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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (ST.) NO.769 OF 2014
IN
NOTICE OF MOTION NO.1516 OF 2011
IN
SUIT NO.1108 OF 2011**

Shivganesh Co-operative Housing Society ... Appellant
(Orig. Defendant No.2)
Vs.
Lokhandwala Infrastructure Pvt. Ltd. And Ors. ... Respondents

**WITH
APPEAL NO.567 OF 2015
IN
NOTICE OF MOTION NO.1516 OF 2011
IN
SUIT NO.1108 OF 2011
WITH
NOTICE OF MOTION (ST.) NO.2734 OF 2014**

M/s. Om Omega Shelters ... Appellant
(Orig. Defendant No.26)
Versus
Lokhandwala Infrastructure
Pvt. Ltd. and Ors. ... Respondents

Mr. Rahul Narichania, Senior Counsel a/w Mr. Vivek Joshi & M.S. Alya Khan and Mr. Hrushi Narvekar i/by Bharucha & Partners for the Appellant in APP/567/2015 and for the Respondent No.26 in Appl/769/ 2014.

Mr. Zubin Behram Kamdin I/by Mr. P.Y. Shankar for the Appellant in Appl/769/2014 and for the Respondent No.3 in App/567/2015.

Mr. Virendra Tulzapurkar, Senior counsel a/w Ms. Shama Mitra and Mr. Anil Rao i/by Wadia Ghandy & Co. for the Respondent No.1.

Mr.Jagdish Reddy for the Respondent No.27 in both Appeals.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 18th JULY, 2016

PC.

1 These Appeals can be disposed of by a common judgment and order. By the impugned order dated 30th October, 2014 the learned Single Judge has answered the preliminary issue of jurisdiction in favour of the original plaintiffs. Appeal No.567 of 2015 has been preferred by the original defendant No.26. Appeal (L.) No.769 of 2014 has been preferred by the defendant No.2 which is a co-operative society.

2 With a view to appreciate the submissions made across the Bar, a brief reference to the facts of the case will be necessary. Going by the case made out in the plaint, the substantive relief is sought in respect of the development agreement dated 10th August, 2013 executed by and between the Association of eligible Slum Dwellers of the property subject matter of the suit and the plaintiff (Lokhandwala Builders, a Partnership Firm). Before advertng to other facts, it will be necessary to make a reference to the prayers in the suit. Prayer (a) is for a declaration that the purported termination by the defendants of the said agreement dated 10th August, 2003 (for short “said agreement”) is null and void, non-est and not binding on the plaintiff. There is also a

declaration claimed that even termination of the irrevocable power of attorney of the same date is illegal, null and void, non-est and not-binding on the plaintiffs. A declaration is also claimed that the said documents are valid and subsisting and enforceable between the parties. Prayer (b) contains the substantive prayer regarding specific performance of the said agreement. Prayer (g) is in the alternative directing the defendant Nos.1 to 25 to pay damages of 108,50,00,000/- to the plaintiff. There are other consequential prayers in support of the prayer in the alternative for damages in terms of the prayer clause (g). The other prayers are for interim relief.

3 The ouster of jurisdiction of the Civil Court is pleaded on the basis of Section 42 of the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971 (for short “the said Act”). Apart from invoking Section 42, a reliance was also placed on Section 3A of the said Act of 1971 and Section 13 of the said Act of 1971. The learned Single Judge held that the plaintiff cannot be non-suited on the basis of the ouster of jurisdiction on the basis of the aforesaid provisions. The learned Single Judge observed that even if ultimately the Court accepts the plea of the defendants that the plaintiff is disentitled to specific performance of the contract, the Court can consider of granting damages in lieu of specific performance as prayed.

4 Both the learned counsel appearing for the Appellant have made a detailed submissions. In Appeal No.567 of 2015, the learned Senior Counsel for the Appellant has taken us through the pleadings and the impugned order and other documents on record. He submitted that apart from the issue of jurisdiction, in view of the orders passed by the Competent Authorities under the said Act of 1971, the plaintiff is dis-entitled to relief of specific performance and in any case, the relief of damages is not sought against the said Appellant.

5 The learned counsel in support of both the Appeals have invited attention of the Court to various orders passed by the Authorities as well as by this Court and the Apex Court. Firstly, our attention was invited to an order made by the Slum Redevelopment Authority dated 20th April, 2011. It is pointed out that the said order was passed in terms of the directions issued by this Court under order 28th January, 2011 passed in Writ Petition No.95 of 2011. Our attention is invited to the findings recorded by the SRA. It is pointed out that there was a gross delay and default on the part of the plaintiff from the year 2003 and in fact the plaintiff acted contrary to the terms and conditions of the suit agreement. Our attention is also invited to the findings recorded in the said order and in particular paragraph 39 which holds that the defendant No.26 was entitled to implement the slum rehabilitation project under Regulation 33(10) of the Development

Control Regulations (for short “DCR”). Our attention is also invited to the fact that the said order of the Slum Rehabilitation Authority (SRA) has attained finality. Our attention is also invited to the order dated 5th April, 2011 passed by the learned Single Judge on a Notice of Motion taken out in the same suit declining to grant ad-interim injunction. It is pointed out that even the said order has attained finality. The submission is that considering the provisions of the Section 3A and Section 13 of the said Act of 1971 as far as the entitlement of the Appellant to develop the scheme under Regulation 33(10) is concerned, it is the only SRA which can adjudicate upon the same. The submission is that in substance it was found by the SRA that the plaintiff has committed breaches and indulged in delay. The submission is that in view of the fact that the order of the SRA has attained finality, now the plaintiff is not entitled to develop the property under Regulation 33(10) of DCR and the exclusive right to develop is conferred on the defendant No.26. It is, therefore, submitted that only the SRA has jurisdiction to decide the issue of the breach of the terms and conditions of the suit agreement.

6 Another limb of argument canvassed by the Appellant is that while deciding the issue of jurisdiction, only the prayers made in the plaint cannot be seen and that the averments made in the plaint as a whole will have to be looked into. Relying upon the decision of the

Apex Court in the case of ***Church of North India Vs. Lavajibhai Ratanjibhai and others***¹, it was submitted that while examining the issue of jurisdiction of the Civil Court, the Court has to consider the nature of claim made in the suit in substance and not merely in form. The submission is that in substance, the prayer made by the plaintiff is with the object of seeking right to develop the property subject matter of the suit by implementing the scheme under Regulation 33(10). It is submitted that the said right has been already denied to the Plaintiff by the Competent Authority/SRA under the said Act of 1971 which is empowered to adjudicate upon the issue of entitlement. Our attention is also invited to the decision of the Division Bench of this Court in the case of ***Charu K. Mehta & Ors. Vs. Lilavati Kirtilal Mehta Medical Trust & Ors.***². Our attention is invited to what is held by the Division Bench in paragraph 50 of the said decision. Our attention is also invited to a well known decision of this Court in the case of ***Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel***³. This decision is pressed into service by arguing that a mere clever drafting cannot bring the suit within the jurisdiction of this Court. Reliance is also placed upon the well known decision of the Apex Court in the case of ***Dhulabhai Vs. State of Madhya Pradesh and another***⁴. It is submitted that as in the

1 (2005) 10 SCC 760

2 2013(1) Bom.C.R.23

3 AIR 1980 Bom. 123

4 (1968) 3 SCR 662

present case, express ouster of jurisdiction is pressed into service, the Court cannot examine the provisions of the said Act of 1971 to find out whether adequate or sufficient remedies are available. Perhaps this submission is canvassed in the light of the submission made by the plaintiff relying upon the claim made in the alternative for grant of a decree of damages. The scrutiny of the averments made in the plaint will show in fact the plaintiff is trying to seek a relief which could be granted only by the SRA in the light of the provisions of Section 3A and Section 13 of the said Act of 1971. Our attention is also invited to the observations made by the Division Bench of this Court in its Judgment⁵ in the Petition filed by the plaintiff and especially what is observed in paragraph 15 thereof wherein the Division Bench observed that such a dispute between a society and developer does not lie purely in the realm of a private contractual dispute. The dispute has consequences which go beyond private interests.

7 The submission of the learned Senior Counsel appearing for the original plaintiff is that at this stage, merits of the claim for specific performance cannot be seen. Inviting our attention to Section 42 of the said Act of 1971, he urged that only in cases where the Authorities under the said Act of 1971 have power to adjudicate upon the dispute, the exclusion of the jurisdiction of Civil Court will come

5 (2011) 3 Bom CR 240

into picture. He submitted that in any event, the Authorities under the said Act of 1971 are powerless to grant compensation/ damages to which the plaintiff will be entitled under the provisions of the Specific Relief Act, 1963 in the event the Court is not inclined to grant specific performance of the agreement.

8 We have given careful consideration to the submissions.
Section 42 of the said act of 1971 reads thus :-

“3A. Slum Rehabilitation Authority for implementing Slum Rehabilitation Scheme. -

- (1) Notwithstanding anything contained in the foregoing provisions, the State Government may, by notification in the Official Gazette, appoint an authority to be called the Slum Rehabilitation Authority for such area or areas or areas as may be specified in the notifications; and different authorities may be appointed for different areas.
- (2) Every Slum Rehabilitation Authority shall consist of a Chairman, a Chief Executive Officer and fourteen other members, all of whom shall be appointed by the State Government.

[(2A) Every Slum Rehabilitation Authority appointed under sub-section (1) shall be a body corporate by the name of “The Slum Rehabilitation Authority” and shall have perpetual succession and common seal; with power to contract, acquire, hold and dispose of property, both movable and immovable, and to do all things

necessary for the purposes of this Act, and may sue and be sued by its corporate name.]

[(3) The powers, duties and functions of the Slum Rehabilitation Authority shall be, -

- (a) to survey and review existing position regarding slum areas;
- (b) to formulate schemes for rehabilitation of slum areas;
- (c) to get the Slum Rehabilitation Scheme implemented;
- (d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slums.]

(4) The terms and conditions of appointment of the non-official members of the Slum Rehabilitation Authority shall be such as may be specified by the State Government.

(5) The Slum Rehabilitation Authority may appoint Committees consisting of its members and experts to facilitate its working and speedy implementation of the scheme prepared under section 3B.

13. Power of Competent Authority to redevelop clearance area .- (1) Notwithstanding anything contained in sub-section (1) of section 12 the Competent Authority may, at any time after the land has been cleared of buildings in accordance with a clearance order, but before the work of redevelopment of that land has been commenced by the owner, by order, determine to redevelop the land at its own cost, if that Authority is satisfied that it is necessary in the

public interest to do so.

(2) Where land has been cleared of the buildings in accordance with a clearance order, the Competent Authority, if it is satisfied that the land has been, or is being, redeveloped by the owner thereof in contravention of plans duly approved, or any restrictions or conditions imposed under sub-section (10) of section 12, or has not been redeveloped within the time, if any, specified under such conditions, may, by order, determine to redevelop the land at its own cost:

Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why the order should not be passed.”

Section 42 of the said Act of 1971 reads thus :-

42. Bar of Jurisdiction. -

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under this Act, to determine; and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

9 In the present case, the defendants are pleading express ouster of the jurisdiction of the Civil Court. Under Section 42 jurisdiction of the Civil Court has been excluded in respect of any

matter which the Appellate Authority, Competent Authority, Grievance Redressal Committee or Tribunal is empowered by or under the Act to determine. Heavy reliance was placed by the defendants on the order of the SRA which is dated 20th April, 2011. The said order upholds right of the defendant No.26 to implement the scheme under Regulation 33(10). What is material is the finding recorded by the SRA in paragraph 36 on page 950 of the Appeal No.567 of 2015. The SRA specifically declined to decide the issue of legality and validity of termination of the suit development agreement by specifically holding that SRA has no jurisdiction to decide the matter of civil nature and the jurisdiction lies before the competent Civil Court. As stated earlier, this order has attained finality.

10 Thus, the issue of legality and validity of termination of the suit agreement will have to be decided by the Civil Court. We have already made a reference to the prayers made in the plaint. Prayer (g) is for a decree for damages against the defendant Nos.1 to 25 in the event of specific performance is not granted.

11 Even the defendants cannot argue that the issue of legality and validity of termination of the suit agreement is either adjudicated upon by the SRA or that SRA has jurisdiction to adjudicate upon the said issue. The order of the SRA which has attained finality holds that it

has no jurisdiction to decide the issue of breach of the suit agreement. No statutory provision is shown to us which confer such a jurisdiction of SRA or any other Authority under the said Act of 1971.

12 In view of the series of the orders passed by this Court whether the plaintiff can ultimately prove that termination is illegal is altogether a different issue. The question is whether there is an express ouster of the jurisdiction of the Civil Court to grant prayer clauses which are incorporated in the suit such as a declaration, for specific performance and in the alternative for damages. Under the provisions of the Specific Relief Act, 1963 the plaintiff for specific performance is entitled to claim relief in the alternative, as grant of damages if the Court is not inclined to grant a specific performance. There is no power vested in any of the Authorities under the said Act of 1971 to grant the said reliefs to the plaintiff. The learned Single Judge in paragraph 18 of the impugned judgment has referred to Section 13 and has held that the termination of the suit agreement is a matter involving private *inter se* dispute and does not in any way concern any Authority exercising power under the said Act of 1971. What is material is the finding recorded by the learned Single Judge in paragraph 21 which reads thus :-

“21. This entire discussion as to whether or not public law remedies can be availed of in cases of rehabilitation

schemes where there may be private disputes between the society and the developer, but equally the actions of the Authority based on such disputes are under scrutiny, is quite besides the point in our case. Here, a developer has come before the Court essentially with a private dispute and has not challenged any action of the Authority or sought determination of any matter, which exclusively rests with the Administrator, Authority or Tribunal. What we are considering here is whether the jurisdiction of the civil court is barred and not whether the recourse to that jurisdiction is the only form of redress. The ratio of Lokhandwala Infrastructure (supra) has no application to the facts of our case.”

13 Even assuming that in the light of the order passed by the SRA eventually at the time of final hearing the plaintiff may be dis-entitled to any reliefs in the suit but that is no ground to throw away the suit on the ground of ouster of jurisdiction of Civil Court under Section 9 of the Code of Civil Procedure, 1908. As contended by the Appellants even if close scrutiny of the averments made, in the plaint is made it is impossible to come to the conclusion that the jurisdiction of the Civil Court to grant reliefs in terms of prayer clauses made in the plaint has been ousted and especially the relief of damages. The learned Single Judge has rightly observed that even assuming that in view of the orders passed by this Court and Apex Court, the plaintiff is held as dis-entitled to specific performance of the contract, the Court can very

well consider at grant of damages in lieu of specific performance after deciding the issue of legality and validity of the termination of the suit agreement.

14 Therefore, on plain reading of the averments made in the plaint and the reliefs sought in the plaint, we are unable to accept the submissions canvassed across the Bar regarding ouster of jurisdiction. In our view, the findings recorded by the learned Single Judge are correct and call for no interference as far as the issue of ouster of jurisdiction is concerned. Hence, we find no merit in both the Appeals and the same are accordingly dismissed with no order as to costs. We make it clear that the observations made in the judgment and order are only for the purposes of consideration of the issue of jurisdiction and no observations shall be considered as any adjudication made on the merits of the pending suits and other disputes between the parties.

(A.A. SAYED, J)

(A.S. OKA, J)