of disposal of writ petitions, Civil Application Nos. 300/2015 in WRIT PETITION NO. 10457 OF 2013 and 301/2015 in WRIT PETITION NO.545 OF 2014 do not survive and are also disposed of.
- (vii) No costs.

(ANOOP V. MOHTA, J.)