

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1262/2017
IN
WRIT PETITION NO.4098/2017

Mangesh Shivram Gosavi ... Applicant/Intervener

Vs.

Lodha Developers Pvt Ltd. & Ors. ... Respondents/Petitioner

Mr. Dinyar Madon, Senior Advocate i/b Deepak Punamiya for the applicant

Mr. P. D. Dalvi for the respondent / petitioner

Mr. Cyrus Ardeshir with Prachi Dhanani with Shyam Gopal i/b. Veritas Legal for respondent No.1

Mrs. V. S. Nimbalkar, AGP for respondent No.2.

CORAM : K. K. TATED, J.

DATE : JULY 11, 2017

PC.:

1. Heard. By this Civil Application, the applicant is seeking direction to the petitioner to add the applicant as respondent in the Writ Petition. The applicant is also seeking a direction to restrain the petitioner society from preventing them from entering Flat No.B-3501 which was purchased by them from the Builder by registered sale deed dated 02.02.2017 and occupy the same by carrying out internal work or any other work as admissible in law.

2. This court, by order dated 14.06.2017 restrained the society by an order of injunction from interfering and/or restraining the applicant from entering and occupying Flat No.B3501, Lodha Imperia CHS Ltd., B.R.Paint, Link Road, Bhandup (W), Mumbai – 400 078 (said flat).

3. The learned senior counsel for the applicant submits that the applicant is a *bona fide* purchaser of the suit flat. He submits that the Municipal Corporation has already granted occupation certificate dated 27.11.2012 for society's building. Hence, there is no question of any unauthorised construction carried out by the Builder. He submits that as the petitioner society has prevented them from entering and/or occupying the same and carry out internal work, they made the Civil Application.

4. The learned senior counsel for the applicant submits that, in the present proceedings, the petitioner society is challenging the order passed by the Assistant Registrar, Cooperative Societies, S-Division dated 11.01.2017. He submits that bare reading of the order dated 11.01.2017 shows that the respondent No.1 Developer was owner of the said flat and same was purchased by the applicant by registered sale deed. He submits that by order dated 11.01.2017 the authority has restrained the petitioner society from interfering with the possession of the developer in respect of Flat No.A-3502 and B-3501. He submits that being a *bona fide* purchaser, the applicant is entitled to occupy the said flat and carry out internal work permissible in law. He submits that if any order is passed in the Writ Petition, same is going to affect their right, title and interest. Hence, they are interested/necessary parties in the present Writ Petition.

5. The learned counsel for respondent No.1 Builder submits that they filed Affidavit-in-Reply in the Civil Application. He submits that there is no question of unauthorised construction carried out by the

developer. He submits that the developer has already obtained occupation certificate dated 27.11.2012. Moreover, the petitioner society used to issue monthly maintenance bills to them. In support of this contention, he relies on Exhibit- G, page 55 to 58 of the Affidavit-in-Reply. He further submits that respondent No.1 used to pay those maintenance bills from time to time. In support of this contention, he relies on the receipts issued by the petitioner i.e. page 59 to 62 of the Affidavit-in-Reply. He submits that in the bills, the petitioner society has specifically written that the those flats were unsold. This itself shows that the petitioner had knowledge that the builder has carried out construction according to law and same is unsold. Therefore, there is no question of preventing the applicant from entering the suit premises and to occupy the same, as he is a *bona fide* purchaser as per sale deed dated 02.02.2017. He further submits that if any order is passed in the petition filed by the petitioner in this court, same is going to affect the right, title and interest of the applicant. Hence, the applicant is necessary party in the present proceedings. Therefore, the Civil Application be made absolute directing the petitioner to join the applicant as party respondent and restrain them from interfering with the applicant's occupation and from carrying out internal work, if any.

6. On the other hand, the learned counsel for the petitioner vehemently opposed the Civil Application. They filed the Affidavit-in-Reply. The main contention of the petitioner is that respondent No.1 builder has carried out construction in refugee area. Hence, same is unauthorised. Apart from that, it is the contention of the petitioner that the Assistant Registrar, Cooperative Societies, S-Division, Mumbai has no authority to pass the impugned order dated 11.01.2017

restraining the petitioner from interfering with possession of respondent No.1 Developer.

7. The learned counsel for the petitioner submits that, the respondent No.1 made an application dated 19.11.2016 with Dy. Registrar for direction to the society for access to their Flat Nos.A-3502 and B-3501. He submits that the petitioner had immediately filed their reply dated 02.01.2017 opposing any order being passed by the Asstt. Registrar. He submits that though the petitioner raised several objections in their reply including authority of the Assistant Registrar, he passed impugned order dated 11.01.2017 and entertained the application made by the respondent No.1 Builder. Same was challenged by them by filing the present Writ Petition.

8. The learned counsel for the petitioner submits that in the Writ Petition, this court (Coram : R. G. Ketkar, J.) by order dated 11.04.2017 directed respondent No.1 not to carry out any construction in refugee area without obtaining any permission from the petitioner society. He submits that in view of the order dated 11.04.2017, there is no question of directing the petitioner to allow the applicant to occupy and carry out internal work, if any, in the suit premises.

9. The learned counsel for the petitioner submits that as per Order I Rule 10 of the Code of Civil Procedure, 1908, the applicant is not necessary party in the Writ Petition . He submits that they are claiming relief against respondent No.1 Builder for constructing suit flat in the refugee area. Therefore, there is no substance in the civil application and it is liable to be dismissed with costs.

10. Heard both sides at length. In the present proceedings, the petitioner challenges the order dated 11.01.2017 passed by the Assistant Registrar, Cooperative Societies, S-Division, Mumbai holding that the petitioner cannot restrain respondent No.1 from entering the suit premises. It is to be noted that, the applicant is a *bona fide* purchaser who purchased the suit flat on 02.02.2017 by a registered sale deed. Apart from that the Corporation has already issued occupation certificate in respect of the building on 25.11.2011. Said occupation certificate reads thus :

“BRIHANMUMBAI MAHANAGARPALIKA

No. CE/1157/BPES/AS

25 OCT 2011

To,
M/s. Lodha Developer Pvt. Ltd.
C.A. to Owner
Lodha Pavilion,
Apollo Mills Compound,
N.M. Johsi Marg,
Malalaxmi,
Mumbai – 400 011

Subject : Part Occupation permission to the residential building i.e, Wing A & B Comprising of Basement + Stilt + 1st & 2nd Podium for parking + 1st to 34th upper floor on plot bearing CTS No.445A, 545, 545/1, 546, 546/1, 546/2 & 547B of village Kanjur, at Tank Road, Bhandup (W).

Sir,

The full development work of the residential building ie. wing "A & B comprising of Basement +Stilt 1st and 2nd Podium for parking +1st to 34th upper floor on plot bearing CTS No.445A, 545, 545/1, 546, 546/1, 546/2 & 547B of village Kanjur, a Tank Road, Bhandup (W) is completed

under the supervision of Licensed Surveyor Shri. Shashikant L. Jadhav , havinig Licence No.J/167/LS and Licensed Structural Engineer Shri Alpa R, Sheth, having Licence No.STR/S/139 may be occupied on the following conditions.

- 1. That certificate under Sec 270-A of the Mumbai Municipal Corporation Act shall be submitted before applying for B.C.C. or within 3 months whichever is earlier.*
- 2. That the balance. IOD/AP/Layout conditions shall be complied with before asking for full occupation or B. C.C. whichever is earlier.*
- 3. That the registered co-op. Hsg. Soc. Shall be formed & copy of the society The registration shall be submitted to this office before applying for BCC.*

A set, of certified completion plans is returned herewith in token of Municipal approval.

Note - This permission is issued without prejudice to actions under sections 305, 353- A of Mumbai Municipal Corporation Act.

*Yours faithfully,
Sd/- 15.10.11
Executive Engineer
(Building Proposals)(E.S.) II"*

11. Bare reading of the occupation certificate shows that the Municipal Corporation has granted occupation certificate in respect of the suit flat also. Therefore, if any order is passed in the present Writ Petition, that may be against respondent No.1 Builder but same is going to affect the right, title and interest of the applicant. Hence, the applicant is necessary party in the Writ Petition.

12. Apart from that, the applicant being *bona fide* purchaser of the suit flat and also the society was issuing monthly maintenance bills in

respect of the suit flat, they are entitled to occupy the same and carry out internal work, if any.

13. Considering these facts, I am of the opinion that the applicant has made out a case for allowing the civil application.

14. Hence, following order is passed:

a. The petitioner is directed to join the applicant as respondent No.5 in the Writ Petition within one week from today.

b. If amendment is not carried out within stipulated time as stated hereinabove by the petitioner, the advocate for the applicant is directed to carry out amendment in the cause title of the petition.

c. If amendment is carried out within stipulated time as stated hereinabove, the advocate for the petitioner is directed to serve the amended copy of the petition on the applicant or their advocate thereafter immediately.

d. Till further orders, the petitioners are restrained from interfering with the right, title and interest of the applicant of Flat No.B-3501.

e. Civil application stands disposed off accordingly.

f. No order as to costs.

JUDGE