

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

WRIT PETITION NO. 12848 OF 2016

M/s. Gera Developments Private Ltd and Anr. ..Petitioners.

Gera Emerald City and Ors. Vs .. Respondents

Mr. A.V. Anturkar, Senior Advocate, a/w Mr.Piyush Pande, i/by Mr. Sandeep M. Phatak, Advocates for Petitioners.

Mr. S.M.Gorwadkar, Senior Advocate, a/w N.Mogre a/w Mr. M.Singh a/w Vinayak Abhyankar, Advocates for Respondent no.1.

**CORAM : R.G.KETKAR,J.
DATE : 01/12/2016**

PC:

1. Heard Mr. A.V.Anturkar, learned senior counsel for the petitioners and Mr. S.M.Gorwadkar, learned senior counsel for respondent no.1 at length. On the motion made by Mr. Anturkar, leave to delete respondents no. 2 to 14 is granted as respondent no.1 who is original plaintiff is the only contesting respondent. Rule. Mr. Mogre waives service for the respondent. Having regard to narrow controversy and at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants no. 1(A) and 1(B), have challenged the Judgment and order dated

21.9.2016 passed by the learned 13th Jt. Civil Judge, Senior Division, Pune, below Exhibit-5 in special Civil Suit No. 1461 of 2015 as also the Judgment and order dated 21.10.2016 passed by the learned Ad-hoc District Judge-1, Pune in Misc. Civil Appeal No. 362 of 2016. By these orders, the Courts below allowed the application made by respondent no.1, hereinafter referred to as 'plaintiffs', and issued injunction restraining defendant no.1 from carrying out construction and creating third party interest in proposed third building 'Affinia' in layout of Survey No.66/1 to 5, Baner, Pune, till disposal of the suit.

3. In support of this petition, Mr. Anturkar advanced three-fold submissions. Mr.Gorwadkar also exhaustively advanced submissions. One of the grievances raised by Mr. Anturkar is that the learned District Judge has not properly considered the submissions advanced by the learned counsel appearing for the parties. He submitted that the learned District Judge has given reasons in paragraphs 13 to 15. In paragraph 14, the learned District Judge has merely reproduced facts from the area statement shown in the Plan sanctioned on 26/03/2007. In other words, the reasons are to be found only in paragraphs 13 and 15. Without considering the documents on record, the learned District Judge recorded a finding that the building 'Affinia' is constructed on the amenities space shown in the sanctioned Plan on 26.3.2007.

4. Mr. Gorwadkar fairly stated that the Judgment given by the learned District Judge is not satisfying and, therefore, the order passed by the learned District Judge may be set aside thereby directing the District Court to decide the Appeal afresh. Learned counsel for the parties jointly make request to transfer the Appeal to a Judge, other than the Judge who has passed the impugned order.

5. Learned counsel appearing for the parties state that the parties will appear before the learned District Judge on 5.12.2016. The learned Judge may be directed to dispose of the Appeal in a time bound manner.

6. In view thereof, by consent of the parties, Judgment and order dated 21.10.2016 passed by the learned Ad-hoc District Judge-1 Pune in Misc. Civil Appeal No.362 of 2016 is set aside. Misc.Civil Appeal No.362 of 2016 is restored to the file of the District Court, Pune.

7. Learned Principal District Judge is requested to assign the Appeal to a Judge other than the Judge who has passed the impugned order. By way of abundant caution, it is made clear that this does not cast any aspirations on the learned Judge who passed the impugned order.

8. Mr. Anturkar makes a statement that pending the Appeal, defendant no.1 will not create further third party interest. Statement made by Mr Anturkar, on instructions, is recorded. He

further states that Municipal Corporation has issued stop work notice on 5.8.2016. Defendant no.1 has filed reply to that notice. Till such time the Corporation takes decision on the stop work notice, defendant no.1 will not proceed with the construction. He further states that in the event the stop work notice is withdrawn, defendant no.1 will carry out construction at its own risk and without claiming any equity. Statements made by Mr. Anturkar, on instructions, are recorded. Defendant no.1 shall not carry out further construction till adjudication of the stop work notice dated 5.8.2016 issued by the Corporation. In the event the stop work notice is confirmed by the Corporation, defendant no.1 will not proceed with the construction during the pendency of the Appeal. In case the Corporation withdraws the stop work notice, defendant no.1 will proceed with the construction at its own risk without claiming any equity. Defendant no.1 will not further create further third party interest during pendency of the Appeal.

9. Parties agree that they will appear before the learned District Judge on 5.12.2016 and for that purpose no fresh notice be issued to them. The learned District Judge is requested to decide the Appeal as expeditiously as possible and preferably on or before 22.12.2016. It is made clear that grant of interim orders does not amount to any expression on merits either way.

10. Rule is made absolute in the aforesaid terms with no order

as to costs.

11. Parties including District Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)