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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 10327 OF 2017
WITH
CIVIL APPLICATION NO. 481 OF 2017

St Michael's Church, a Public Charitable Trust & ...Appellants
Anr

Versus

Our Lady of Mailankanni & Perpetual Succour ...Respondent

Mr SC Naidu, i/b Aniket Poojary, for the Appellants.

Mr Ashok Jain, i/b M/s. AV Jain & Associates, for Respondent No. 1.

CORAM: G.S. PATEL, J

DATED: 3rd July 2017

PC:-

1. Civil Application No. 481 of 2017 is filed seeking condonation of 154 days' delay in filing the Appeal from Order. For the reasons set out therein, the Civil Application is made absolute.

2. The Appellants were original Defendants Nos. 1 and 2A in the Suit. Appellant No. 1 is a Public Charitable Trust and Appellant No. 2 is its sole Trustee. Respondent No. 1 was the original Plaintiff and is a cooperative housing society. Respondent No. 2, original Defendant No. 3, is a firm of developers. Respondent No. 3, another

cooperative housing society, was the original 4th Defendant, while Respondent No. 4 was original Defendant No. 5. It is the Housing Board.

3. The Notice of Motion was actually the third round of litigation between these parties. The Notice of Motion was earlier dismissed on 11th September 2014. In Appeal, it was remanded. It was decided afresh on 4th May 2016, and once again dismissed. That order too was successfully challenged. The Notice of Motion went back again. This time, in its third hearing, the Plaintiffs obtained a restraint order in terms of prayer (b) of the Notice of Motion, preventing the Defendants from carrying out further construction.

4. The issue in this case, as in many cases involving developments of large and complex layouts, was whether, having regard to the provisions of the Maharashtra Ownership Flats Act (“**MOFA**”), the Plaintiffs were entitled to stop the Defendants from carrying on additional construction. The Plaintiffs, invoking well-known precedents on the subject, claimed that they had not given their ‘informed consent’ to the additional construction, and that the Defendants were attempting illicitly to load extra FSI or TDR on plot for additional construction contrary to what had been promised to the Plaintiffs. The Defendants contended that the additional buildings were part of an original layout of about 20 buildings. The construction was being done in phases. Fifteen buildings were demolished and their occupants put into possession; what remained (and yet remains) was the completion of remaining five buildings. This is all that the Defendants were doing. The

Defendants also said that because of an amendment to the governing statute there is a component of construction required to be delivered to MHADA for public housing. This is not an option; the Defendants say they must deliver this MHADA construction.

5. The result of the restraint of course is that further development is prevented, but the impact of that restraint is perhaps felt by persons other than the Defendants —those to whom accommodation in the remaining five buildings was promised, and, of course, also to MHADA, which will not be able to get its public housing constructed component. At the same time, allowing construction to proceed would conceivably cause irrevocable and irreversible prejudice to the Plaintiffs. If that construction proceeds, the Plaintiffs' suit is rendered almost certainly infructuous.

6. The correct course in this situation, in my view, is neither to go into the Appeal at this stage nor to remand the matter yet again but to continue the present order until the final disposal of the Suit, while directing that the Suit be heard on priority. That it must be given priority is a matter about which I have no doubt at all. The housing accommodation is, if not fully, at least in significant part for lower income groups and affordable housing is a social welfare initiative, and demands the highest priority. A private concern of parties such as the Plaintiffs cannot be override a public concern such as affordable public housing, provided, of course, that the additional public housing construction component is legitimate and within the four corners of the law.

7. I am informed that the Plaintiffs have moved a Chamber Summons to have the issues recast. That is a wholly unnecessary procedure. Issues can be recast at any time, even at the time of delivering judgment. There is no question of wasting time in replies and rejoinders in such a Chamber Summons. The learned Judge will consider that application even it is made orally provided sufficient notice is given.

8. The matter is before the Trial Court on 28th July 2017. Parties will appear before the Trial Court on that day. The Trial Court is requested to immediately issue directions for filing of evidence, documents, discovery and inspection. The Trial Court is requested to endeavour to complete the trial and render judgment no later than by 15th December 2017.

9. The interim order will continue pending the final disposal of the Suit, and, should the Suit be dismissed, for a period of four weeks thereafter.

10. The Plaintiffs on their part assure me that there will be no delay on their account. They undertake not to seek adjournments on the ground of the convenience of their Advocates', witnesses or themselves. The Trial Court is requested to keep the parties, their Advocates and witnesses on as strict and unyielding a schedule as possible. No party shall complain of lack of opportunity if the Court refuses an adjournment. All parties agree to abide by these terms.

11. The Appeal from Order is disposed of in these terms. No costs.

(G. S. PATEL, J)