

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 629 OF 2015
IN
SUIT NO. 134 OF 2009

M/s. Oyster Ship Management Pvt.Ltd. & Ors. ... Plaintiffs

Versus

M/s. Bhavsar Construction Co.Pvt. Ltd. & Ors. ... Defendants

Mr. Ashish Kamat a/w. Ms. Neha Solanki i/b. Kiran Jain for the Plaintiffs.

Mr. H.V. Kumarswamy for Defendant Nos. 4 to 6.

Mr. P.P. Bhaidkar, 2nd Assistant to Court Receiver, present.

CORAM : S.J. KATHAWALLA, J.
DATED : 4TH DECEMBER, 2015

P.C.

1. The above Suit is filed by the Plaintiffs to declare that they are purchasers of their respective units as per the Schedule annexed to the Plaint as Exhibit-C-1 to C-7 in the commercial complex building known as 'Sharda Complex' to be constructed on the plot of land bearing Survey No. 41 part (1) (B), bearing CTS No. 444, 444/1, 444/2 and 445 situate at Swami Vivekanand Road, Village Oshiwara, Jogeshwari, Mumbai – 400102.

2. In the above Suit, the Plaintiff has taken out Notice of Motion No. 316 of 2009 inter alia for appointment of the Court Receiver in respect of the Suit premises and to complete the construction. Prayer clause (a) of the said Notice of Motion is reproduced hereunder :

“(a) that pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Mumbai or some other fit and proper person be appointed as Receiver in respect of the said immovable property viz. Plot of land bearing Survey No. 41 Part (1)(B), bearing CTS Nos. 444, 444/1, 444/2 and 445 situate at Swami Vivekanand Road, Village Oshiwara, Jogeshwari, Mumbai-400102 with all powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908 with further directions to :

- (i) appoint an Architect for revalidating the sanctioned plan ;*
- (ii) appoint contractors for completing the balance of the construction work of the proposed building in accordance with the sanctioned and revalidated plan ;*
- (iii) apply for and obtain through the assistance of the Architect and contractors, occupation certificate in respect of the construction ;*
- (iv) put each of the Plaintiffs in vacant and peaceful possession of their respective unites after the same are constructed and the occupation certificate is granted by the Bombay Municipal Corporation ;*
- (v) sell the balance premises after placing the Plaintiffs into possession of the respective units and realize the cost of construction ;*
- (vi) to do all necessary, acts, deeds and things in accordance with the Bombay Municipal Corporation Act, Maharashtra Ownership Flats (Regulation of the Promotion, Sale, Management and Transfer) Act, 1963, Development Control Rules and Transfer of Property Act”.*

3. The said Notice of Motion was heard at length by this Court (Coram : S.C. Dharmadhikari, J.) and a detailed order dated 2nd December, 2010 was

passed. Paragraphs 11 and 12 of the said order are relevant and therefore, reproduced hereunder :

“11] After having heard learned Counsel appearing for parties at great length and finding that the position as set out by the MMRDA in its affidavit and the contents of further affidavit filed by the plaintiffs, demonstrate that it is just and convenient to appoint Court Receiver, High Court, Bombay as receiver of the said property. The motion is, therefore, made absolute in terms of prayer clause (a). Until the Receiver takes possession, there will be an injunction in terms of prayer clause (f).

12] It is clear that the Court Receiver will be appointed of the land and structure which is an unauthorised structure. Further, the land is stated to be encroached and the encroachments are increasing day by day. It is for this additional reason as well, I am appointing Court Receiver of the suit property. However, upon his appointment and taking possession, Receiver will have to carry out survey and measurement of the land as part of it is open and vacant. In such circumstances, all statutory authorities, including the MMRDA should render assistance to the Court Receiver in carrying out measurement and survey of the land. Further, Mumbai Municipal Corporation, office of the Collector Mumbai Suburban district and local police station to render such assistance as is necessary to the Receiver to carry out survey and measurement and put up a fencing and compound wall. Mr.Sen submits that at the first instance the Costs, charges and expenses for this exercise will be undertaken by the plaintiffs, subject to final orders and directions in the suit”.

4. The Defendant Nos. 4, 5 and 6 had preferred an Appeal from the order dated 2nd December, 2010 and the same was later withdrawn. The Court Receiver has thereafter acted upon the said order. The Suit property has been demarcated and the measurements have been carried out. The Court Receiver has addressed several letters / complaints to the Mumbai Municipal Corporation (Corporation) about the increasing encroachments on the Suit land and requested the Corporation to remove the same. However, the Corporation has till date failed to do so. The Court Receiver has therefore taken out the present report inter alia seeking directions against the Corporation to remove the said encroachments. The Receiver has also sought direction against the Plaintiffs to appoint security guards once the encroachments are removed.

5. The learned Advocate appearing for Defendant Nos. 4, 5 and 6 has tendered an Affidavit filed by his Clients and has contended that by the said order dated 2nd December, 2010, the Court Receiver is not directed to remove the encroachments, which were already in existence on the date of passing of the order i.e. 2nd December, 2010.

6. When this Court inquired from the learned Advocate appearing for the Defendant Nos. 4, 5 and 6 whether he is supporting the encroachers, who had already encroached the Suit land on the date of the passing of the order dated 2nd December, 2010, he submits that he is not supporting any encroachers on the Suit land. I therefore fail to understand the above submission advanced by the learned

Advocate appearing for the Defendant Nos. 4, 5 and 6. From prayer clause (a) of the Notice of Motion read with the directions contained in paragraph 12 of the order dated 2nd December, 2010, it is established beyond any doubt that the Court Receiver has to interalia move the Corporation for removal of the encroachments on the Suit land, failing which it would be impossible for him to proceed and implement the said order by putting up a fencing and compound wall on the Suit property. In view thereof, the following order is passed :

- i. The Mumbai Municipal Corporation is directed to remove encroachments carried out by the illegal occupants on the Suit property within a period of eight weeks from today with the assistance of local police.
- ii. Upon the said encroachments being removed, the Plaintiffs shall deploy the security guards at the Suit site.
- iii. The cost of this Report quantified at Rs.3000/- shall be paid by the Plaintiffs to the Court Receiver within a period of one week from today.
- iv. The Court Receiver's report is accordingly disposed of.

(S.J.KATHAWALLA, J.)