

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**APPEAL FROM ORDER NO. 511 OF 2014
WITH
CIVIL APPLICATION NO. 597 OF 2014**

Shri Prabhakar Sitaram Patil & Ors. Appellants

Versus

M/s RNA Builders (AA) & Ors. Respondents

A. Y. Sakhare, Senior Advocate I/b A. R. Shaikh, for Appellants.
P. K. Dhakephalkar, Senior Advocate a/w Saket Mone and Mr. Subit
Chakrabarti I/b Vidhi Partners, for Respondent No. 1.
L. M. Acharya I/b Anish Khandekar, for Respondent No. 3.
M. S. Lagu, for Respondent No. 19.

***CORAM : N. M. Jamdar J.
Tuesday 26 July, 2016***

ORAL ORDER

. The appellants challenge the order passed by the Civil Judge, Senior Division, Thane dated 19 March, 2014 rejecting the application filed by the appellants/original plaintiffs for grant of temporary injunction.

2. The property in question is situated at village Ghodbundar, Tahsil and District Thane. In the suit the appellants

prayed to restrain the respondent nos. 1 to 4 by an order of injunction in respect of 13550 sq.mtrs. of the vacant land of the suit premises and also to restrain the respondents from carrying out and completing development activity in the suit property. The learned Civil Judge after considering the material on record concluded that at this stage, the construction which is almost completed, cannot be stopped.

3. Heard learned Counsel for the parties. The learned Counsel for the parties have placed their respective maps on record. The learned Counsel for the respondents has placed the copy of sanctioned plan, while the learned Counsel for the appellants has placed on record a sketch prepared by an architect.

4. The learned Counsel for the appellants has divided his submissions in two parts. As regard the constructed portion, the learned Counsel for the appellants submitted that merely on the ground that construction is completed, order of injunction ought not to have been refused. This submission cannot be accepted. It has come on record as on date the entire complex, barring last percentage of construction, has already come up. Prima facie there is no explanation whatsoever as to why the appellants could not approach the Court in time, especially since an equitable relief is sought. The discretion used by the learned Civil Judge not to grant

injunction at such a belated stage when respondent no. 1 has invested substantial amount cannot be said to be incorrect or be termed as a perverse.

5. As regard the open pieces of land, there are two distinct pieces. One is a long strip of land approximately 9650 sq.mtrs. and second is a piece of land approximately 3900 sq. mtrs. as stated in the map produced by the learned Counsel for the appellants. As regard the strip of land is concerned, the sanctioned plan which is placed on record shows that some part of the strip of land is R.G. Area which cannot be used for construction. Some part is a road and it is informed that remaining is sold to respondent no. 3. The learned Counsel for the respondent no. 1 has re-iterated this position. This being the sanctioned plan and obviously the appellants and the respondent no. 1 cannot go beyond the sanctioned plan. There is no appreciation that any construction will be carried on by respondent no. 1 in the strip of land. The learned Counsel for the respondent no. 3 states that commencement certificate is obtained and construction is on going. In this appeal, the relief is not sought against the respondent no. 3. Since the suit is pending, it is always open to the appellants to seek appropriate relief against respondent no. 3 and if such application is made will be considered on merits.

6. As regard the other portion of land, the sanctioned plan shows that the entire area is shown in the layout as R.G. Again the same position applies, that is as per sanctioned plan, no construction can be carried out in this area.

7. This being the position of the open area and that the construction in the remaining area has already been substantially carried out by respondent no. 1, no orders can be passed in favour of the appellants in this appeal. The Appeal from Order is accordingly disposed of. All contentions of the parties on merits in the suit is kept open.

(N. M. Jamdar, J.)