

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION

NOTICE OF MOTION (L) NO.666 OF 2015

IN

SUIT NO.431 OF 2015

Runwal Residency Pvt. Ltd. ... Applicant /
Plaintiff

Vs.

Metropolitan Infrahousing P. Ltd. ... Defendant

Mr. Virendra Tulzapurkar, Sr. Adv. a/w. Virag Tulzapurkar, Sr. Adv.,
a/w. Dhawal Mehta, Adv. a/w. Mr. Denzil Arambhan, Adv. a/w. Ms.
Arushi Mishra, Adv. i/b. Wadia Gandhi & Co. for plaintiff.

E P Bharucha, Sr. Adv., a/w. Mr. Prakash Shah, Adv. a/w. Mr.
Jitendra Shukla, Adv. a/w. Mr. Durgaprasad Poojari, Adv. i/b. PDS
Legal for defendant.

Mr. G G Ketkar, Court Receiver present.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 23rd July, 2015.

P.C. :

1. The plaintiff has essentially claimed a specific performance of the agreement dated 31st July, 2014 under which 65 acres of contiguous land shown in the plan annexed thereto came to be agreed to be sold to the plaintiff. The defendant was shown as the owner and holder of the land agreed to be sold. The defendant was to obtain the title certificate in respect of the said land. The defendant as the seller was to provide the fencing on the said land at the expenses of the plaintiff, the purchaser. The mortgage on the land was created in favour of Axis Trusteeship Services Ltd. The mortgage was required to be released and discharged and the land under the agreement was to be reconveyed in favour of the plaintiff as the purchaser. The defendant represented that the plots of land agreed to be sold were contiguous.

2. A conveyance of the said land has also been executed 30th September, 2014 and kept in escrow by the parties pending the discharge of the mortgage. The conveyance shows the land which has been sold to the plaintiff thereunder. The conveyance shows that the land sold is contiguous as one of the representations and warranties of the defendant.

3. The suit land sold by the defendant to the plaintiff consists of a larger land which initially belonged to Premier Automobile Ltd., (PAL) / PAL Peugeot. The latter company came to be wound up. Its land was sold by the Court Receiver. The entire land was purchased by the defendant. The first schedule to the conveyance shows the entire land purchased by the defendant comprising in all 135 acres 14 Gunthas & 5 Annas. The land which has been sold by the defendant to the plaintiff is a part of the land comprising 65 acres. The remainder of the land has not been sold by the defendant to the plaintiff.

4. There is some dispute between the parties with regard to survey No.37/21 which forms a part of the total land purchased by the defendant from the Court Receiver. This land is excluded from the suit land sold by the defendant to the plaintiff.

5. The land sold by the defendant to the plaintiff is represented and shown to be contiguous. The plaintiff contends that the contiguity of the suit land was the most essential representation and warranty of the defendant and if survey No.37/21 is excluded from the suit land, the land ceases to be contiguous and consequently the defendant would not show title to the full land as per the

representations and warranties of the defendant in the conveyance.

6. The defendant contends that there is a road running through both the lands. The plan annexed to the conveyance shows a road by a horizontal line thereon. The contiguity of the land is maintained by the road. The plaintiff denies that there is any road. The defendant been called upon and has produced a photograph to show a tar road. The contiguity is, hence, prima facie seen.

7. The plan schedule annexed to the conveyance prima facie shows exclusion of survey No.37/21 though showing 65 acres sold to the plaintiff.

8. The plaintiff has got the demarcation made by the TILR. The demarcation is between two separate villages. The plaintiff would contend that the demarcation would show a strip of land in village Usarghar such that the contiguity is not maintained. That is not borne out in the plan annexed to the conveyance. The plan annexed to the conveyance indeed does not show the inclusion of survey No.37/21 and hence the consideration which is payable is not for survey No.37/21 under the agreement or the conveyance between the parties.

9. The plaintiff has got the land stated to have been demarcated by the TILR which valued at Rs.70 Crores. The area of survey No.37/21 is 2505 Sq.mtrs. which is about half a guntha. The entire land admeasuring 135 acres is valued Rs.333 Crores.

10. The plaintiff would contend that the present market price of survey No.37/21, which is Rs.70 Crores, must be deducted from the

purchase price of the suit land as Survey No.37/21 though forming a part of the land sold to the plaintiff is shown to be excluded from the schedule showing the separate plots conveyed to the plaintiff.

11. The plaintiff has sued for specific performance of the agreement between the parties. For the plaintiff to call upon the defendant to specifically perform its obligations under the agreement between the parties the plaintiff must be ready and willing to perform its part of the agreement as per its terms. In the case of ***Bal Krishna & Anr. Vs. Bhagwan Das (Dead) by LRs & Ors. (2008) 12 Supreme Court Cases 145*** the Supreme Court held that the entire of the consideration which was in one of the two agreements between the parties must be paid for enforcing specific performance. That case was of a joint family property of two brothers and their grand mother sold for consideration of Rs.25,000/- under the sale deed dated 19th July, 1952. Rs.10,000/- was paid as consideration which was accepted and acknowledged by the defendant. There was to be a reconveyance of the house upon payments upon receiving the full consideration under the agreement and upon adjusting the earnest paid. The plaintiffs contended that they were ready and willing to perform their part of the contract according to its true construction. The amount of interest on Rs.10,000/- was calculated to be Rs.6,930/-. Suit for specific performance was valued at Rs.16,980/-. The plaintiffs applied for reconveyance upon payment of consideration of Rs.11,930/- after adjusting the earnest of Rs.5,000/- and claimed to be delivered possession. This was upon pleading that the sale deed dated 19th July, 1952 was for Rs.10,000/- and not for Rs.25,000/-. Upon considering Section 16(c) of the Specific Relief Act, 1963 the Supreme Court held that plaintiff should be ready and

willing to perform the essential terms of the contract which had to be performed by him mandatorily and the plaintiff must show his readiness and willingness as per his terms of the contract. The Supreme Court upon considering the evidence of the two agreements dated 19th July, 1952 and 27th February, 1952 held that the plaintiff must be ready and willing to pay the entire balance amount of Rs.20,000/- upon the consideration of Rs.25,000/- to obtain the reconveyance by specific performance.

In this case the most important obligation of the plaintiff is the payment of the consideration for the suit land. This would exclude Survey No.37/21. Rs.70 Crores is the part payment made by the plaintiff leaving a balance of Rs.263 Crores yet payable by the plaintiff to the defendant for the suit land which excludes Survey No.37/21 and which is yet shown to be a contiguous land in the above plan.

12. The plaintiff has applied for the relief of injunction against transfer, alienation and creation of third party rights by the defendant. The plaintiff has not paid a large chunk of the consideration. The plaintiff is bound to honour its main obligation of payment of the remainder of the consideration if it is to be granted injunction against transfer or alienation of the suit property.

13. The plaintiff shall deposit the balance consideration of Rs.263 Crores in Court within four weeks from today upon which the plaintiff shall be entitled to the injunction as prayed. If the deposit of Rs.263 Crores is not made within aforesaid time the Notice of Motion shall stand dismissed.

14. The defendant shall file its Written Statement within 30 days.

15. Suit is adjourned to 26th August, 2015 for framing issues.
16. The defendant shall maintain the status quo as already ordered for four weeks from today.

(ROSHAN DALVI, J.)