

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11322 OF 2014**

Mahavir Universal Homes Private Limited)
A Company incorporated under the companies)
Act, 1956, through its Directors)
1 Mr. Bhanwarlal V. Chhajer)
2 Mr. Omprakash B. Chhajer)
Office Nos.66 and 67 Mahavir Centre,)
Plot No.77, Sector-17, Vashi,)
Navi Mumbai – 400 703) **..Petitioner**

Vs.

**1 Draupadi Hasurm Keni nee Bhoir)
Age-Adult, Occupation-Farmer)
residing at Targhar, Post-Ulwe,)
Taluka Panvel, District – Raigad)**

2 Janardhan Dhaya Mhatre)
Age-Adult, Occupation Farmer,)
residing at Sonari, Taluka-Uran)
District Raigad)

3 Dharma Mahadev Pargaonkar)
Age-Adult, Occupation-Farmer)
residing at Targhar, Post-Ulwe,)
Taluka Panvel, District – Raigad)

4 Minabai Dnyaneshwar Bhoir)
Age-Adult, Occupation-Farmer)
residing at Karave, Navi Mumbai)

5 Ganesh Dashrath Mhatre)
Age-Adult, Occupation-Farmer)

6 Rupesh Dashrath Mhatre)
Age-Adult, Occupation-Farmer)

7 Kailash Dashrath Mhatre)
Aged-Adult, Occupation-Farmer)

above 5 to 7 residing at – Morave,	)	
Taluka Pannel, District Raigad	)	
8 Chief Land and Survey Officer	)	
The City and Industrial Development	)	
Corporation of Maharashtra Ltd.,	)	
CIDCO Bhavan, 1 st floor,	)	
C.B.D. Belapur, Navi Mumbai	)	
9 The Estate Officer	)	
The City and Industrial Development	)	
Corporation of Maharashtra Ltd.,	)	
CIDCO Bhavan, 1 st floor,	)	
C.B.D. Belapur, Navi Mumbai	)	
10 The Additional Town Planning Officer,	)	
Permission for construction , 4 th floor,	)	
Raigad Bhavan, C.B.D. Belapur,	)	
Navi Mumbai	)	..Respondents

Mr. R. S. Apte Senior Advocate a/w Mr. Saurabh Oka i/b G. P. Law & Associates for the Petitioner
 Mr. S. S. Patwardhan a/w Mr. A. D. Magdum for the Respondent No.1
 Mr. P. J. Das for the Respondent Nos.8, 9 and 10

CORAM : R. M. SAVANT, J.
 DATE : 14th SEPTEMBER, 2015

ORAL JUDGMENT

1 Rule with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 28-10-2014 passed by the Learned District Judge- 1 Raigad by which order, Civil Misc Appeal No.84 of 2013 came to be dismissed and resultantly

the order dated 17-8-2013 passed by the Learned Civil Judge Senior Division, Panvel, allowing the application Exhibit 5 filed for temporary injunction came to be confirmed. Hence both the courts below have concurrently held that the Respondent No.1 who is the original Plaintiff is entitled to the exercise of discretion.

3 The facts necessary to be cited for adjudication of the above Writ Petition in brief can be stated thus. The Respondent No.1 is the original Plaintiff who has filed the Suit in question for declaration, partition and injunction in respect of her share in the suit property which she has computed as being 333.33 sq.mtrs. in the plot of land bearing No.168 admeasuring 6450 sq.mtrs. situate at Sector 9, Ulve Navi Mumbai. The Petitioner has founded the Suit on the fact that the said plot of land has been allotted in lieu of the lands acquired from one Dhaya Mhatre in whose name the land stood and which lands were acquired for setting up the new township of Navi Mumbai. The Respondent No.1 i.e. the Plaintiff claims share in the said land as being the daughter of Dhaya. The Defendants to the said Suit are Janardan who is the brother of the Plaintiff and the other Defendants are the heirs of the sister of the Plaintiff. It is not necessary to dilate further on this aspect. In so far as the Petitioner is concerned, the Petitioner is the original Defendant Nos.10 who has entered into a transaction with the Respondent No.2 Janardhan who represented to the Petitioner that he is concerned for the other family members

and that the Lease Deed is in his favour and that he alone has the right to the said property. It appears that the Lease Deed was executed by the CIDCO with 17 persons who were all entitled to allotment of small pieces of land under 12.5% of scheme along with the Respondent No.2. It appears that thereafter a tripartite agreement was entered into by the CIDCO with the persons who had been allotted land under the 12.5% scheme including the Respondent No.2 to which the Petitioner i.e. the Defendant No.10 was a party which tripartite agreement is dated 14-9-2009. After the execution of the tripartite agreement, the Defendant No.10 who is the developer submitted the plans for sanction to the CIDCO which plans were approved on 3-9-2010, by issuance of commencement certificate and thereafter the construction commenced and had progressed substantially by the year 2013, in the sense that almost 90% of the building having in total about 196 flats /shops. The instant Suit being Special Civil Suit No.30 of 2013 was filed in January 2013 in which an application for temporary injunction came to be filed in which notice came to be issued on 24-1-2013. On notice being received, the Petitioner /Defendant No.10 filed its Written Statement cum reply to the said application for injunction. In the reply it was stated that the Defendant No.10 was a bonafide purchaser for value without notice and that no injunction could be granted in view of the fact that the construction progressed substantially in as much as 90% building was completed and the entire FSI of the plot was utilised.

4 The Trial Court considered the said application and has by its order dated 17-8-2013 granted the application for injunction on the ground that the Plaintiff was the sister of the Defendant No.1 and had prima facie a share in the suit plot to the extent of 333.33 sq.mtrs., therefore directed the status-quo in respect of the plot area admeasuring 333.33 sq.mtrs..

5 The Defendant No.10 i.e. the Petitioner herein aggrieved by the said order dated 17-8-2013 filed Misc Civil Appeal No.84 of 2013. The Lower Appellate Court dismissed the Appeal and has whilst dismissing the Appeal observed that there is no evidence to show that the Defendant No.10 is a bonafide purchaser and has given huge amount for the same. The Lower Appellate Court further observed that the Plaintiff / Respondent No.1 to the Appeal has not relinquished her right and therefore she would be entitled to get 333.33 sq.mtrs. out of the total area admeasuring 6450 sq.mtrs. in the suit property. The Lower Appellate Court was of the view that since the Trial Court has considered all the facts and recorded a finding whilst passing the order below Exhibit 5 no interference was called for with the said order in the Appellate jurisdiction. As indicated above, it is the said order dated 28-10-2014 which is taken exception to by way of the above Petition.

6 The Learned Senior Counsel appearing on behalf of the Petitioner i.e. the Defendant No.10 would contend that both the Courts below have failed

to appreciate and take into consideration the fact that the construction is almost complete and huge building having 196 flats / shops is presently on the plot of land. The Learned Senior Counsel would contend that inspite of the said facts having been placed on record the Courts below have not modulated the reliefs but have directed that the area of 333.33 sq.mtrs. should not be dealt with.

7 Per contra Mr. Patwardhan the Learned Counsel appearing on behalf of the Respondent No.1/Plaintiff would support the impugned order. It was the submission of the Learned Counsel that if the Plaintiff succeeds she would be entitled to the share of 333.33 sq.mtrs. and therefore the orders passed by the Courts below does not want interference. The Learned Counsel would contend that though the building has come up, the Plaintiff's interest would have to be adequately protected pending the Suit by the Defendant No.10. It was therefore incumbent on the Trial Court to pass an order so as to protect the Plaintiff's interest.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The instant Petition arises out of the grant of injunction to the Plaintiff. The facts as narrated above discloses that the tripartite agreement was entered into in the year 2009, the commencement certificate has been granted to the Defendant No.10 in the year 2010 and it is

almost after a period of 3 years that the Suit in question came to be filed. In so far as the right of the Plaintiff is concerned, there cannot be much dispute about the same as the Plaintiff claims to be the sister of the Defendant No.1 Janardan and it is the Defendant No.1 through whom the Defendant No.10 has entered into transaction in respect of the plot of land in question. The defence that the Defendant No.10 seeks to take is that of a bonafide purchaser for value without notice, that is a defence which would have to be considered at the appropriate stage in the Suit and the outcome of the finding on the said issue would at the highest determine as regards whose liability it is towards the Plaintiff. However, at the interlocutory stage both the Courts without taking into consideration the facts as aforesaid, have concurrently held that the Plaintiff is entitled to the exercise of discretion and directed status-quo to be maintained in respect of the area of 333.33 sq. mtrs. A reading of the orders passed by the Courts below however discloses that the Courts below have not adverted to the facts which have taken place prior to the filing of the Suit i.e. the facts between the year 2009 and 2013 resulting in the construction being put up by the Defendant No.10 and presently a huge building having 196 flats/shops is existing on the site in question. This was a relevant consideration and the Courts below were therefore required to modulate the reliefs if they deemed it appropriate to protect the Plaintiff's interest pending the Suit. However, the orders passed by the Court below unfortunately discloses that such was not the consideration which weighed with the Courts below.

9 In my view therefore, the impugned order passed by the Lower Appellate Court would have to be quashed and set aside and is accordingly quashed and set aside. The matter would have to be relegated back to the Lower Appellate Court for a denovo consideration of the Appeal on the touchstone of the observations made hereinabove. Needless to state that the same would be done on its own merits and in accordance with law, uninfluenced by the impugned order or the instant order. The same also to be done latest by 31-12-2015.

10 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment