

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.961 OF 2015
with
CAA/1177/2015

Yogesh Mishra

... Appellant/Plaintiff

Vs.

M/s.Dreams Associates & Ors.

... Respondents

Mr.B.S. Mahajani for the Appellant
Ms.Aparna Shinde for Respondent No.3
Mr.D.A. Athavale for Resp. Nos.4 to 6

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **2nd FEBRUARY, 2016**

P.C.:

1. This Appeal from order challenges the order dated 22.4.2015 passed by the learned Civil Judge, Senior Division, Pune whereby the plaintiff, i.e., the plaintiff, has filed suit for specific performance being Special Civil Suit No.10 of 2014 against all the respondents. In the said suit, an application under Order 3 Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction against the defendants that they should not create third party right. Injunction was also sought against defendant Nos.4 to 6 i.e., CIDCO, from issuing permission to other defendant Nos.1, 2 & 3 or third party to develop the suit property or enter into tri-partite agreement with defendant No.3 or defendant Nos.1 and 2.

2. This is a routine matter in respect of 12.5% scheme of the land. The defendant No.3 is entitled to get benefit of the scheme of 12.5% which is implemented by CIDCO in respect of land owners whose lands are acquired for the purpose of Navi Mumbai project. Defendant No.3 is the land owner. He entered into Memorandum of Understanding with defendant No.2 on 19.7.2006 for which an amount of Rs.24 lacs was paid to the land owner, defendant No.3. On the basis of that Memorandum of Understanding, as the power of development under resale was given to defendant No.2 by defendant No.3, he entered into agreement with defendant No.1 on 17.4.2010 and thereafter defendant No.1 entered into an agreement of sale of the said suit plot in favour of the plaintiff by agreement dated 23.9.2010. The total consideration for that plot was fixed at Rs.1 crore out of which Rs.41,75,000/- was paid by the plaintiff to defendant No.1. Defendant No.2 was a confirming party to the said agreement. It is the case of the plaintiff that defendant No.3 had asked for more consideration and, therefore, there was agreement on 27.4.2010 between defendant Nos.1 and 2. In between, Letter of Intent was issued by the CIDCO on 8.6.2009. However, as defendant No.3 has not taken further steps and the plot was not allotted to the plaintiff, he filed Suit No.10 of 2014 for specific performance and asked for stay in order to avoid further transactions which may take place by defendant No.3, the owner of the land. The said application was rejected. Hence, this appeal.

3. The learned Counsel for the plaintiff / plaintiff has submitted that he has paid the amount Rs.41,75,000/- to defendant No.1 / defendant No.1 to which defendant No.2 is the confirming party. He submitted that defendant No.3, the original land owner, is at fault and he has not taken steps to get the plot allotted from CIDCO. He further submitted that defendant No.3 has received the full amount of compensation from CIDCO. He submitted that he has filed criminal case against defendant No.1 of cheating and Letter of Intent was issued in 2009. Though the Letter of Intent was issued in 2009, till today, the plot is not allotted by CIDCO. So, it is necessary for the Court to give directions and, therefore, he has filed the suit for specific performance.

4. The learned Counsel for the defendant No.2, the land owner, while opposing this Appeal from order, has argued that there is no privity of contract between defendant No.3 and the plaintiff. She submitted that she has not received any amount from the plaintiff and therefore she is not accountable to the plaintiff. She submitted that defendant No.2 has filed the suit. There is another litigation going on between the defendant Nos.2 and 3 in respect of the suit land. She further argued that the land is not yet allotted to defendant No.3. Under such circumstances, it is not a case to grant any injunction in respect of the plot which is not allotted yet.

5. The learned Counsel appearing for CIDCO has submitted that defendant No.3 is not an owner of the land but the owner is CIDCO, who has issued Letter of Intent of giving the plot on lease in favour of defendant No.3. He submitted that no order against CIDCO can be passed as CIDCO is free to allot the land and take decisions accordingly. There is no contract between CIDCO and the plaintiff.

6. Heard the submissions. Perused the documents especially the Memorandum of Understanding between defendant No.3 and defendant No.2 dated 19.7.2006. It is an admitted position that there is no direct contract between defendant No.3, the lessee and the plaintiff but the plaintiff is claiming through defendant No.1 and defendant No.1 is claiming through defendant No.2 who has originally entered into an agreement of development and Memorandum of Understanding with defendant No.3, the lessee. There are payments made by defendant No.2 to defendant No.3, so also by the plaintiff to defendant No.1. The agreement dated 23.9.2010 was between the defendant and the plaintiff for which defendant No.2 is the confirming party. Under such circumstances, it is necessary to see whether the Memorandum of Understanding or the agreement dated 19.7.2006 which was executed between defendant No.2 and defendant No.3, the lessee, confers power to defendant No.2 to develop or resale or assign the rights to defendant No.2 in respect of the suit plot or not. There was supplementary agreement between defendant No.3 and defendant

No.2 on 27.4.2010. My attention was drawn to the terms and conditions agreed by defendant Nos.2 and 3 wherein it was mentioned that defendant No.3 has accepted more money from defendant No.2 and, therefore, he is ready to assign or transfer the rights in the said plot in favour of any person as told by defendant No.2. Thus, this transaction is based on the transfer of assigned developmental rights. At this stage, there is no need to go into the merits of the suit but prima facie, the plaintiff has made out a case to grant relief in his favour. The learned Judge of the trial Court in para 13 of her order has stated that the plaintiff did not issue notice to defendant No.3 before filing the suit and has also stated that defendant No.3 did not agree to sell the property to defendant No.1 and, therefore, he had no right to sell the property. These observations are not correct considering the factual as well as the legal position and, therefore, the said order will have to be set aside. It is to be noted that when such transactions take place between the parties, the original land owner is likely to enter into further transactions and which may lead to multiplicity of litigation, hence, the order of injunction is necessary to arrest further chain of litigation.

7. Accordingly, the Appeal from order is disposed of with the following order:

- i) The impugned order dated 22.4.2015 is set aside;

ii) Defendant No.3, the lessee, and the other defendant Nos.1 and 2 are restrained from entering into any agreement with any other party and from creating any third party interest in the suit property and so also, shall not create any encumbrance in respect of the suit property.

iii) It is made clear that there is no order of injunction against the defendant – CIDCO.

8. In view of the above, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)