

property and / or from creating third party rights. According to the Appellant, he had entered into an agreement with Defendant No. 6 only in respect of Plot No. 10 and not in respect of Plot Nos. 6 and 7 and if any development rights are accrued to the Developer from the said plot, he was entitled to use those rights for developing Plot No. 10. Defendant has also filed the counter-claim claiming his right to develop Plot Nos. 6 and 7 as well.

2. The learned Single Judge has allowed the notice of motion filed by the Respondent / original Defendant and has injuncted the Plaintiff from creating third party rights not only in respect of Plot No. 10 but also in respect of Plot Nos. 6 and 7.

3. According to the Plaintiff, the clauses under the original agreement clearly indicate that no rights have been given to the Defendant in respect of Plot Nos. 6 and 7 which were reserved garden and park.

4. However, on the other hand, it is case of the Defendant that if clauses in the agreement are taken into consideration, it would indicate that he had right to utilise FSI of Plot Nos. 6 and 7.

5. We have perused the impugned order. The impugned order does not take into consideration these rival submissions, which are made by both the parties. The said order is not a reasoned order and the contentions raised by both the parties are not taken into consideration. In our view, the impugned order will have to be set aside. The impugned order is set aside and the matter is remanded back to the learned Single Judge. The learned Single Judge is requested to decide the motion, without being influenced by any of the observations made in the impugned order dated 25th June, 2015, on merits and in accordance with law, as expeditiously as possible and in any case within 8 weeks. Till disposal of the motion, the impugned order passed by the learned Single Judge will continue.

Sd/-
[REVATI MOHITE-DERE, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath