

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER No. 663 OF 2017**

|                                 |                 |
|---------------------------------|-----------------|
| Reliance Infrastructure Limited | ... Appellant   |
| Vs.                             |                 |
| Clover Grove CHS Ltd. & Ors.    | ... Respondents |

Mr. Sarosh Bharucha a/w. Ms. Bhavna Singh, Mr. Paresh Patkar i/b.  
M/s. Mulla & Mulla & CB&C, Advocate for the appellant.  
Mr. Jitendrakumar G. Damani, Advocate for respondent no.1.  
Mrs. Madhuri More, Advocate for respondent No. 2.

**CORAM: MRS.MRIDULA BHATKAR, J.**  
**DATE: 27<sup>th</sup> November, 2017.**

**P.C.:**

Admit. By consent, the Appeal is heard finally and disposed of at the stage of admission.

2. This Appeal from Order is directed against the order dated 6<sup>th</sup> February, 2017 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 1250 of 2015 in L.C. Suit No. 1064 of 2015 thereby granting temporary injunction restraining defendant no.1, i.e., appellant from installing the sub-station of 33/11 KV on an area of 300 sq. mts. on the plot of respondent no.1/Society.

3. The respondent No. 1/original plaintiff is a Cooperative Housing Society who has filed the suit against the defendant no.1/appellant.

The appellant/defendant No. 1 is going to construct electric sub-station. Respondent no.1/defendant No. 2 is the Municipal Corporation who sanctioned the plan of sub-station and respondent no.3/defendant No. 3 is a builder/developer who wants to develop the layout on the entire plot of approximately over 2 Hectares wherein the respondent No. 1/plaintiff-society is having a portion of the land admeasuring 5676 sq.mtrs. The building of appellant/Society is constructed in the year 2011 and 227 flat purchasers are occupying the building since 2011. Thereafter as the respondent No. 3/builders wanted to develop the remaining plot, he entered into Lease Agreement with appellant/defendant No. 1 for the purpose of installation of 33/11 KV sub-station for supply of electricity to all the buildings including the proposed buildings in the entire layout. Today, there is already one sub-station occupying 60 sq.mtrs. area.

4. It is the case of the respondent no.1/Society that due to installation of sub-station by the appellant/defendant No. 1, the area of 300 sq. mtrs. of their Society will be consumed by the appellant which is used by the members of the Society as parking place. The learned trial Judge has restrained defendant no.1/appellant from constructing the sub-station and hence, this Appeal.

4. The learned counsel for the appellant has submitted that the challenge given by the respondent No. 1/plaintiff to the layout sanctioned by respondent no.2/Corporation is on three grounds- firstly, that the land for sub-station belongs to the Society; secondly, the O.C. is given by respondent No. 2/Corporation in favour of the Society and said space is used as a parking place, and thirdly, at the time of submitting the plan, neither the appellant nor respondent No. 3 have obtained no objection of respondent no.1/plaintiff. The learned counsel has submitted all these three grounds are baseless. There is no privity of contract between the appellant and respondent no.1/Society. The respondent No. 3/builder has right to develop the entire layout and for the purpose of supplying electricity to 11 buildings, installation of sub-station is necessary. The plaintiff-Society also will be benefited due to installation of the sub-station. He further submitted that the Society has no right in the said area of the plot. He argued that the members of the Society are not using that space for parking their vehicles and moreover, respondent No. 3/builder has provided another place for parking vehicles, so no inconvenience will be caused to the Society members. He further submitted that under the D.C. Regulation, the respondent no.2/Corporation has given permission to install the sub-station and

there is no illegality in the action of the appellant. He further submitted that appellant is having possession receipt since 2009 and they executed registered Lease Deed with respondent No. 3 in the year 2014.

5. The learned counsel for the respondent No. 1/original plaintiff has supported the order passed by the learned Judge of the City Civil Court and has submitted that the members of the respondent/Society are using the same space for parking their vehicles since 2011 when the possession of the respective flats is given. The Society was registered in the year 2011. He further submitted that at the time of Agreement under Maharashtra Ownership of Flats Act, respondent No. 3 have shown the same place and promised to give for parking at the same place and the Corporation has confirmed the said O.C. Plan. He further submitted that the Corporation should not have sanctioned the said plan when the consent or NOC of the respondent No. 1/Society was not obtained.

6. Heard the submissions. Perused the reasoned order passed by the learned Judge. Though there is a registered Lease Deed between the appellant and respondent no.3/builder, there is a privity

of contract under MOFA between respondent No. 3 and members of the respondent no.1/Society wherein the parking space is promised and shown on the same plot. It appears *prima facie* that the members of the Society who are 227 in number, are using the same space for parking their vehicles, then shifting of the place may cause inconvenience to them. The view taken by the learned Judge that whether respondent No. 3 can shift the parking in such a manner without consent of respondent No. 1/Society when the building of the Society is already completed in 2011 as per the plan, can be decided only after considering the evidence, is found correct and hence no interference is required in the order passed by the learned trial Judge.

7. The learned counsel informs that written statement is filed by the appellant/defendant No. 1, however, it is not filed by respondent No. 3. Considering the short issue involved in the matter, the trial Court may endeavour to expedite the suit.

8. Appeal from Order is dismissed.

**(MRIDULA BHATKAR, J.)**