

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

FIRST APPEAL NO. 1228 OF 1998

Smt Gangubai Dinanath Ulvekar (deleted)
Shri Narandra Gupta & Anr ...Appellants

Versus

Shantilal Tejsi Shah & Ors ...Respondents

**WITH
FIRST APPEAL NO. 471 OF 2007**

Shanta Navinchandra Shah & Ors ...Appellants

Versus

Tejbai Tejshi Shah & Ors ...Respondents

**WITH
FIRST APPEAL NO. 375 OF 2007**

Narendra Gupta ...Appellant

Versus

Shanta Navinchandra Shah ...Respondent

**WITH
FIRST APPEAL NO. 1497 OF 2007**

Smt.Gangubai Dinanath Ulvekar ...Appellant

Versus

Shanta w/o.Navinchandra Shah & Ors. ...Respondents

WITH
FIRST APPEAL NO. 1664 OF 2002

Shanta Navinchandra Shah & Ors. ...Appellants

Versus

Smt. Gangubai Dinanath Ulvekar & Ors. ...Respondents

WITH
FIRST APPEAL NO. 1872 OF 2007

Shantilal Tejshi Shah & Ors. ...Appellants

Versus

Smt.Gangubai Dinanath Ulvekar & Ors. ...Respondent

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Mr.V.A.Thorat, Senior Advocate a/w.Mr.Vaibhav Sugdare, Mr.Amit Mehta i/b. Mahimtura & Co. for the Appellants in FA No. 1228 of 1998.

Mr. Shailesh Shah, Senior Advocate a/w. Ms.Mahek Bookwala, Mr. Abbas Zaidy i/b. Zohair & Co. for the Respondents in FA Nos. 1228 of 1998, 375 of 2007 and 1497 of 2007 and for the Appellants in FA Nos. 1664 of 2002, 471 of 2007 and 1872 of 2007.

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CORAM: MRS.MRIDULA BHATKAR, J.
DATE : DECEMBER 13, 2017

P.C.:

1. Learned Senior Counsel for the parties submit that the parties have worked out the matters pursuant to the Minutes of Order dated 13th December, 2017.

2. Learned Senior Counsel of both the sides have filed the joint affidavit of Ms.Shanta Navinchandra Shah, Ms. Pravina Mukundlal Shah, Surendra Navinchandra Shah and Jyotin Navinchandra Shah dated 13th December, 2017 and the affidavit of Mr.Narinder Gupta dated 12th December, 2017. The said affidavits are taken on record and marked as Exhibit 1 and Exhibit 2 respectively for identification. The learned Counsel for both the parties signed the Minutes of Order dated 13th December, 2017 for identification. The said Minutes of Order is taken on record and marked as Exhibit 3 for identification. The undertakings given in the affidavits by the parties are accepted. Learned Senior Counsel for both the parties confirm that pursuant to the Minutes of Order, Mr.Narinder Gupta, one of the appellants, has handed over pay order totaling an amount of Rs. 5 crores towards first installment as stated in the Minutes of Order to Shah Group.

3. In view of this, Minutes of Order is reproduced as under:

"1. In pursuance of an order dated 24th April, 2017, passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.12192 of 2017, filed by Mr. Narendra Gupta (also known as Narinder Gupta) in First Appeal No.1228 of 1998, the hearing of the Appeal had been expedited with a direction to dispose of the same preferably within three months. On account of protracted litigation for more than two

decades and on account of advanced age of Mr. Narinder Gupta, who is 71 years old, and of some of the members of Shah Group [that is, Ms. Shanta Navinchandra Shah, who is 82 years old and Ms. Pravina Mukundlal Shah, who is 77 years old] the parties agree to accept the decision of the Court which may be given by this Court so as to put an end to the disputes and differences and they (parties or their respective legal heirs, executors, administrators and successors) will not challenge the same in the higher Court for any reason whatsoever.

2. Perused the Affidavit dated 12th December 2017 of Mr. Narendra Gupta (also known as Narinder Gupta) and the Joint Affidavit dated 13th December 2017 of (i) Ms. Shanta Navinchandra Shah; (ii) Ms. Pravina Mukundlal Shah; (iii) Mr. Surendra Navinchandra Shah and (iv) Mr. Jyotin Navinchandra Shah and the said Affidavits are taken on record. In view submissions and averments made in the said Affidavits and after hearing the Counsel for the respective parties following order is passed by this Court;

3. Before the Bombay City Civil Court, there were four suits filed, details of which are as under:

(a) Suit No. 7318 of 1988

This Suit was brought by Gangubai Ulvekar (predecessor in title of Mr. Narinder Gupta) which sought a declaration of title and restraint against Tejbai Tejshi Shah (predecessor in title of (i) Ms. Shanta Navinchandra Shah, (ii) Ms. Pravina Mukundlal Shah, (iii) Mr. Surendra Navinchandra Shah and (iv) Mr. Jyotin Navinchandra Shah [hereinafter 'Shah Group']). This suit was decreed ex parte on 31 October 1990. The Shah Group filed First Appeal No. 1664 of 2002 against the Order dated 31 October 1990.

(b) Suit No. 7317 of 1988

This Suit was brought by Gangubai Ulvekar (predecessor in title of Mr. Narinder Gupta) which sought a declaration of title and restraint against Shantitlal Tejshi Shah and Deepak Rajnikant Shah (predecessor in title of (i) Ms. Shanta Navinchandra Shah, (ii) Ms. Pravina Mukundlal Shah, (iii) Mr. Surendra Navinchandra Shah and (iv) Mr. Jyotin Navinchandra Shah [hereinafter 'Shah Group']). This suit was dismissed on 30 March 1998. Mr. Gupta filed First Appeal No. 1228 of 1998 challenging the Order dated 30 March 1998. The Shah Group is forthwith made a party Respondent in First Appeal No. 1228 of 1998.

(c) Suit No. 5996 of 1985

This Suit was filed by Shah Group against Gangubai Ulvekar and Mr. Gupta seeking permanent injunction. The Suit was dismissed on 18 November 2006. Shah Group has filed First Appeal No. 471 of 2007 and Mr. Gupta has filed First Appeal No. 375 of 2007.

(d) Suit No. 2194 of 1992

This Suit was filed by Shah Group against Gangubai Ulvekar and Mr. Gupta seeking permanent injunction. The Suit was dismissed on 18 November 2006. Shah Group has filed First Appeal No. 1872 of 2007.

4. In pursuance of the Order dated 22nd June, 2017, passed in the above Appeals read with the Order dated 14th August 2017, public notice/s were jointly issued in Times of India [Mumbai Edition] on 24th August, 2017 and in Gujarat Samachar [Kutch Region] on 24 August 2017 by Mahimtura & Company, Advocates for Mr. Gupta and Zohair & Company, Advocates for the Shah Group

respectively, informing the pendency of the above respective Appeals for hearing and final disposal and inviting claims, if any, from the respective heirs or legal representatives of Smt. Gangubai Ulvekar or Smt. Tejbai Tejshi Shah/Shantilal Shah/Deepak Rajnikant Shah. I am informed by the Ld. Counsel for the respective parties that although the period of 21 days, as mentioned in the public notice/s having been expired, no adverse claims have been lodged with any of the Advocate/s on record for the parties herein or has been filed with this Court.

5. The possession of Narendra Gupta also known as Narinder Gupta (claiming under Gangubai Ulvekar alias Gangabai Ulvekar) being the Appellant in First Appeal No.1228 of 1998 (arising from BCCC Suit No. 7317 of 1988) and Respondent in (i) First Appeal No. 1664 of 2002 (arising from BCCC Suit No. 7318 of 1988), (ii) Appellant in First Appeal No.375 of 2007 (arising from BCCC Suit No. 5996 of 1985) and (iii) Respondent in First Appeal No. 1872 of 2007 (arising from BCCC Suit No. 2194 of 1992) in respect of the lands bearing Survey No. 55 (part) and Survey No. 56 (part) of village Nahur, taluka Kurla, Mumbai Suburban District and bearing the following CTS Nos.:

- (i) CTS No. 687;
- (ii) CTS proposNo. 689;
- (iii) CTS No. 690;
- (iv) CTS No. 692;
- (v) CTS No. 695;-
- (vi) CTS No. 696; and -
- (vii) CTS No. 693.

which totally admeasures 12,456.9 square metres or thereabout as per Mr. Gupta, being the Suit Lands do stand confirmed.

6. The claim of the (i) Ms. Shanta Navinchandra Shah, (ii) Ms. Pravina Mukundlal Shah, (iii) Mr. Surendra Navinchandra Shah and (iv) Mr. Jyotin

Navinchandra Shah, the Appellants in (i) First Appeal No 1664 of 2002 (arising from BCCC Suit No. 7318 of 1988), (ii) First Appeal No. 471 of 2007 (arising from BCCC Suit No. 5996 of 1985) and (iii) Appellant in First Appeal No. 1872 of 2007 (arising from BCCC Suit No. 2194 of 1992) in respect of Suit Lands on the basis of two separate sale deeds both dated 9th November 1979 cannot be sustained in law in view of the Order bearing No. C/ULC/D/7/SR/26/647/ WS.163/93 dated 19th February 1994, passed by the Competent Authority under the Urban Land (Ceiling & Regulation) Act, 1976. The Shah Group confirms that they have themselves not created any right, title or interest in respect of the Suit Lands in favour of any person.

7. In view of the above, the said Mr. Gupta do pay to Shah Group comprising of Shanta Navinchandra Shah; Pravina Mukundlal Shah; Surendra Navinchandra Shah and Jyotin Navinchandra Shah being the Appellants in First Appeal No.1664 of 2002, First Appeal No. 471 of 2007 and First Appeal No. 1872 of 2007, a lumpsum amount of Rs.22,00,00,000/- (Rupees Twenty Two Crore only), for not pursuing all their appeals (First Appeal Nos.1664 of 2002; First Appeal No.471 of 2007; and First Appeal No.1872 of 2007) and not opposing First Appeals No. 1228 of 1998; 375 of 2007 and 1497 of 2007 filed by or pursued by Mr. Gupta in the following manner:

- *Rs.5,00,00,000 (Rupees Five Crores Only) on 13th December 2017;*
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- *Rs.5,00,00,000 (Rupees Five Crores Only) on or before –30th January 2018;*
- *Rs.4,00,00,000 (Rupees Four Crores Only) on or before 15th March 2018;*

- *Rs.4,00,00,000 (Rupees Four Crores Only) on or before 15th May 2018; and*
 - *Rs.4,00,00,000 (Rupees Four Crores Only) on or before 15th June 2018.*
- (i) *Mr. Gupta (his heirs, legal representatives, executors and administrators) undertakes to this Hon'ble Court to pay the aforesaid aggregate amount of Rs.22,00,00,000/- (Rupees Twenty Two Crore only) on or before its respective dates by cheques as per the individual names equally amongst the Shah Group and the Shah Group either jointly or severally do pass a receipt of amount so received from the said Mr. Gupta. The full amount on receipt by all of them jointly or severally shall be deemed to be payment made to the entire Shah Group.*
- (ii) *Till the entire amount of Rs.22,00,00,000/- (Rupees Twenty Two Crore only) is paid in full to the Shah Group by the said Mr. Gupta there shall be a charge on the Suit Lands and the said Mr. Gupta shall not alienate or part with possession or create third party right in any manner in the constructed portion or encumber the Suit Lands or take development right certificate against surrendering any part of the Suit Lands. Equally, the Shah Group shall not create any right, title and interest or encumber or alienate the Suit Lands or any portion thereof.*
- (iii) *Till the payment of Rs. 14,00,00,000 (Rupees Fourteen Crores Only) is received by the Shah Group, Mr. Gupta will not be entitled to construct on any portion of the Suit Lands and, thereafter, Mr. Gupta may carry out construction on the Suit Lands but he shall not create in any manner third party rights in the Suit Land or constructed area*

till the entire amount is paid to the Shah Group.

- (iv) *Upon receipt of an aggregate amount of Rs.22,00,00,000/- (Rupees Twenty Two Crore only), the Shah Group forever acquit, release and discharge Mr. Gupta and release all their right, title and interest so far as the Suit Lands are concerned.*
- (v) *Upon payment of an aggregate amount of Rs. 22,00,00,000, Mr. Gupta will be entitled to enter his name into the property register cards in respect of all the CTS Nos. 687, 689, 690, 692, 693, 695, 696 (i.e. in respect of the Suit land). Mr. Gupta shall also then be entitled to make appropriate applications to the Office of Sub-Registrar of Assurances at Mumbai/Kurla/ Bandra/ Andheri for giving effect to this order as the Conveyance both dated 9th November 1979 in favour of the Shah Group cannot be sustained in law in view of the Order dated 19 February 1994, passed by Competent Authority under the Urban Land (Ceiling & Regulation) Act. 1976.*
- (vi) *Simultaneously upon receipt of the last payment of Rs.4,00,00,000 (on or before 15th June 2018), the Shah Group jointly or severally shall hand over to Mr. Gupta the Original Conveyance dated 20th January 1965 entered between Ratansey Karsandas and Others in favour of Shantilal Tejshi Shah and Deepak Rajnikant Shah in respect of some portion of the Suit Lands.*

8. In view of Mr. Gupta having been ordered herein by this Court to pay to the Shah Group as and by way of compensating their claim on the basis of the above referred Sale Deeds dated 9th November 1979 and for not prosecuting or defending the First Appeals, First Appeal No.1228 of 1998 filed by Mr. Gupta against the

Judgment and Order dated 30th March 1998, passed by the Bombay City Civil Court in Suit No.7317 of 1988 is hereby allowed and the Judgment of the trial Court dated 30th March 1998 is hereby set aside. Accordingly, the Suit No. 7317 of 1988 is decreed and there shall be a Decree in terms of prayer clauses (a) and (b) of Suit No.7317 of 1988 in favour of Mr. Gupta for which First Appeal No. 1228 of 1998 was filed by Mr. Gupta.

9. First Appeal No.1664 of 2002 filed by Shah Group against the Order dated 31 October 1990, passed in Suit No. 7318 of 1988 is hereby dismissed. Accordingly, the Judgement and Order dated 31st October 1990, passed by the Bombay City Civil Court in Suit No.7318 of 1988 is hereby confirmed. Accordingly, there shall be a decree in terms of prayer clauses (a) and (b) of Suit No. 7318 of 1988 in favour of Mr. Gupta for which First Appeal No. 1664 of 2002 was filed by Shah Group.

10. In view of the above, First Appeal Nos.1664 of 2002; First Appeal No.471 of 2007; and First Appeal No.1872 of 2007 filed by Shah Group do not survive and are disposed of accordingly with no Order as to cost.

11. Subject to payment of Rs.22,00,00,000 to Shah Group by Mr. Gupta he will then be entitled to withdraw the amount of Rs.62,71,742/- (Rupees Sixty Two Lakhs Seventy One Thousand Seven Hundred and Forty Two Only) along with accrued interest, if any, being the award/compensation deposited by the Special Land Acquisition Officer (3) in lieu of handing over possession of 1071.20 square metres from the Suit Lands in the pending LAQ Reference No.2 of 1997 or claim transfer of development rights/Floor Space Index

in respect thereof, as per the existing policy of the Government of Maharashtra. Accordingly, the minutes of the order dated 22nd November 2006, passed by the Hon'ble Bombay High Court in Notice of Motion No.298 of 2006 in LAQ Reference No.2 of 1997 would then enure in favour of Mr. Gupta.

12. Decree in terms of prayer clauses (a) and (b) in Suit No. 7317 of 1988 and prayer clauses (a) and (b) in Suit No. 7318 of 1988 shall be drawn up accordingly in favour of Mr. Gupta being the Appellant in First Appeal No.1228 of 1998 (arising from BCCC Suit No. 7317 of 1988) and Respondent in First Appeal No. 1664 of 2002 (arising from BCCC Suit No. 7318 of 1988).

13. In view of the above, First Appeal No. 1664 of 2002, First Appeal No. 471 of 2007, First Appeal No. 1228 of 1998 and First Appeal No. 1872 of 2007 are disposed of. Accordingly, all the civil applications filed therein are also disposed of.

14. Parties are at liberty to apply for any clarification or implementation of this order”.

4. In view of the Minutes of Order, all First Appeals are disposed of. Accordingly, decree is to be drawn in terms of the Minutes of the Order.

5. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)