

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CIVIL APPELLATE JURISDICTION***  
**APPEAL FROM ORDER NO. 630 OF 2016**  
**IN**  
**INTERIM APPLICATION (EXHIBIT 5)**  
**IN**  
**SPECIAL SUIT NO. 209/2014**  
**BEFORE THE COURT OF HON.CIVIL JUDGE SENIOR DIVISION**  
**AT PANVEL**  
**DISTRICT – PANVEL**  
**ALONGWITH**  
**CIVIL APPLICATION NO. 805 OF 2016**  
**IN**  
**APPEAL FROM ORDER NO. 630 OF 2016**  
  
**AND**  
**APPEAL FROM ORDER NO. 629 OF 2016**  
**IN**  
**INTERIM APPLICATION (EXHIBIT 101)**  
**IN**  
**SPECIAL SUIT NO. 209/2014**  
**BEFORE THE COURT OF HON.CIVIL JUDGE SENIOR DIVISION**  
**AT PANVEL**  
**DISTRICT – PANVEL**  
**ALONGWITH**  
**CIVIL APPLICATION NO. 804 OF 2016**  
**IN**  
**APPEAL FROM ORDER NO. 629 OF 2016**

M/s.Himax Developers Pvt. Ltd., )  
Through Director Mr.Hemchand G.Gala )  
Age-64 years, Occ : Business, )  
Res. Shop No.5, D.S.Trade Centre, )  
Station Road, Vidhyavihar (W), )  
Mumbai 400 086 ) ..... Appellant

**VERSUS**

1. Shri Jagannath Yashwant Deshmukh, )  
Age 59 yrs, Occu-Retired No Service, )  
Res. At Kopar, Post Gavhan, )  
Tal. Panvel, Dist.Raigad )
2. Shri Shivaji Yashwant Deshmukh, )  
Age 54 yrs, Occu-Retired - No Service, )  
Res. At Kopar, Post Gavhan, )  
Tal. Panvel, Dist.Raigad )
3. Shri Tanaji Janardhan Deshmukh, )  
Age 38 yrs, Occu- Service, )  
Res. At Kopar, Post Gavhan, )  
Tal. Panvel, Dist.Raigad )
4. Mrs.Jyotsna Ravindra Deshmukh, )  
Age 36 yrs, Occu -Housework, )  
Res. At Post Saralgaon, )  
Tal. Murbad, Dist.Thane )
5. Mrs.Manisha Mangesh Suryarao, )  
Age 32 yrs, Occu -Housework, )  
Res. At Sayale, Post Saralgaon, )  
Tal. Murbad, Dist.Thane )
6. Smt.Hirabai Janardhan Deshmukh, )  
Age 56 yrs, Occu -Housework, )  
Res. At Kopar, Post Gavhan, )  
Tal. Panvel, Dist.Raigad )
7. Shri Vilas Janardhan Deshmukh, )  
Age 52 yrs, Occu -No Service, )  
Res. At Kopar, Post Gavhan, )  
Tal. Panvel, Dist.Raigad )
8. Smt.Kaushalya Raghunath Deshmukh,) )  
Age 77 yrs, Occu -Housework, )  
Res. At Honad, Post Sajgaon, )  
Tal. Khalapur, Dist.Raigad )

9. Mrs.Sindhu Prakash Yashwantrao, )  
Age 49 yrs, Occu -Housework, )  
Res. At Post Kasgaon, )  
Tal. Murbad, Dist.Thane )
10. Smt.Sharada Anant Deshmukh, )  
Age 67 years, Occu -Housewife, )  
At Shngaon, Tal. Khalapur, )  
Dist.Raigad )
11. Mr.Prashant R.Joshi, )  
Age 49 yrs, Occu - Business, )  
Proprietor-M/s.Prathmesh Construction )  
At Shop No.1, Plot No.C.T.S. No.1028, )  
Prathmesh House, Belapur, )  
Post Konkan Bhuvan, Navi Mumbai, )  
Dist. Thane )
12. CIDCO Corporation, )  
through Hon. Management Director, )  
CIDCO Ltd., Cidco Bhavan, C.B.D.Belapur) )  
Navi Mumbai – 400 614 )
13. CIDCO Corporation, )  
through Hon.Asst.Land Revenue Officer, )  
CIDCO Ltd., Cidco Bhavan, 7<sup>th</sup> Floor, )  
C.B.D.Belapur, Navi Mumbai – 400 614 )
14. CIDCO Corporation, )  
through Hon.Colony Officer, )  
CIDCO Ltd., Cidco Bhavan, 1<sup>st</sup> Floor, )  
C.B.D.Belapur, Navi Mumbai – 400 614 )
15. CIDCO Corporation, )  
through Hon.Town Planning Officer, )  
(Building Construction Authority) )  
CIDCO Ltd., Raigad Bhavan, 1<sup>st</sup> Floor, )  
C.B.D.Belapur, Navi Mumbai – 400 614 )

Mr.P.S.Dani, Senior Advocate, a/w. Mr.Vishal Shriyan, Mr.Haabil Vahanvaty, i/b. Khaitan & Co. for the Appellant.

Mr.Girish Godbole, i/b.Mr.Suresh Sabrad and Mr.Vinod Shinde for Respondent no.1.

Mr.Prasanjit Keswani, i/b. Idris Vohra for Respondent nos. 3 to 7 and 9.

Ms.Gauri Godse for Respondent no.10.

Mr.Saurabh Oka for Respondent no.11.

Mr.Rohit Sakhadeo for Respondent nos. 12 to 15.

**CORAM : R.D. DHANUKA, J.**

**RESERVED ON : 19<sup>th</sup> OCTOBER, 2016**

**PRONOUNCED ON : 27<sup>th</sup> OCTOBER, 2016**

**JUDGMENT :**

By consent of parties, both these appeals were heard together and are being disposed of by a common order :-

2. The appellants (original defendant no.11) in Appeal No.630 of 2016 has impugned the order dated 30<sup>th</sup> April, 2016 passed by the learned Civil Judge, Senior Division, Panvel allowing the application (Exs.5 and 83) filed by the respondent no.1 (original plaintiff) inter alia praying for interim injunction directing the respondent nos. 2 to 11 and the appellant not to create any third party right, title and interest in the suit plot and not to carry out any construction work in the suit plot.

3. In Appeal No.629 of 2016, the appellant (original defendant no.11) has impugned the order dated 30<sup>th</sup> April, 2016 passed in an application made by the respondent nos. 3 to 7 (Ex.No.101) (original defendant nos. 2 to 6) and directing the respondent nos. 12 to 15 (CIDCO) not to issue any completion certificate in

respect of the suit plot during the pendency of the suit. Some of the relevant facts for deciding these two appeals are as under :-

4. Mr.Yashwant Vithall Deshmukh, was the owner of ancestral property at Village Gavhan, Taluka Panvel, District Raigad being Survey Nos.96/3, 97/9, 181/3A, 202/3, 209/1A, 209/2, 225/6, 225/8A, 233/1, 235/4, 242/5, 247/1B, 247/1D, 247/4, 247/5, 252/4, 252/10, 255/2 and 156A/12. The said Mr.Yashwant Vithall Deshmukh expired in the year 1974.

5. After death of the said Mr.Yashwant Vithall Deshmukh, the names of the respondent nos. 1 to 10 were mutated as his legal heirs in the record of the rights in respect of the said ancestral property on 3<sup>rd</sup> April, 1974.

6. Sometimes in the year 1985,the said ancestral property was acquired by the respondent nos.12 to 15 i.e. CIDCO Corporation for town planning purpose.

7. Sometimes in the year 1985, the respondent nos. 1 and 3 to 10 executed a power of attorney in favour of Mr.Shivaji Yashwant Deshmukh, the respondent no.2 herein (original defendant no.1) to receive the compensation and awards in respect of the acquired land from CIDCO for and on behalf of the said Hindu Undivided Family and on behalf of each of the family member.

8. CIDCO is a New Town Planning Authority for Navi Mumbai in terms of sub-section 3A of section 113 of the Maharashtra Regional and Town Planning Act, 1966 and has power and authority to dispose of by lease by granting the plots on lease which are vested in it by the State Government alongwith its own lands for the purpose of development. The State Government has formulated a

rehabilitation scheme for allotment of developed lands to the project affected persons known as 12.5% scheme.

9. The land acquisition officer issued three land acquisition awards all bearing nos. 575 in the name of the following person :-

- (1) award for acquisition of survey no.209 in the name of Mr.Shivaji Yashwant Deshmukh,(the respondent no.2 herein)
- (2) survey nos. 225, 247, 181, 233, 209 in the name of Mr.Shivaji Yashwant Deshmukh (the respondent no.2) as legal heirs of Yashwant V.Deshmukh (deceased) and,
- (3) survey no.97 in the name of Mr.Shivaji Yashwant Deshmukh (the respondent no.2).

10. The total entitlement for 12.5% scheme towards the said awards was worked out by CIDCO at 4000 sq.mtrs.

11. The CIDCO under the said 12.5% scheme, allotted four plots at Village Ulwe Node, Taluka Panvel, District Raigad i.e. plot no.1 in sector no.18, admeasuring 4000 sq.mtrs., plot no.2 in sector no.19, admeasuring 1650 sq.mtrs., plot no.C-18 in sector no.16, admeasuring 100 sq.mtrs. and plot no.B-72 in sector no.16, admeasuring 40 sq.mtrs. It was the case of the respondent no.1 that he alongwith respondent nos. 2 to 10 being the members of the Hindu undivided family of the said Mr.Yashwant Vithall Deshmukh were entitled to share in the said ancestral property. Respondent no.1 claimed 1/7<sup>th</sup> share in the suit property.

12. It was the case of the respondent no.11 that on 30<sup>th</sup> June, 2004 an agreement was entered into by the respondent nos. 1 to 10, jointly and severally in

favour of the respondent no.11 i.e. M/s.Prathmesh Construction through his sole proprietor Mr.Prashant R.Joshi and agreed to transfer and alienate plot of land admeasuring 2000 sq.mtrs. (1<sup>st</sup> Part) out of total entitlement of 4000 sq.mtrs. they were held entitled to under 12.5% scheme of CIDCO Ltd. for consideration.

13. It was the case of the respondent no.11 that respondent no.2 alongwith respondent nos. 4 and 8 jointly and severally had executed a document of confirmation deed thereby confirming the sale, assignment, transfer and alienation of plot of land admeasuring 2000 sq.mtrs. (1<sup>st</sup> Part) out of total entitlement of 4000 sq.mtrs. in favour of the respondent no.11 i.e. M/s.Prathmesh Construction. It was also the case of the respondent no.11 that the respondent no.2 and others jointly and severally entered into a development agreement in favour of the said M/s.Prathmesh Construction and one another in respect of the said land admeasuring 2000 sq.mtrs.(2<sup>nd</sup> Part). The respondent no.1 and other legal heirs of the said Yeshwant V.Deshmukh except respondent no.2 have disputed their signatures on such alleged documents.

14. On 27<sup>th</sup> October, 2004, the respondent no.2 and respondent nos. 3 to 10 have alleged to have jointly and severally executed a 'Hamipatra' confirming that the total entitlement i.e. 2000 sq.mtrs.(2<sup>nd</sup> Part) of the respondent no.2 and respondent nos. 3 to 10 had been sold in favour of (I) Mr.Sakharam Sonu Pachpute, (II) Mr.Ramkrishna Haribhau Khedekar and they have received certain consideration from the said two parties. It was recorded in the said document that the respondent no.2 and respondent nos. 3 to 10 shall cancel the said agreement entered into in favour of the said Mr.Sakharam Sonu Pachpute and Mr. Ramkrishna Haribhau Khedekar and confirmed to have agreed to sell, assign, transfer and alienate the total area of 4000 sq.mtrs. in favour of the said

M/s.Prathmesh Construction, the respondent no.11 herein.

15. On 24<sup>th</sup> November, 2004, a deed of cancellation is alleged to have been executed by and between respondent no.2 and few other respondents jointly and severally and Mr.Sakharam Sonu Pachpute and Mr. Ramkrishna Haribhau Khedekar whereby the MOU dated April 2004 entered and executed between the parties in respect of 2000 sq.mtrs.(2<sup>nd</sup> Part) is alleged to have been cancelled.

16. On 8<sup>th</sup> December 2004 and 20<sup>th</sup> June 2005, the defendant nos. 8 and 10 addressed letters to CIDCO with a copy to respondent no.2 not to allot the suit plots in favour of the respondent no.2.

17. On 10<sup>th</sup> January 2005 and 7<sup>th</sup> April 2006, respondent nos. 8 and 10 through their advocates issued a legal notice to the respondent no.2 thereby cancelling his authority and instructing him not to accept the suit plots to the extent of rights of the other co-sharers and not to create third party rights in the suit plots.

18. On 12<sup>th</sup> January, 2005 the respondent no.11 i.e. M/s.Prathmesh Construction issued a public notice in a local newspaper calling for objections from the public at large in respect of the transaction in respect of the entire 4000 sq.mtrs. plot of land. It is the case of the appellant that M/s.Prathmesh Construction approached them in the month of November 2007 with an opportunity to develop the said land admeasuring 4000 sq.mtrs.

19. During the period between 17<sup>th</sup> June, 2006 and 11<sup>th</sup> September, 2007 various communications were exchanged between various officials of the State

Government and CIDCO with regard to the allotment of suit plot in the name of Mr.Shivaji Yashwant Deshmukh, the respondent no.2 herein.

20. On 14<sup>th</sup> July, 2007, CIDCO issued a letter of intent in respect of the land admeasuring 1650 sq.mtrs. in the name of all the legal heirs of the said Mr.Yashwant V.Deshmukh.

21. On 31<sup>st</sup> October, 2007, CIDCO issued letter of intent in respect of plot no.2, sector 19-B admeasuring 4000 sq.mtrs. in the name and in favour of all the legal heirs of Mr.Yashwant Vithall Deshmukh.

22. On 5<sup>th</sup> November, 2007, CIDCO issued corrigendum with regard to the allotment letter dated 31<sup>st</sup> October, 2007 and changed the allotment of previous plot no.2 of sector 19-B of plot no.1 of sector 19B which was issued in favour of all the legal heirs of the said Mr.Yashwant Vithall Deshmukh to the name of the respondent no.2 exclusively. A copy of the said corrigendum dated 5<sup>th</sup> November, 2007 was not issued either to the respondent no.1 nor to the other legal heirs of the said Mr.Yashwant Vithall Deshmukh.

23. On 12<sup>th</sup> November, 2007, the said M/s.Prathmesh Construction, the respondent no.11 herein for and on behalf of the respondent no.2 has alleged to have paid a sum of Rs.1,50,560/- towards lease premium and other allied charges to CIDCO.

24. On 7<sup>th</sup> December, 2007, CIDCO issued another corrigendum with regard to the corrigendum dated 5<sup>th</sup> November, 2007 and changed the allotment of previous plot no.1 of sector 19-B of plot no.1 of sector 18. CIDCO however did

not issue any copy of the said corrigendum to the respondent no.1 or to the other legal heirs of the said Mr.Yashwant Vithall Deshmukh. A copy of the said corrigendum was forwarded to the personal secretary to the then Chief Minister of Maharashtra.

25. On 11<sup>th</sup> December, 2007, the CIDCO executed an agreement to lease in favour of the respondent no.2 and has alleged to have handed over possession of the suit plot of land to the respondent no.2.

26. On 19<sup>th</sup> December, 2007, a tripartite agreement came to be executed between the respondent nos.2, 11 and CIDCO for transfer of leasehold rights in favour of respondent no.11 with respect to the suit plot no.1 in sector no.18, admeasuring 4000 sq.mtrs.

27. On 19<sup>th</sup> December, 2007, the appellant passed a resolution to acquire, buy, sell or otherwise transfer the suit plot of 4000 sq.mtrs.

28. On 24<sup>th</sup> December, 2007, the respondent no.11 entered into a registered tripartite agreement to lease with CIDCO and with respondent no.2. On 7<sup>th</sup> January, 2008 the respondent no.11, the appellant and CIDCO entered into a tripartite agreement for further transfer of leasehold rights of the suit plot in favour of the appellant. The other legal heirs of the said Mr.Yashwant V.Deshmukh are not made parties to the said agreement.

29. On 26<sup>th</sup> September, 2008, the respondent no.10 (one of the legal heir of the said Mr.Yashwant V.Deshmukh) filed a civil suit (Special Civil Suit No.524 of 2008) inter alia praying for partition and separate possession in respect of the suit

plot against the respondent no.1, respondent nos. 2 to 9, CIDCO.

30. On 8<sup>th</sup> October, 2008, the respondent no.11 filed a special civil suit (533 of 2008) inter alia praying for specific performance of contract against all the legal heirs of Mr.Yashwant Vithall Deshmukh with respect of plot of 1650 sq.mtrs. bearing no.2 of sector no.19, Ulwe.

31. On 15<sup>th</sup> January, 2009, the respondent no.1 filed a Regular Civil Suit No. 10 of 2009 before the learned Civil Judge, Junior Division, Panvel against the appellant and the respondent nos. 2 to 15 for partition, cancellation of agreement to lease and tripartite agreement and filed an application for interim relief (Ex.5) therein.

32. On 16<sup>th</sup> April, 2009, the appellant and respondent no.11 jointly filed their written statement in the said Regular Civil Suit No. 10 of 2009 (re-numbered as Special Civil Suit No.209 of 2014. The CIDCO also filed their written statement in the said suit and admitted that the Government had acquired the land of village Gavan, having joint holding of Mr.Shivaji Yashwant Deshmukh and others and stated that till the date of filing the said written statement, the CIDCO had not allotted the suit plot.

33. In the month of June 2009 the respondent no.10 filed her written statement in Regular Civil Suit No.10 of 2009 and admitted the claim of the respondent no.1 and also asked for her share in the suit property. The respondent no.10 is the sister of the respondent nos. 1 and 2.

34. On 12<sup>th</sup> August, 2009, the CIDCO issued a letter under the provisions

of Right to Information Act confirming that Mr.Prashant R.Joshi, the proprietor of the respondent no.11 was working as a clerk in the office of CIDCO at the relevant time.

35. On 28<sup>th</sup> August, 2009 CIDCO issued commencement certificate in favour of the appellant with an express condition that the commencement certificate was subject to pending Regular Civil Suit No. 10 of 2009 and clarifying that the order passed by the Hon'ble Court shall be binding on the appellant.

36. On 15<sup>th</sup> March, 2012, the respondent no.2 filed a written statement in Regular Civil Suit No. 10 of 2009 alleging that he had entered into the transaction with respect to his share only in the suit plot. The respondent nos. 4 to 6 filed a separate written statement on 21<sup>st</sup> November, 2013 and admitted the claim of the respondent no.1. The respondent nos. 3 to 7 also preferred a separate application for injunction against the appellant on 21<sup>st</sup> November, 2013. The respondent no.9 also filed a separate written statement on 15<sup>th</sup> June, 2012 in the said Regular Civil Suit No. 10 of 2009 and admitted the claims of the respondent no.1.

37. On 23<sup>rd</sup> January,2014 the respondent no.10 (Sharda) filed a special civil suit (35 of 2014) against the respondents and the appellant inter alia praying for cancellation of the agreement to sale, tripartite agreement dated 19<sup>th</sup> December, 2007 and 7<sup>th</sup> January,2008 and also prayed for temporary and permanent injunction. The respondent no.10 also preferred an injunction application (Ex.5) in the said civil suit (35 of 2014). The learned trial judge passed an injunction order in the said application (Ex.5) filed by the respondent no.10 and restrained the appellant herein from carrying on any construction on the suit plot and from creating any third party rights.

38. On 3<sup>rd</sup> August, 2014, the said Regular Civil Suit No. 10 of 2009 filed by the respondent no.1 was renumbered as Special Civil Suit No.209 of 2014 before the Civil Judge, Senior Division, Panvel.

39. Being aggrieved by the order dated 24<sup>th</sup> February, 2014 passed by the learned trial judge in application (Ex.5) filed by the respondent no. 10 in Special Civil Suit No.35 of 2014, the appellant herein and respondent no.11 M/s.Prathmesh Construction filed two separate Appeal from Order Nos. 425 of 2014 and 407 of 2014 in this court respectively. By an order dated 17<sup>th</sup> November,2014 passed by this court, the said two appeals were partly allowed. The appellant herein was allowed to construct over the the suit plot, however was directed not to enter into the agreement and not to create third party rights in any manner in respect of 24 flats and not to sell those 24 flats till the decision of the said suit (Special Civil Suit No.35 of 2014). By an order dated 25<sup>th</sup> November, 2014, this court clarified the order dated 17<sup>th</sup> November,2014. It was clarified that Appeal from Order No.407 of 2014 is dismissed. Appeal from Order No.425 of 2014 is partly allowed.

40. Being aggrieved by the said order dated 17<sup>th</sup> November, 2014 passed by this court in Appeal from Order No.425 of 2013, the respondent no.1 and others filed special leave petition (35366 of 2014) before the Supreme Court of India. Supreme Court passed an order in the said special leave petition on 18<sup>th</sup> December,2014 as under :-

Creation of any kind of third party rights shall remain stayed,  
in the meantime.

Construction to be made by respondent no.1 shall be at his

own risk and responsibility and shall not create any equitable right upon respondent no.1.

41. On 8<sup>th</sup> December,2015 the Supreme Court directed that by an order dated 18<sup>th</sup> December,2014, the Supreme Court had already passed an order expressing that the interim arrangement would satisfactorily protect the interest of the rival parties during the pendency of the civil suit. The Supreme Court observed that the court was satisfied in affirming the said order while disposing of the special leave petitions. It was held that the impugned order was in the nature of the interim arrangement between the parties operable during the pendency of the proceedings before the trial court. Supreme Court disposed of the special leave petitions.

42. On 30<sup>th</sup> October,2015, the appellant herein preferred an application for amendment to the common written statement. The trial court allowed the said amendment application on 30<sup>th</sup> April,2016.

43. On 27<sup>th</sup> November,2015, the respondent no.1 preferred an application for amendment of plaint with respect to the documents filed under Ex.125. The trial court allowed the said application for amendment on 30<sup>th</sup> April,2016.

44. On 30<sup>th</sup> April,2016 the learned trial judge passed the impugned order on Ex.5 which was filed by the respondent no.1 in Special Civil Suit No.209 of 2014 and restrained the appellant and respondent nos. 2 to 11 from creating any third party rights in the suit property and also from carrying out any construction activities on the suit plot.

45. The learned trial judge passed a separate order on the application filed by the respondent nos. 3 to 7 (Ex.no.101) in the Special Civil Suit No.209 of 2014 and partly allowed the said application. By the said order, the learned trial judge directed the respondent nos. 12 to 15 that pending the hearing and final disposal of the said suit, they should not issue any completion certificate in respect of the suit plot.

46. Being aggrieved by the order dated 30<sup>th</sup> April,2016 passed by the learned trial judge in application (Ex.5) in Special Civil Suit No.209 of 2014 , the appellant (original defendant no.11) filed Appeal from Order No.630 of 2016 in this court. The appellant also filed a separate appeal (Appeal from Order No.629 of 2016) and impugned the order dated 30<sup>th</sup> April,2016 passed by the learned trial judge in application (Ex.5) filed by the respondent nos. 3 to 7 in Special Civil Suit No.209 of 2014.

47. Mr.Dani, learned senior counsel for the appellant invited my attention to the averments made in the plaint filed by the respondent no.1, the prayers sought in the plaint in support and would submit that the plaintiff had suppressed several true and correct facts and also several documents. He submits that the respondent no.1 (plaintiff) was all throughout aware of the transaction between the respondent no.2 and respondent no.11 at the first instance, the documents executed by and between the respondent no.2, respondent no.11 and CIDCO and also the documents entered into between the respondent no.11, CIDCO and the appellant. He submits that since the respondent no.1 has suppressed various true and correct facts in the plaint, the learned trial judge could not have exercised his discretionary powers in granting interim relief in favour of the respondent no.1.

48. It is submitted that the respondent no.1 has also suppressed that to his knowledge the construction in the suit plot had been proceeded with since 2009 till the interim order came to be passed by the learned trial judge in his favour. He submits that the respondent no.1 was guilty of delay and latches in proceeding with the application (Ex.5). He submits that though the said application was filed by the respondent no.1 as far back as in the year 2009, the respondent no.1 deliberately did not proceed with the said application and allowed the appellant to proceed with the construction on the suit plot. He submits that the respondent no.1 deliberately waited for the outcome of the application for injunction filed by the respondent no.10 in a separate suit filed by her and only after the Supreme Court granting an injunction restraining the appellant from creating any third party rights in the suit property, the respondent no.1 pursued his application for interim relief.

49. It is submitted by the learned senior counsel that the respondent no.2 was also a member of Hindu Undivided Family of Mr.Yashwant Vithall Deshmukh. He submits that the respondent no.1 had also signed various documents in favour of the respondent no.11 and also in favour of the appellant in respect of the suit plot which fact is suppressed by the respondent no.1. It is submitted by the learned senior counsel that the respondent no.1 had already made a complaint to the CIDCO as far back as on 8<sup>th</sup> January,2008 requesting the CIDCO to not to make any allotment of any plot of land to the respondent no.2. He submits that thus the cause of action had arisen as far back as on 8<sup>th</sup> January,2008 and thus respondent no.1 could not have pursued the application for injunction in the year 2015-16.

50. It is submitted by the learned senior counsel that the respondent no.1 in his suit has not challenged the allotment of the land by CIDCO in favour of the

respondent no.2 at all but has on the contrary prayed for his 1/7<sup>th</sup> share in the said plot of land allotted by CIDCO in favour of the respondent no.2. The respondent no.1 has also challenged the tripartite agreement entered into between the respondent no.2, respondent no.10 and CIDCO and also the tripartite agreement between the respondent no.10, CIDCO and the appellant. He submits that since the respondent no.1 has not challenged the allotment of the plot, he cannot allege any fraud alleged to have been committed by the respondent no.2 or the officers of CIDCO or anybody else.

51. Learned senior counsel invited my attention to the affidavit in reply filed by the appellant before the learned trial judge in the application (Ex.5) filed by the respondent no.1. My attention is also invited to the impugned order passed by the learned trial judge and it is submitted that none of the documents referred to and relied upon by the appellant and the factual aspects brought on record by the appellant regarding the stage of construction on the suit property, the extent of third party rights already created by the appellants and the investments so far made etc. are dealt with in the impugned order. He submits that as of today, about 98% work on the suit plot has been already carried out by the appellant to the knowledge of the respondent no.1. He submits that the appellant has already created third party interest in respect of the 89 tenements out of which 34 agreements are duly registered. He submits that under the tripartite agreement entered into between the CIDCO, appellant and respondent no.11, the appellant has to allot 50% of the constructed flats or on the suit plot to the respondent no.11.

52. Learned senior counsel for the appellant invited my attention to the order passed by the learned trial Court in the application (Exhibit – 5) filed by the respondent no.10 restraining the appellant herein from carrying out any

construction on the suit plot and from creating any third party rights in respect of the suit plot. He also invited my attention to the judgment of this Court dated 17<sup>th</sup> November, 2014 passed by this Court in Appeal from Order Nos.425 of 2013 and 407 of 2014, which were filed by the appellant herein and the respondent no.11 respectively impugning the order passed by the learned trial Judge in the application for injunction filed by the respondent no.10. He submits that this Court by the said judgment had modified the interim relief granted by the learned trial Judge after considering the fact that the appellant had already carried out substantial part of the construction on the suit property and directed the appellant herein and the respondent no.11 not to enter into agreement and not to create any third party rights in any manner in respect of 24 flats till the decision of the suit. The said order was clarified by an order dated 25<sup>th</sup> November, 2014. This Court dismissed the said Appeal from Order No.407 of 2014 filed by the respondent no.11 herein and partly allowed the appeal filed by the appellant herein.

53. Learned senior counsel for the appellant invited my attention to the order dated 18<sup>th</sup> December, 2013 passed by the Supreme Court in the special leave petitions filed by the respondent no.2 against the order passed by this Court and also to the order dated 8<sup>th</sup> December, 2013 passed by the Supreme Court while disposing of the special leave petitions and would submit that it was made clear by the Supreme Court that interim arrangement to the effect that the construction to be made by the appellant herein shall be at his own risks and responsibility and shall not create any equitable right upon it and directed that they shall not create any kind of third party rights during the pendency of the suit which order would satisfactorily protect the interest of the rival parties. He submits that the said order passed by the Supreme Court at the instance of the respondent no.1 (original plaintiff) is in force. He submits that the Supreme Court also in the said order has

permitted the appellant to continue with the construction on the suit plot subject to the clarification issued therein and there being no change of circumstances after passing of the said orders by the Supreme Court, the learned trial Judge could not have passed an injunction restraining the appellant from carrying on any construction on the suit plot.

54. It is submitted by the learned senior counsel for the appellant that the application for injunction filed by the respondent no.2 was deliberately kept pending by the respondent no.2 from 2009 to 2016 and thus the learned trial Judge could not have granted any order of injunction restraining the appellant from carrying out construction on the suit plot and that also at the stage when the construction is complete to the extent of 98%.

55. Mr.Godbole, learned counsel for the respondent no.1 (original plaintiff) on the other hand submits that admittedly a notification under section 4 of the Land Acquisition Act in respect of the suit property was already issued by the Government when the said Yeshwant V. Deshmukh, the owner of the ancestral property was alive. He submits that after the demise of the said owner i.e. Yeshwant V. Deshmukh, the name of the respondent no.1 and respondent nos.2 to 10 were mutated as legal heirs in the record of rights in respect of the said ancestral property. The respondent no.1 and other legal heirs of the said Yeshwant V. Deshmukh had executed the power of attorney in favour of the respondent no.2 for limited purpose to collect the compensation in respect of the suit property in the land acquisition proceedings.

56. It is submitted that the Land Acquisition Officer has made an award in respect of the suit property in favour of the respondent no.2 as legal heir of the said

Yeshwant V. Deshmukh on behalf of all the legal heirs of the said Yeshwant V. Deshmukh. My attention is invited to page 134 i.e. the land acquisition award which refers to the name of all the legal heirs of the said Yeshwant V. Deshmukh.

57. It is submitted by the learned counsel that under the said land acquisition award, compensation was shown payable to all the legal heirs of the said Yeshwant V. Deshmukh i.e. respondent nos.1 to 9. The respondent no.2 had produced the power of attorney before the Land Acquisition Officer for collecting compensation, for filing reference etc.

58. Learned counsel for the respondent no.1 invited my attention to the complaint dated 8<sup>th</sup> December, 2004 filed by the respondent no.10 and respondent no.8 before CIDCO by which CIDCO was informed that the power of attorney executed by some of the respondents in respect of the respondent no.2 and informing that the respondent no.2 had not paid any compensation to the respondent no.1 and other legal heirs of the said Yeshwant V. Deshmukh and requesting CIDCO not to deal with the respondent no.2 since all the legal heirs of the said Yeshwant V. Deshmukh were co-owners of the suit property and were entitled to seek compensation. Similar complaint was filed by the respondent no.10 with CIDCO on 20<sup>th</sup> June, 2005.

59. Learned counsel for the respondent no.1 invited my attention to a letter dated 10<sup>th</sup> January, 2005 by which the respondent nos.10 and 7 revoked the power of attorney executed in favour of the respondent no.2 on various grounds.

60. Mr.Godbole invited my attention to a letter of intent dated 14<sup>th</sup> July, 2007 issued by CIDCO in favour of all the legal heirs of the said Yeshwant V.

Deshmukh in respect of the land admeasuring 1650 sq. mtrs. bearing plot no.2 of section 19, Ulwe. On 31<sup>st</sup> October, 2007, CIDCO issued another letter of intent in favour of the legal heirs of all the said Yeshwant V. Deshmukh in respect of plot no.2, section 19-B admeasuring 4000 sq. mtrs. at Ulwe.

61. Learned counsel invited my attention to the letter dated 5<sup>th</sup> November, 2007 addressed by CIDCO to the respondent no.2 issuing letter of intent exclusively in the name of the respondent no.2 in respect of the land admeasuring about 4000 sq. mtrs. He submits that the said Corrigendum issued by CIDCO thereby issuing a letter of intent exclusively in the name of the respondent no.2 was not served upon the respondent no.1 and other legal heirs of the said Yeshwant V. Deshmukh. He submits that a copy of the said Corrigendum dated 5<sup>th</sup> November, 2007 was sent by CIDCO also to the Private Secretary of the then Chief Minister of Maharashtra. He submits that in the said Corrigendum, it was fraudulently mentioned that since the award was issued in the name of the respondent no.2 alone and since he had received the entire compensation, the said letter of intent was issued in his name.

62. Learned counsel for the respondent no.1 also invited my attention to some of the documents obtained by the respondent no.1 from CIDCO under the provisions of Right to Information Act in respect of the subject matter of the allotment of the suit property. He submits that the office of CIDCO had made a recommendation to change the letter of intent in favour of the respondent no.2 based on the recommendation received from Shri Bhai Jagtap, M.L.A., Shri Rajesh Tope, then Minister for State and Saint Om Shrisharanbasavling Shivyogi Maharaj, who had addressed letters to the then Chief Minister. It is submitted that on the basis of the recommendation made by the above referred persons, CIDCO had

changed letter of intent which was originally issued in favour of all the legal heirs of the said Yeshwant V. Deshmukh to the name of the respondent no.2 i.e. Shivaji Yeshwant Deshmukh.

63. Learned counsel invited my attention to the letter addressed by Saint Om Shrisharanbasavling Shivyogi Maharaj to the then Chief Minister in this regard. He submits that CIDCO obtained an indemnity from the respondent no.2 and fraudulently issued a Corrigendum and illegally changed the letter of intent exclusively in favour of the respondent no.2 without informing the other legal heirs of the said Yeshwant V. Deshmukh and even without communicating about the Corrigendum issued by CIDCO. He submits that CIDCO was fully aware of the joint ownership of all the legal heirs in respect of the suit property and thus could not have unilaterally issued the Corrigendum to the letter of intent. He submits that CIDCO issued further Corrigendum on 7<sup>th</sup> December, 2007 making further changes. A copy of the said further Corrigendum was also sent to the Private Secretary to the then Chief Minister and not to the other legal heirs of the said Yeshwant V. Deshmukh.

64. Learned counsel for the respondent no.1 invited my attention to the agreement to lease dated 11<sup>th</sup> December, 2007 executed between CIDCO and the respondent no.2 alone in respect of the suit property. He submits that in the entire agreement to lease, CIDCO as well as the respondent no.2 did not refer to the joint ownership of the other legal heirs of the said Yeshwant V. Deshmukh and about the final letter of intent issued jointly in the name of all the legal heirs by CIDCO. He submits that a copy of the said agreement to lease was never endorsed to other legal heirs of the said Yeshwant V. Deshmukh at any point of time.

65. It is submitted by the learned counsel for the respondent no.1 that surprisingly on 19<sup>th</sup> December, 2007 a tripartite agreement is entered into between the respondent no.2 and one Prashant R. Joshi, who claims to be the proprietor of Prathamesh Construction, respondent no.11 herein and CIDCO. He submits that admittedly the said Prashant R. Joshi was a Clerk working with CIDCO when the said tripartite agreement was entered into between the respondent no.2, CIDCO and said Prashant R. Joshi acting as a proprietor of Prathamesh Construction, the respondent no.11 herein. Learned counsel for the respondent no.2 also invited my attention to a letter addressed by CIDCO confirming the fact that the said Prashant R. Joshi, who was a party to the said tripartite agreement dated 19<sup>th</sup> December, 2007 was a Clerk in the office of CIDCO when the tripartite agreement was entered into between them.

66. Under the said tripartite agreement, the respondent transferred their alleged rights in the said property in favour of the respondent no.11. He submits that even in the said tripartite agreement, the other legal heirs of the said Yeshwant V. Deshmukh were not joined as parties, nor any reference was made in respect of their rights in the suit property. He submits that within less than 20 days from the date of execution of the said tripartite agreement dated 19<sup>th</sup> December, 2007 between the respondent no.2, CIDCO and respondent no.11, another tripartite agreement came to be executed on 7<sup>th</sup> January, 2008 between CIDCO, respondent no.11 and the appellant herein in respect of the suit property. He submits that even in the said tripartite agreement, there was no reference to the final letter of allotment, which was issued in favour of all the legal heirs of the said Yeshwant V. Deshmukh and their rights in the suit property.

67. It is submitted that the respondent no.11 himself had issued a public

notice on 2<sup>nd</sup> January, 2005 inviting the objections from the members of public in which the respondent no.11 had clearly mentioned that there were eight legal heirs of the said Yeshwant V. Deshmukh. Learned counsel for the respondent no.2 also invited my attention to the commencement certificate dated 28<sup>th</sup> August, 2009 issued by CIDCO in favour of the appellant for carrying out construction on the suit property. He submits that even in the said commencement certificate issued by CIDCO, it was made clear that the said commencement certificate was subject to the pending suit bearing Regular Civil Suit No.10 of 2009 which was filed by the respondent no.1 herein and made it clear that the order passed by the Court shall be binding on the appellant. He submits that the appellant thus cannot be claimed to be the bonafide purchaser for value without notice. He submits that inspite of the knowledge of the appellant that the other legal heirs of the said Yeshwant V. Deshmukh were claiming rights in the suit property and inspite of the specific condition imposed by CIDCO in the commencement certificate as far back as on 29<sup>th</sup> August, 2009, the appellant continued the construction on the suit property and thus the appellant cannot be allowed to plead any equity. He submits that the said suit No.10 of 2009 is now renumbered as Special Civil Suit No.209 of 2014.

68. It is submitted by the learned counsel for the respondent no.1 that the respondent no.1 had obtained various documents under the provisions of Right to Information Act from CIDCO and had produced some of these documents in the plaint. He submits that at the interference of the above referred politicians and Saint Om Shrisharanbasavling Shiviyogi Maharaj, CIDCO could not have changed the letter of intent which was in the joint name of all the legal heirs of the said Yeshwant V. Deshmukh to the respondent no.2 exclusive by committing a fraud upon the other legal heirs of Yeshwant V. Deshmukh. He submits that the allotment in favour of the respondent no.2 exclusively by CIDCO in respect of the

suit property is *per-se* illegal. He submits that the respondent no.1 had averred that CIDCO could not allot the suit plot exclusively in favour of the respondent no.2. He submits that the respondent no.1 has also challenged various tripartite agreements fraudulently entered into between CIDCO, respondent no.2, respondent no.10 and between CIDCO, respondent no.10 and the appellant.

69. It is submitted by the learned counsel for the respondent no.1 that neither the respondent no.11 nor the appellant herein could be considered as innocent purchasers for value and without notice. It is submitted that out of their alleged third party rights created in favour of 89 persons, the appellant has placed reliance on only 34 registered agreements. It is submitted by the learned counsel that the issues are already framed in the suit filed by the respondent no.10. Insofar as the suit filed by the respondent no.1 is concerned, the draft issues are already tendered. Both the suits are already clubbed. It is submitted by the learned counsel that since the respondent no.1, who has applied for partition of the suit property and his undivided share and since the other legal heirs of the said Yeshwant V. Deshmukh would be also entitled to their equal share in the suit property being the legal heirs of the said Yeshwant V. Deshmukh and for various reasons recorded aforesaid, the appellant cannot be allowed to carry out any further construction on the suit property as canvassed by the learned senior counsel for the appellant. He submits that in these circumstances, the learned trial Judge was justified in passing the impugned order, restraining the appellant and the respondent no.11 from carrying on any construction in the suit property on the suit plot. He submits that the learned trial Judge was also justified in passing an order of injunction restraining CIDCO from issuing any completion certificate in favour of the appellant.

70. Learned counsel for the respondent no.1 invited my attention to the *prima-facie* findings rendered by the learned trial Judge and would submit that the learned trial Judge has considered the entire documentary evidence and pleadings and has passed a detailed order while granting various interim reliefs in favour of the respondent no.1 and respondent nos.3 to 7, which cannot be interfered with by this Court. He submits that the respondent no.1 has no objection if hearing of the suit is expedited.

71. Mr.Godbole, learned counsel appearing for the respondent no.1, on instructions, submits that his client is ready and willing to give an undertaking before the trial Court that if the appellant succeeds in the suits filed by the respondent no.1 herein and the respondent no.10, his client would abide by the order of compensation, if any, awarded against his client by the learned trial Judge.

72. Ms.Godse, learned counsel for the respondent no.10, Mr.Keswani, learned counsel for the respondent nos.3 to 7 and 9 adopted the submissions made by Mr.Godbole, learned counsel for the respondent no.1. Learned counsel on instructions however, submits that their clients are not ready to produce any security as canvassed by the learned senior counsel for the appellant.

73. Learned counsel for the respondent no.11 submits that though his client was working as a Clerk in the office of CIDCO when the tripartite agreement was entered into in favour of his client, there was already a family business of his client and other family members to carry on business as Builder and Developer. He submits that he was also a *bonafide* purchaser for value and without notice.

74. Learned counsel for CIDCO submits that CIDCO had issued a Corrigendum to the letter of intent, only after the respondent no.2 executed an indemnity in favour of CIDCO. He submits that a Corrigendum was issued in favour of the respondent no.2 since the land acquisition award showed the name of the respondent no.2 and since he had collected the compensation in respect of the said land.

75. Mr.Dani, learned senior counsel for the appellant in re-joinder submits that after this Court refused to grant stay of construction in the appeal from order filed by the appellant and the respondent no.11, there was no change in circumstances on the basis of which the learned trial Judge could have passed an order restraining the appellant from carrying on any construction on the suit property. It is submitted by the learned senior counsel that out of 196 tenements proposed to be constructed on the suit property, 98 tenements are being allotted to the respondent no.11. He submits that if this Court proposes to grant any injunction from handing over possession of any part of the suit property, this Court shall grant an injunction against respondent no.11 and not the appellant.

76. It is submitted that if the appellant is not allowed to complete the balance construction and is not allowed to hand over possession of those 96 flats which came to the share of the appellant under the tripartite agreement, the appellant would face further litigation from those flats buyers under the provisions of The Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963. He submits that the learned trial Judge could not have passed such drastic order of stoppage of construction on the suit plot without providing any safeguard in favour of the appellant and without directing the respondent no.1 (original plaintiff) to secure the claim of the

appellant in case the appellant succeeds in the suit. He submits that the undertaking offered by the learned counsel for the respondent no.1 is not sufficient to secure the claim of the appellant if the appellant succeeds before the learned trial Court.

77. Ms.Godse submits that her client was not the signatory to any documents between CIDCO, respondent no.11 and the appellant and between the respondent no.2, CIDCO and respondent no.11. She submits that various nothings made in the file of CIDCO and various correspondence received by CIDCO from various politicians and Saint Om Shrisharanbasavling Shivyogi Maharaj to issue letter of allot in favour of the respondent no.2 were not available with her client when the said suit was filed by her client.

**REASONS AND CONCLUSIONS :**

78. There is no dispute that when the notification under section 4 of the Land Acquisition Act was issued by the Government in respect of the suit property, the original owner of the suit property i.e. Yeshwant V. Deshmukh was alive. There is also no dispute that the said Yeshwant V. Deshmukh expired leaving behind him eight legal heirs. A perusal of the award issued by the Land Acquisition Officer clearly indicates that the names of all the legal heirs were mentioned in the said award and more particularly page 134 of the compilation of documents filed by the respondent no.1. It was however, mentioned that the compensation be paid to the respondent no.2. Admittedly the respondent no.2 was a constituted attorney of the legal heirs of the late Shri Yeshwant V.Deshmukh, for the purpose of collecting compensation from the Government in respect of the suit property.

79. A perusal of the letters of intent dated 14<sup>th</sup> July, 2007 and 31<sup>st</sup> October, 2007 in respect of the two plots clearly indicates that those two letters of intent were issued by CIDCO in favour of eight legal heirs of the said deceased Yeshwant V. Deshmukh. The said allotment was subject to various conditions mentioned therein. These two letters of intent issued in favour of all the legal heirs of the said Yeshwant V. Deshmukh by CIDCO were not challenged by the respondent no.2 or by respondent no.11 or by the appellant.

80. A perusal of the letter of intent dated 5<sup>th</sup> November, 2007 issued by CIDCO indicates that the said Corrigendum is issued only in favour of the respondent no.2 in respect of 4000 sq. mtrs. plot. A perusal of the said letter of intent indicates that a copy of the said letter of intent was not even forwarded to any of the other legal heirs of the said Yeshwant V. Deshmukh. A copy of the said letter of intent however is marked to the Private Secretary of the then Chief Minister for information. With the assistance of the learned counsel for the respondent no.1, I have perused various notings made in the various correspondence exchanged between CIDCO, respondent no.2 i.e. Shivaji Yeshwant Deshmukh and the letter addressed by Saint Om Shrisharanbasavling Shivyogi Maharaj.

81. The recommendation made by the office of CIDCO indicates that the recommendation for issuance of Corrigendum in favour of the said Shivaji Yeshwant Deshmukh, respondent no.2 herein was based on various recommendations issued by CIDCO from Shri Rajesh Tope, the then Minister of State, Shri Bhai Jagtap and Saint Om Shrisharanbasavling Shivyogi Maharaj by addressing letters to the then Chief Minister for allotting the said plot of land in favour of Shivaji Yeshwant Deshmukh though there were 8 other legal heirs of the

said Yeshwant V. Deshmukh claiming the rights in respect of the suit property. CIDCO appears to have accepted the recommendations of Shri Bhai Jagtap, MLA, Shri Rajesh Tope, the then Minister of State and Saint Om Shrisharanbasavling Shiviyogi Maharaj in issuing the Corrigendum to the earlier final letter of intent which was issued in favour of all the legal heirs. It is surprising that CIDCO while issuing the Corrigendum did not even cancel the earlier final letter of intent, which was issued in favour of all the legal heirs of the said Yeshwant V. Deshmukh and did not even convey the said Corrigendum issued fraudulently in favour of the respondent no.2 alone. All the above persons appears to have played important role in illegal allotment of plot in favour of the respondent no.2.

82. A perusal of the record further indicates that the respondent no.2 appears to have executed an Indemnity (Hamipatra) on 12<sup>th</sup> November, 2007 which consist of five lines and does not refer to the subsisting claims of other legal heirs of said Yeshwant V. Deshmukh. The respondent nos.7 and and 10 vide their notices dated 10<sup>th</sup> January, 2005 and 7<sup>th</sup> April, 2006 had already cancelled the authority of the respondent no.2 to accept the suit plot to the extent of other co-sharers. The power of attorney in favour of the respondent no.2 was also cancelled. Some of the legal heirs had also addressed letters raising strong objection to CIDCO and calling upon CIDCO not to allot the suit plot in favour of the respondent no.2 as far back as on 8<sup>th</sup> December, 2004 and 20<sup>th</sup> June, 2005. The respondent no.11 himself had issued a public notice on 12<sup>th</sup> January, 2005, acknowledging that there were other legal heirs of the said Yeshwant V. Deshmukh, who was the original owner of the suit property.

83. In spite of these documents on record, including various objections raised by various legal heirs of the said Yeshwant V. Deshmukh to the knowledge

of CIDCO, it is surprising that CIDCO issued a Corrigendum without cancelling the earlier final letter of intent in respect of the suit property, exclusively in favour of the respondent no.2 in view of the involvement of Shri Bhai Jagtap, MLA, Shri Rajesh Tope, the then Minister for State and Saint Om Shrisharanbasavling Shivyogi Maharaj. CIDCO continued their illegal action in collusion with the respondent no.11 and respondent no.2, though had full knowledge that there were seven other legal heirs, who had share in the suit property, entered into a tripartite agreement with the respondent no.11, who was admittedly a Clerk working in the office of CIDCO. Within less than 20 days of the first tripartite agreement entered into between the said Clerk who himself had *prima facie* no right, title or interest to deal with the suit property, entered into tripartite agreement in favour of the appellant with CIDCO.

84. In the circumstances narrated aforesaid, I am not inclined to accept the submissions of the learned counsel for the appellant that the appellant was a *bonafide* purchaser for value without notice. In my *prima-facie* view, since the respondent no.2 alone did not have exclusive right, title and interest in the suit property, though CIDCO had illegally issued a Corrigendum thereby allotting the suit plot in his favour exclusively inspite of the documentary evidence on record showing the claim of the other legal heirs jointly in the suit property, no right, title or interest could have been created by him *prima-facie* in favour of the respondent no.11, who was working as a Clerk in the office of CIDCO in respect of the suit property. Consequently the respondent no.11 could not have *prima-facie* created right, title or interest in favour of the appellant herein.

85. Learned senior counsel for the appellant could not dispute that the commencement certificate issued by CIDCO in favour of the appellant as far back as on 28<sup>th</sup> August, 2009 was with an express condition that the said commencement certificate was subject to the outcome of the pending Regular Civil Suit No.10 of 2009 filed by the respondent no.1 herein for partition of the suit property and for various other reliefs, which is now renumbered as Special Civil Suit No.209 of 2014 and subject to the order that may be passed by the Court which shall be binding on the appellant. The appellant was impleaded as a party defendant also in suit filed by the respondent no.10 (Special Civil Suit No.35 of 2014).

86. In my view, the appellant has proceeded with the construction on the suit property in these circumstances at their own risks and subject to the outcome of Regular Civil Suit No.10 of 2009 (renumbered as Special Civil Suit No.209 of 2014) and subject to the orders as may be passed by the Court and thus cannot claim any equity. The Supreme Court also while disposing of the two special leave petitions vide order dated 8<sup>th</sup> December, 2015 had made it clear that the construction to be made by the appellant herein shall be at his own risk and responsibility and shall not create any equity and/or right upon the appellant. The said order was passed by the Supreme Court on 18<sup>th</sup> December, 2014.

87. In my view, the learned senior counsel for the appellant is not right in his submission that if the appellant is not allowed to complete the construction, it would cause undue hardship to the appellant and the flat purchasers or that the appellant will have to face further litigation from the flat purchasers under the provisions of The Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 in the facts and

circumstances of this case.

88. The next question that arises for consideration of this Court is whether the order passed by the learned trial judge restraining the appellant from carrying out further construction on the plot and directing CIDCO not to issue any completion certificate is proper and is justified after orders are passed by the Supreme Court or not.

89. It is not in dispute that the respondent no.1 had not only prayed for a declaration of the tripartite agreements as void and illegal but has also claimed 1/7<sup>th</sup> undivided share in the suit property. The respondent no.2 has not claimed any exclusive right, title and interest in the suit property claiming through the said Yeshwant V. Deshmukh. The respondent no.2 has also not disputed that in the land acquisition award, names of all the legal heirs of the said deceased Yeshwant V. Deshmukh were mentioned. He has also not disputed that the two letters of intent were issued jointly in the name of all the legal heirs of the said Yeshwant V. Deshmukh, including the respondent no.1 (original plaintiff) in Regular Civil Suit No.10 of 2009, now renumbered as Special Civil Suit No.209 of 2014 and the respondent no.10 (original plaintiff) in Special Civil Suit No.35 of 2015.

90. The said two letters of intent which were issued in the name of all the legal heirs of the said Yeshwant V. Deshmukh were not even cancelled. In my view, in these circumstances when all the three Courts have already taken a *prima-facie* view in favour of the respondent no.1 (original plaintiff) and against the respondent no.2, CIDCO, respondent no.11 and the appellant herein, if the appellant is allowed to continue the construction on the suit property, which is stopped since the date of the impugned order i.e. 30<sup>th</sup> April, 2016 and if is allowed

to hand over possession of any portion of the suit property to any of the flat purchasers as canvassed by the appellant and if the plaintiff and other legal heirs succeed in the suit for partition, execution of the decree of partition in their favour would not be possible.

91. I am thus not inclined to accept the statement of the learned senior counsel for the appellant that there is no change in the circumstances or that this Court can protect the interest of the respondent no.1, who claims only 1/7<sup>th</sup> share in the suit property by granting an injunction against the respondent no.11 alone from handing over possession of the suit property to any of the flat purchasers insofar as his 50% share in the structure constructed on the suit property is concerned.

92. Insofar as the submission of the learned senior counsel for the appellant that the learned trial Judge has not considered any submissions made by the appellant in the impugned order is concerned, in my view there is no substance in this submission made by the learned counsel for the appellant. The learned trial Judge has passed a detailed order after considering the pleadings, documents and the submissions made by both the parties. The learned trial Judge has *prima-facie* held that the respondent no.2 had illegally sold the suit property to the respondent no.11. It is held that though the respondent nos.7 and 10 had taken objection in writing before CIDCO not to make any allotment in favour of the respondent no.2, CIDCO did not consider the said objections and executed various documents in favour of the respondent no.11 and the appellant.

93. It is held that the appellant and the respondent no.11 had urged that they were *bonafide* purchasers of the suit property and had commenced the construction work on the suit plot and had also brought to the notice of the learned

trial Judge the photographs in that regard. The learned trial Judge held that inspite of the same, legal right of the respondent no.1 (the original plaintiff) and the other respondents in the suit plot could not be taken away. It is also *prima-facie* held that CIDCO also had not acted with clean hands and clean intention. It is held that though the appellant and the respondent no.11 had commenced construction work on the suit plot, since the respondent no.1 and other respondents if are deprived of their rights, they would suffer irreparable loss and thus the respondent no.1 was entitled to be granted injunction as prayed.

94. Insofar as the submission of the learned senior counsel for the appellant that though the respondent no.1 had admittedly not challenged the allotment of land by CIDCO in favour of the respondent no.2 and had claimed share in the suit plot of land allotted by CIDCO thus no interim relief could have been granted by the learned trial Judge is concerned, in my view, Mr.Godbole, learned counsel for the respondent no.1 is right in his submission that the respondent no.1 was not required to apply for cancellation of the letter of allotment in favour of the respondent no.2 itself on the ground that the respondent no.1 had challenged the tripartite agreements and also applied for partition of the suit property being one of the members of the joint family property and was entitled to an undivided share in the suit property.

95. A perusal of the impugned order passed by the learned trial Judge indicates that the learned trial Judge has considered various documents issued by CIDCO under the provisions of Right to Information Act in favour of the respondent no.2 pertaining to the process of allotment of the suit plot and execution of the tripartite agreements by CIDCO in favour of the appellant, the respondent no.2 and the respondent no.11. The learned trial Judge also considered

a letter filed at Exhibit 125/14, in which there was reference to the name of Shri Bhai Jagtap, the member of Legislative Assembly, Shri Rajesh Tope, the then Minister of State and Saint Om Shrisharanbasavling Shivyogi Maharaj.

96. After considering the documents produced for the perusal of the learned trial Judge, it is held that the respondent no.2 had made a request for allotment of the plot admeasuring 4000 sq. mtrs. without drawing a lot. The concerned officer of CIDCO had referred to the recommendation of the above referred persons while recommending to allot the plot of land exclusively in the name of the respondent no.2 with intimation to the office of the then Chief Minister. The learned trial Judge rightly observed that the respondent no.2 had got the plot allotted in his own name by using the powers of the Private Secretary of the then Chief Minister, the M.L.A. Shri Bhai Jagtap, the then Minister of State Shri Rajesh Tope and Saint Om Shrisharanbasavling Shivyogi Maharaj. The learned trial Judge also noticed that the Corrigendum issued by CIDCO in favour of the respondent no.2 thereby allotting the plot of land in favour of the respondent no.2 was not sent to the respondent no.1 and other legal heirs of Yeshwant V. Deshmukh but was forwarded to the Private Secretary to the then Chief Minister.

97. A perusal of the written statement filed by CIDCO before the learned trial Judge indicates that in the said written statement filed on 9<sup>th</sup> June, 2009, it was the case of CIDCO that the State Government had acquired the suit land having joint holding of Shivaji Yeshwant Deshmukh and others for the development of the new town of Navi Mumbai. It was also averred that till the date of filing of the said written statement, CIDCO had not issued any allotment letter to the original landholder. In my view, the subsequent allotment of plot of land in the name of the respondent no.2 by CIDCO while issuing a Corrigendum was based on such

recommendation letter issued by M.L.A. Shri Bhai Jagtap, the then Minister of State Shri Rajesh Tope and Saint Om Shrisharanbasavling Shivyogi Maharaj illegally. Such allotment issued by CIDCO in favour of the respondent no.2 was *ex-facie* contrary to the stand taken by CIDCO in the written statement filed by it before the learned trial Judge and also completely overlooking the objection raised by some of the legal heirs of the said Yeshwant V. Deshmukh.

98. In my view, the appellant cannot be allowed to proceed with the construction of the suit plot even at this stage in view of the fact that the suit for partition filed by the respondent no.1 and the respondent no.10 in respect of the entire property is pending. Even if the respondent no.2 could have transferred his 1/7<sup>th</sup> share in the said suit property, the purchaser thereof could not develop the suit property or any part thereof without partition of the property. In my *prima facie* view, there is substance in the plea of the respondent no.1 and the respondent no.10 in their respective suits *inter-alia* praying for partition of their undivided share. The construction on the suit plot which *prima-facie* belongs to seven owners thus cannot be permitted to be developed without consent of all the co-owners of the suit property.

99. It is not in dispute that the issues are already framed insofar as Special Civil Suit No.35 of 2014 filed by the respondent no.10 is concerned. The draft issues are already filed insofar as the suit filed by the respondent no.1 is concerned. Both the suits are already directed to be heard together. For the reasons recorded aforesaid, I am thus not inclined to interfere with the impugned orders passed by the learned trial Judge in these two appeals from order filed by the appellants.

100. The respondent no.1 and respondent no.10 however, shall be directed to execute an undertaking before the learned trial Judge within four weeks from today to the effect that if the appellant herein succeeds in those two suits or in the counter claim, if any, filed by the appellant and if any amount is directed to be paid by the respondent no.1 or by the respondent no.10 in those two suits or counter claim, they will pay the said amount to the appellant as may be directed.

101. I therefore, pass the following order :-

- a). Appeal From Order No.630 of 2016 and Appeal From Order No.629 of 2016 are dismissed. Hearing of Special Civil Suit Nos.209 of 2014 and 35 of 2014 is expedited.
- b). Respondent no.1 and respondent no.10 are directed to file an undertaking before the learned trial Judge within four weeks from today to the effect that if the appellant herein succeeds in those two suits or in the counter claim, if any, filed by the appellant and if any amount is directed to be paid by the respondent no.1 or by the respondent no.10 in those two suits or counter claim, they will pay the said amount to the appellant as may be directed and shall forward a copy thereof to the appellant and other respondents simultaneously.
- c). In view of dismissal of the aforesaid two appeals from order, Civil Application No.805 of 2016 and Civil Application No. 804 of 2016 do not survive and are accordingly disposed of.
- d). No order as to costs.

**[R.D. DHANUKA, J.]**