

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2127 OF 2016

IN

WRIT PETITION NO. 905 OF 2016

Reelicon Garden Grove Co-operative Housing
Society Ltd.

...Applicant

In the matter between

M/s. K.S. Developers

...Petitioner

Versus

The Competent Authority & Ors.

...Respondents

Mr. S.D. Thokade, i/b Jayesh Kocheta, for the Applicant.

Mr. Nandu V. Pawar, for Petitioner.

CORAM : K.K. TATED, J.

DATE : 18th October 2016

P.C. :

1. Heard the learned Counsel for the parties. This Application preferred by original Respondent No. 2 for an order of injunction restraining the Petitioner from making any new constructions and from creating any third party interest in the suit

property.

2. The learned Counsel for the Applicant submits that the Competent Authority by an order dated 6th November 2015 granted deemed conveyance in favour of the Applicant-Society. He submits that the deemed conveyance order challenged by the Petitioner before this Court. He submits that the Petition was admitted by this Court on 3rd March 2016. Paragraph 3 of the said order reads thus:-

“3. Further, it is clarified that in case the petitioner is obstructed from further construction, in terms of the plans which the petitioner claims to have already been approved on the basis of the Deemed Conveyance, the petitioner shall be at liberty to apply for appropriate interim relief in this petition. Such application, as and when made, will be considered on its own merits and in accordance with law.”

He submits that this Court permitted the Petitioner to continue the construction on the basis of approved sanctioned plan. He submits that the Petitioner started carrying out the construction activities on the basis of the sanctioned plan of the Authority which was sanctioned after the impugned order dated 3rd March 2016.

Hence, the Petitioner may be restrained by an order of injunction from carrying out any further construction and/or creating third party right. He further submits that this Hon'ble Court be pleased to direct the Petitioner to disclose in writing, the order dated 3rd March 2016 passed by this Court in the Writ Petition No. 905 of 2016, to the prospective purchasers of the tenements in Building "A". He submits that if the pendency of the present Writ Petition as well as the order dated 3rd March 2016 is not disclosed to the subsequent purchasers, it will be very difficult for the Applicant to take steps against the bona fide purchasers of flats/shops in Building "A".

3. On the other hand, the learned Counsel Mr. Pawar for the Petitioner submits that they started construction of Building "A" on the basis of sanctioned plan dated 25th January 2016 granted by Pune Municipal Corporation. He further submits that this Court by order dated 3rd March 2016 permitted the Petitioner to carry out the construction activities on the basis of already sanctioned plan. Hence, there is no question of granting any injunction restraining the Petitioner from completing the construction of Building "A" in the suit premises.

4. The learned Counsel for the Petitioner further makes a

statement that they have no objection to disclose pendency of the present Petition along with the order dated 3rd March 2016 to the prospective purchasers in Building “A”.

5. I heard both the sides at length. It is to be noted that this Court by order dated 3rd March 2016 permitted the Petitioner to continue the construction activities on the basis of already sanctioned plans. The Petitioner in his Affidavit in Reply specifically stated in paragraph 4 that they started construction on the suit land on the basis of sanctioned plan dated 25th January 2016, which is before passing order in Writ Petition.

6. Considering these facts, I do not find any reason to restrain the Petitioner from carrying out any construction activities.

7. The question about creating third party right in Building “A”, the learned Counsel for the Petitioner made a statement that they have no objection to disclose the prospective purchasers about the present litigation. On the basis of his statement, following order is passed:-

- (i) The prayer made by the Applicant for an order of injunction restraining the Petitioner from carrying out construction activities on the suit land in respect

Building “A” is rejected.

- (ii) The Petitioner is directed to disclose the present litigation as well as order dated 3rd March 2016 passed by this Court to the prospective purchasers in writing and also incorporate in Agreement for Sale and/or in other documents, if any.
- (iii) The Civil Application stands disposed of with these directions.

[K.K. TATED, J.]