

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 416 OF 2013

IN

SUIT NO. 173 OF 2013

**Intercom Investments & Finance Pvt.Ltd.)
A Company registered under the Companies Act) 1956, having its registered office at Ararat, 89,)
Nagindas Master Road, Fort, Mumbai – 400 001)**

**..... Applicants/
Original Plaintiffs**

IN THE MATTER BETWEEN

**Intercom Investments & Finance Pvt.Ltd.)
A Company registered under the Companies Act) 1956, having its registered office at Ararat, 89,)
Nagindas Master Road, Fort, Mumbai – 400 001)**

..... Plaintiffs

Versus

1. Sagolite Industries,)
A registered partnership firm having its address)
at Plot No.3, J.P.Udyog Bhavan, Saki Vihar Road,)
Saki Naka, Mumbai – 400 072)

2. Hiralal Gobindram Lalwani,)

3. Nirmala Pritamdas Lalwani,)

4. Jyoti Nandlal Lalwani,

5. Sunil Pritamdas Lalwani,

6. Pritamdas Gobindram Lalwani,)
Karta of P.G.Lalwani (HUF) Nos. 2 to 6 are)
Partners of Defendant No.1 having office at)
Plot No.3, J.P.Udyog Bhavan, Saki Vihar Road,)
Saki Naka, Mumbai 400 072)

7. Metal India Industries,)
 Both registered partnership firms both having)
 their addresses at Plot No.3, J.P.Udyog Bhavan,))
 Saki Vihar Road, Saki Naka, Mumbai – 400 072)
8. Pritamdas Gobindram Lalwani,)
9. Nandlal Gobindram Lalwani,)
10. Rani Hiralal Lalwani,)
11. Sanjay Pritamdas Lalwani,)
12. Navin Nandlal Lalwani,)
13. Avinash Hiralal Lalwani,)
 Nos. 8 to 13 are Partners of Defendant No.7,)
 having office at Plot No.3, J.P.Udyog Bhavan,)
 Saki Vihar Road, Saki Naka, Mumbai 400 072) Defendants

Mr.G.R.Joshi, Senior Advocate, a/w. Mr.Piyush Raheja, Mr.Hemang Raythattha,
 Mr.Jayesh Mistry, i/b. RMG Law Associates for the Plaintiffs/Applicants.

Mr.Gautam Ankhad, a/w. Ms.Nishita Mohanty, Mr.Hemant Sethi, i/b. Hemant
 Sethi & Associates for the Defendants.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 10th NOVEMBER, 2017

PRONOUNCED ON : 30th NOVEMBER, 2017

JUDGMENT :

By this notice of motion filed by the applicants (original plaintiffs),
 the plaintiffs seek an order and direction against the defendants to jointly and/or
 severally forthwith restore the possession of the said property described in Ex.A to
 the plaintiff being the land together with structures, for appointment of the Court
 Receiver as a receiver of the suit property and for an injunction against the

defendants from alienating, encumbering, dealing with, selling and/or transferring and/or creating third party rights over the suit property and any part thereof and/or parting with possession thereof. Some of the relevant facts for the purpose of deciding this notice of motion filed in a suit under section 6 of the Specific Relief Act, 1963 are as under :-

2. Defendant nos. 1 and 7 are the owners of the suit property described as suit village at Mohili, Taluka Kurla, MSD, bearing CTS No.5/8 admeasuring 2741.50 sq.mtrs. alongwith the structures. It is the case of the plaintiffs that on 26th February, 2004 the plaintiffs and defendants executed a Development Agreement in respect of the suit property for the joint development of the said property. On 25th February, 2004 the defendants executed an irrevocable power of attorney in favour of the plaintiffs and its directors. On 30th August, 2004, the parties executed a Supplemental Development Agreement for use of the Development Rights Certificate. The defendants have alleged to have paid a sum of Rs.75 lacs to the plaintiffs for purchase of the said Development Rights Certificate.

3. On 19th January, 2005, the Municipal Corporation of Greater Mumbai issued Intimation of Disapproval (IOD). On 28th February, 2005, the Municipal Corporation of Greater Mumbai issued commencement certificate. It is the case of the plaintiffs that in the month of March 2005, the defendants demolished the existing structures and handed over vacant and peaceful possession of the said property to the plaintiffs and thereafter the plaintiffs obtained various permission, sanctions and approvals from various authorities required for carrying out construction on the suit property. In the month of April 2005, the plaintiffs commenced construction in the suit property and constructed basement

admeasuring 11000 sq.ft., on ground floor 8500 sq.ft. and on first floor 8500 sq.ft. It is the case of the plaintiffs that on 16th October, 2006 the plaintiffs handed over the portion of the ground floor admeasuring 1000 sq.ft. to the defendants for godown and continued to be retain possession of the balance portion of the suit property. During the period 2006-07, the plaintiffs obtained various permission including NOC from Ministry of Tourism and Police for construction of an Apartment Hotel. The Municipal Corporation of Greater Mumbai thereafter sanctioned revised plans duly signed by the defendants on 29th October, 2007 for construction of Apartment Hotel.

4. It is the case of the plaintiffs that Ginger Hotels thereafter made negotiations with the plaintiffs and on its own behalf and on behalf of the defendants in the month of August 2009. A meeting took place between the defendants and the plaintiffs to consider the offer of Ginger Hotels and appointment of security guards. The plaintiffs permitted the defendants to appoint additional security guards on the suit property at their own cost on 19th August, 2009. The defendants have acknowledged about such permission granted by the plaintiff.

5. The defendants however sought to terminate the said Development Agreement on 18th October, 2009. It is the case of the plaintiffs that the defendants however admitted that they were in possession of only 1000 sq.ft. premises as godown. During the period between October 2009 till November 2012, various meetings had alleged to have taken place between the parties when the defendants had alleged to have waived termination. It is the case of the plaintiffs that further development could not take place as there was *inter-se* disputes between the partners or brothers of the defendants and accordingly the defendants had asked

the plaintiff not to proceed with the development as the *inter-se* disputes were coming to an end.

6. It is the case of the plaintiffs that however on 17th November, 2012, with the help of 20 goons, the defendants entered the suit property with an intention to dispossess the plaintiffs. The plaintiffs lodged a police complaint. The local police station recorded the statement of the representative of the plaintiffs and also inspected the site and prepared a report. The concerned police station however did not provide any copy of such report to the plaintiffs. On 19th November, 2012, some more goons were alleged to have sent by the defendants to the suit property to dispossess the staff of the plaintiffs and thereby entry and exit of the plaintiffs and its staff was stopped. The plaintiffs lodged a complaint to the police station regarding that incident also.

7. It is the case of the plaintiffs that on 20th November, 2012 at 00.15 hours, the plaintiffs lodged a complaint to the police station alleging that the defendant has dispossess to the plaintiffs. The police recorded only an N.C. and not FIR against the defendants. The plaintiffs accordingly filed this suit on 26th November, 2012 *inter alia* praying for restoration of the possession of the suit property under section 6 of the Specific Relief Act, 1963.

8. Mr. Joshi, learned senior counsel for the plaintiffs invited my attention to various provisions of the Development Agreement, various annexures to the plaint and also to the affidavit in reply and rejoinder filed by the defendants and in the plaint. He submits that under the said Development Agreement, the plaintiffs were put in vacant possession of the suit property. The defendants have admitted that the plaintiffs had handed over possession of the area admeasuring about 11000

sq.ft. to the defendants as godown on 16th October, 2006. He submits that unless the plaintiffs would have been handed over the possession of the suit property to the defendants, the plaintiffs could not have carried out construction on portion of the suit property including the portion of the ground floor admeasuring 1000 sq.ft. which was handed over by the plaintiffs to the defendants duly constructed. He submits that the rest of the suit property was all throughout in possession of the plaintiffs exclusively till the plaintiffs were forcibly dispossessed by the defendants on 17th September, 2012 with the help of their goons.

9. Learned senior counsel invited my attention to a letter dated 7th December, 2009 sent by the defendants through their advocates to the advocates and solicitors of the plaintiffs contending that the licence granted to the plaintiffs to enter upon the suit property by the defendants had come to an end. He submits that it is not the case of the defendants in any of the correspondence or in the affidavit filed before this court that the suit property was abandoned by the plaintiffs at any stage. Learned senior counsel also invited my attention to the correspondence exchanged between the architect appointed by the plaintiffs and the Municipal Corporation. He submits that the defendants have wrongly contended that the said correspondence was addressed by the architect of the plaintiffs behind the back of the defendants and without their knowledge. He submits that the said letter dated 30th June, 2012 was issued by the architect to the plaintiffs after so called termination of the Development Agreement by the defendants which would indicate that the defendants had not pressed the said letter of termination and had withdrawn the same.

10. It is submitted that the defendants have admittedly not terminated the power of attorney or an agreement with the architect. He submits that the

defendants themselves had asked the plaintiffs to deploy their security guards which would clearly indicate that not only the plaintiffs were in exclusive possession of the suit property but had also deployed its own security guards on the suit property on the date of defendants seeking such permission from the plaintiffs for deploying their additional security guards. Learned senior counsel invited my attention to some of such invoices annexed by the plaintiffs to the plaint in support of the submission that even after so called termination of the Development Agreement, the plaintiffs had deployed the security guards which continued till the date of dispossession of the plaintiffs by the goos of the defendants. He submits that all such security guards were already made payment from time to time. He also invited my attention to the electricity bills and also photographs of the suit property annexed to the plaint.

11. In support of his submission that even if any licence was created in favour of the plaintiffs as canvassed by the defendants under the provisions of the Development Agreement, the fact remains that the exclusive and vacant possession of the suit property was handed over by the defendants to the plaintiffs and the title in respect of the suit property would be irrelevant for the purpose of deciding the suit under section 6 of the Specific Relief Act, 1963. Learned senior counsel placed reliance on the judgment of Supreme Court in case of **Krishna Ram Mahale vs. Mrs.Shobha Venkat Rao, (1989) 4 SCC 131** and in particular paragraphs 6, 8 and 9, judgment of Supreme Court in case of **Rame Gowda vs. M.Varadappa Naidu and another, (2004) 1 SCC 769** and in particular paragraphs 8 and 9. He also placed reliance on the unreported judgment of this Court delivered on 2nd July, 2008 in case of **Mumbai International Airport Pvt.Ltd. vs. Indamer Company Pvt. Ltd. & Anr. in Appeal from Order No.418 of 2008** and in particular paragraph 37.

12. Learned senior counsel for the plaintiffs also placed reliance on the order dated 20th January, 2014 passed by this court in case of ***Arun Bhaskar Adarkar vs. Mrs. Mina Srinivasan Krishnan & Anr. in Notice of Motion No.1548 of 2011 in Suit No.1173 of 2011*** and in particular paragraphs 2, 6, 7, 10 and 14 and would submit that the plaintiffs were under juridical and settled possession of the suit property on the date of the dispossession of the plaintiffs by the defendants on 17th December, 2009 without due process of law and is thus entitled to file a suit under section 6 of the Specific Relief Act, 1963 and is further entitled to seek restoration of the possession at this stage.

13. It is lastly submitted by the learned senior counsel that even if this court comes to the conclusion that both the parties did not produce any clinching evidence to show their respective possession in respect of the suit property on the date of the dispossession of the plaintiffs, even in that event, the suit property has to be protected by this court by appointment of the Court Receiver or by passing an order of status-quo against the parties otherwise the suit filed by the plaintiffs under section 6 of the Specific Relief Act, 1963 would be infructuous. He submits that the balance of convenience is in favour of the plaintiffs and not in favour of the defendants. The plaintiffs have spent substantial amount on carrying out construction of the suit property. The construction was however stalled in view of the discussion which went on for quiet sometime between the parties to convert the said proposal of the re-development into the hotel project. He submits that no prejudice would be caused to the defendants.

14. Mr. Gautam Ankhad, learned counsel for the defendants on the other hand invited my attention to some of the provisions of the Development

Agreement dated 26th February, 2004 and Supplemental Development Agreement, power of attorney dated 30th August, 2004 and the documents annexed to pleadings. He submits that the said Development Agreement was already terminated by the defendants on 14th October, 2009 including the licence granted to the plaintiffs to enter into the suit property for the purpose of carrying out development thereon. He submits that since the date of termination of the Development Agreement, the plaintiffs had no alleged vested right of any nature whatsoever on the suit property. He submits that since July, August 2008 itself, the plaintiffs had abandoned the suit property and was not on the suit property even as a licensee.

15. Learned counsel for the defendants invited my attention to a purported Deed of Declaration dated 30th January, 2010 which was got registered by the plaintiffs with the Sub-Registrar of Assurances. He submits that the plaintiffs have committed fraud upon the defendants by getting such purported declaration deed registered. He invited my attention to those documents annexed to the plaint and would submit that the Development Agreement and the Supplemental Agreement were admittedly not registered were allegedly annexed to the declaration deed which were actually not registered even with the declaration deed after termination of the Development Agreement by the defendants. The plaintiffs is trying to show that even the said Development Agreement and Supplemental Agreement were also registered. He submits that the plaintiffs have fabricated the seal of the Office of the Sub Registrar of Assurances and illegally put such seal on the copy of the Development Agreement and Supplemental Agreement alleged to have been annexed to the said Deed of Declaration which was registered on 30th January, 2010. He submits that the plaintiffs have not come to this court with clean hands and have fabricated documents and have forged the seal of the Registrar of Assurances and thus he is not entitled to the relief in the notice of motion on that

ground itself. He also placed reliance on the certificate issued by the Sub Registrar of Assurances in this regard forming part of the record in support of the submission that the seal of the Registrar of Assurances was fabricated by the plaintiffs and that the Development Agreement and the supplemental agreement were not registered. He submits that the said Declaration Deed was admittedly not signed by the defendants. In the said alleged Deed of Declaration, the plaintiffs have suppressed about the termination of the Development Agreement.

16. Learned counsel for the defendants invited my attention to the averments made in the plaint by the plaintiff and more particularly on a paragraph on page 9 of the plaint alleging that the Development Agreement was registered and would submit that the said averment is *ex-facie* false. The plaintiff has come to this Court with a false case. It is submitted by the learned counsel that the plaintiff was granted a limited right by of licence to enter upon the suit property for the purpose of carrying out construction. In support of this submission, he placed reliance on clause 12, 18 and 35 of the Development Agreement. He submits that the Development Agreement is already terminated by the defendants as far back as on 14th October, 2009. Neither the said Development Agreement nor the Supplemental Agreement nor the Power of Attorney were ever registered. The plaintiff had no funds to carry out any development activity on the suit property. He submits that this fact is brought on record by the defendants in the said letter of termination dated 14th October, 2009.

17. Learned counsel also invited my attention to the reply to termination notice issued by the plaintiff's advocate on 26th October, 2009 admitting that the plaintiff had been put to financial constraint as the plaintiff had not been able to raise the funds from their bankers to proceed with the development of the property.

He also invited my attention to a paragraph on page 142 of the plaint which was a reply dated 26th October, 2009 given by the plaintiff's advocate recording that the defendants are in use and occupation of the ground floor for godown and office. In paragraph 11 of the said reply, the plaintiff has contended that the defendants had already taken occupation of part of the property in part performance of the agreement. The plaintiff did not give any reply to the instructions issued by the defendants not to enter upon the suit property.

18. Learned counsel for the defendants invited my attention to the reply dated 23rd November, 2009 from the plaintiff's advocate to the advocates for the defendants alleging for the first time that the plaintiff had been in possession as the developers under valid, subsisting and binding agreement for valuable consideration which allegations were denied by the defendants vide their advocates' reply dated 26th November, 2009. The defendants vide their advocates' letter dated 7th December, 2009 denied the allegations of the plaintiff that the plaintiff was in possession of the suit property.

19. Learned counsel for the defendants invited my attention to the bills of the alleged security services at Exhibit F-1 and F-2 annexed to the plaint on pages 86 to 106 and would submit that none of those bills would indicate that any security members were deployed by the plaintiff during that period on the suit property. The description of the property on those bills is totally vague. No address of the suit property is mentioned at all. He submits that on page 90 of the plaint, the bill is allegedly issued by Zcop Security Services, which was another security services. The said alleged bill would show that the said bill was for the month of December, 2009. He invited my attention to the bill dated 1st December, 2009 annexed as Exhibit F-6 on page 91 of the plaint issued by Roshan Enterprises for

the month of November, 2009. He submits that the alleged bills annexed to the plaint would itself indicate that those bills are fabricated and are filed with a view to create a false evidence. He invited my attention to an averment made in paragraph (K) on page 15 of the plaint. He submits that no affidavit of the said Ex-men's Services Bureau Private Limited, who was allegedly dispossessed by the defendants from the suit property has been filed.

20. Learned counsel for the defendants invited my attention to the electricity bill annexed as Exhibit-G in the month of September, 2006, and would submit that the said bill would not indicate that the plaintiff was in possession of the suit property on the date of the alleged dispossession. Learned counsel for the defendants placed reliance on the photographs annexed as Exhibit-H to the plaint and would submit that those photographs does not show any office of the plaintiff on the suit plot. The photographs would also not show possession of the plaintiff in respect of the suit plot. Insofar as the letter dated 15th August, 2009 annexed at page 125 of the plaint as Exhibit-N from the defendants to the plaintiff is concerned, it is submitted that the said letter was prior to the date of termination of the agreement. Learned counsel for the defendants invited my attention to the averments made in paragraph 21 and would submit that the defendants had posted their own security guards on the suit property and those security guards continued on the suit property till date. The defendants have been incurring the expenses of securing and protecting the said property. The plaintiff had deployed the security guards on site who had left the site after termination of the contract on 14th October, 2009. The plaintiff has not denied the statements of the defendants in their advocate's notice dated 14th October, 2009 while terminating the Development Agreement that the defendants were in possession of the suit property.

21. Learned counsel for the defendants invited my attention to various electricity bills annexed to the written statement for the period September, 2009 to October, 2012 that is for the period even prior to the date of termination of the Development Agreement showing payments made by the security guards agency by cheques. He also placed reliance on the vouchers dated 10th July, 2009 showing payment of Rs.5,000/- towards the electricity connection made by the defendants. The defendants had also applied for new electricity connection on the suit property and has annexed relevant documents on pages 317 to 321 of the written statement. The defendants have also annexed the electricity bills on pages 322 to 388 and also proof of payments made by the defendants in respect of the suit property. The defendants have annexed the photographs as Exhibit-F to the written statement in support of their plea that they were always in possession. The defendants have also made payment to the Municipal Corporation towards Mosquito treatment. The Municipal Corporation had issued the notice on 18th July, 2012 upon the defendants for payment of Mosquito treatment. The defendant had made that payment to the Municipal Corporation and has annexed the receipt dated 29th October, 2012. The defendants have also annexed water taxes bill from the year 2009 onwards on pages 399 to 422 and property taxes bills. The defendants have also made payment of land revenue taxes and have annexed those bills on pages 424 to 434.

22. Learned counsel for the defendants also invited my attention to a notice issued by the defendants to the Municipal Corporation for tree cutting on the suit property and the bills for the construction of compound wall annexed on pages 435 to 442 and 443 respectively.

23. Learned counsel for the defendants placed reliance on the judgment of the Privy Council in case of ***Richard J. Kirby vs. John J. Cowderoy, (1912) Appeal Cases 599*** and in particular on relevant paragraph on page 602. He submits that the plaintiff has not filed the suit for specific performance of the Development Agreement. The plaintiff has not paid any taxes and has already abandoned the site and vacated it much before the date of alleged dispossession. He also invited my attention to the averments made in paragraphs (FF) and (GG) of the plaint insofar as the issue of termination is concerned. Learned counsel for the defendants invited my attention to the averments made in the plaint by the plaintiff and more particular in paragraph (HH), (JJ) and (KK) alleging forcible dispossession of the plaintiff by the alleged goons of the defendants on 17th November, 2012.

24. Learned counsel for the defendants placed reliance on the police complaint dated 20th November, 2012, filed by Mr.Rajkumar Yadav on behalf of the plaintiff with police station alleging that he was working as a security guard at the place of business of Mr.Amit J.Dholakia. In the said complaint, it was alleged that on 19th November, 2012 at 5:00 p.m., the accused i.e. Mr.Sunil Lalwani, defendant no.5, had a quarrel with the complainant and he abused him and had pushed him. It is submitted that the said complaint is totally in variance with the averments made in the plaint and more particularly paragraph (JJ) and (KK). He submits that in the said police complaint, the said complainant has not alleged any dispossession of the plaintiff or any servants or agents of the plaintiff, including the said security guard, who was allegedly in possession of the suit property. He submits that in the said complaint, it is alleged that the quarrel had taken place on 19th November, 2012 at 5:00 p.m. The plaintiff had also filed a criminal proceedings against the defendants based on such complaint before the learned

Magistrate, which is dismissed.

25. The said complainant thereafter filed a separate complaint before the Sessions Court. In the said complaint, it was alleged that the said security guard was deployed with another agency viz. Vishal Security Force and was not working with Ex-Mens' Security Force, who was deployed at site by the plaintiff. He also invited my attention to the statement of the said complainant recorded before the concerned police officer, who in his statement informed that for last one and half year he was working with Vishal Security Force. Learned counsel submits that the proceedings for seeking investigation was filed under section 156(3) of the Indian Penal Code also came to be dismissed. Learned counsel invited my attention to the observations made by the learned Metropolitan Magistrate while rejecting the complaint filed under section 203 of the Code of Criminal Procedure.

26. Learned counsel for the defendants placed reliance on the following judgments in support of the aforesaid submissions :

- 1). ***S.P. Chengal Varaya Naidu (Dead) By L.Rs. vs. Jagannath (Dead) by L.Rs. & Ors. (1994) 1 SCC, 1.***
- 2). ***Amar Singh vs. Union of India & Ors. (2011) 7 SCC, 69.***
- 3). ***Maria Margarida Sequeira Fernandes & Ors. vs. Erasmo Jack De Sequeira (Dead) through L.Rs. (2012) 5 SCC 370 (paragraphs 94 to 97).***
- 4). ***Bagadia Builders & Developers, Thane vs. Defense Civilians Co-op. Hsg. Soc. Thane & Ors. (2010) 6 Mh.L.J. 841 (paragraphs 2, 5, 6 and 9).***

27. Learned counsel for the defendants distinguished the judgment of the Supreme Court in case of **Krishna Ram Mahale** (supra) and also the judgment of the Supreme Court in case of **Rame Gowda** (supra). Learned counsel also distinguished the judgment of this Court in case of **Arun B. Aadarkar** (supra) and would submit that the said judgment would in fact support the case of the defendants and not the plaintiff. He relied upon paragraphs 6, 7 and 10 of the said judgment.

28. Mr. Joshi, learned senior counsel for the plaintiff in rejoinder made an attempt to distinguish the judgment of the Supreme Court in case of **Maria Margarida Sequeira Fernandes & Ors.** (supra) on the ground that the said judgment was not dealing with the suit under section 6 of the Specific Relief Act, 1963. He also placed reliance on paragraphs 95 and 97 of the said judgment and would submit that the facts before the Supreme Court in the said judgment were totally different. Similarly judgment in case of **Bagadia Builders & Developers, Thane** is also distinguished on the same ground. In the said suit, the claim was filed based on the title and not under section 6 of the Specific Relief Act. He submits that this Court cannot go into the title in this case.

29. It is submitted that under the provisions of the Development Agreement, it is clearly recorded that vacant possession of the suit property was handed over to the plaintiff. The suit property is thus required to be protected. He submits that admittedly the defendants were handed over possession of the area admeasuring 1000 sq. ft. on the ground floor on 16th October, 2006. The physical possession of the plaintiff cannot be disputed by the defendants on the date of the alleged dispossession. The parties are required to lead evidence in the matter. He

submits that it is an admitted position that the plaintiff had permitted the defendants to deploy the additional security guards which would indicate that the plaintiff was in possession of the suit property and had deployed its own security guards.

30. Insofar as reliance placed on the electricity bills produced by the plaintiff is concerned, it is submitted that since the plaintiff had applied for permission to convert the project into a hotel business, the consumption of the electricity on the suit property was only around 100 units every month which in any event would not show possession of the defendants.

31. Insofar as the bills relating to payment of property taxes relied upon by the defendants is concerned, it is submitted that the defendants being the owner of the suit property, were liable to pay the taxes and in any event such payment of taxes would not indicate that the defendants were in possession of the suit property on the date of dispossession of the plaintiff. Insofar as the construction of the compound wall is concerned, it is submitted that the said compound wall was constructed by the defendants after dispossessing the plaintiff and would not show possession of the defendants on the date of dispossession. He submits that if the reliefs in the notice of motion are not granted, the suit of the plaintiff would be infructuous.

32. Insofar as the order passed by the learned Metropolitan Magistrate Court and the observations made therein are concerned, it is submitted that the plaintiff had already filed a revision application against the said order, which is pending. He submits that the police did not lodge any FIR but registered only the NC, though FIR ought to have been registered.

33. Learned senior counsel produced the original of the Declaration Deed along with Development Agreement and the Supplemental Agreement for perusal of this Court in support of his submission that no fabrication is done by the plaintiff. He submits that it is not the case of the Collector of Stamps that the stamp of the office of the Sub-Registrar of Assurances was put by the plaintiff. He submits that the plaintiff can claim specific performance of the Development Agreement and can rely upon those documents for co-lateral purpose even if no sufficient stamp duty is paid by the plaintiff. He placed reliance on the judgment of the Supreme Court in case of **Bondar Singh & Ors. vs. Nihal Singh & Ors. (2003) 4 SCC, 161** and in particular paragraph 5. He also placed reliance on the judgment of the Supreme Court in case of **Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj Pratap Deo & Ors. (1981) 4 SCC 613** and in particular paragraph 22. He also placed reliance on an unreported judgment delivered by this Court in Appeal from Order No.418 of 2008 and would submit that the notice of motion be made absolute as prayed.

34. A short question that arises for consideration of this court at this stage in this notice of motion filed in a suit for possession under section 6 of the Specific Relief Act, 1963 is whether on the date of alleged dispossession of the plaintiffs by the defendants on 17th November,2012, the plaintiffs were in possession.

35. It is not in dispute that the plaintiffs and the defendants had executed Development Agreement on 26th February, 2004 and a Supplemental Development Agreement on 30th August, 2004 and irrevocable power of attorney in favour of the plaintiffs and his directors on 25th February,2004. Under the said Development Agreement and the Supplemental Development Agreement, the plaintiffs had

agreed to carry out development on the suit plot on the terms and conditions recorded in the said two agreements. The plaintiffs were granted licence to enter upon the said property for the purpose of carrying out development thereon. The plaintiffs have placed reliance on the letter dated 16th October, 2006 in support of its case that the plaintiffs have constructed basement admeasuring 11000 sq.ft., and has handed over possession thereof on the ground floor to the defendants for godown and continued to retain the possession of the balance portion of the suit property. It is the case of the plaintiffs that during the period between 2006-07, the plaintiffs obtained various permissions from Municipal Corporation of Greater Mumbai and NOC from Ministry of Tourism and Police for construction of an Apartment Hotel.

36. It is also the case of the plaintiffs that the Municipal Corporation of Greater Mumbai sanctioned revised plans duly signed by the defendants on 29th October, 2007 for construction of Apartment Hotel. According to the plaintiffs, some negotiations between the parties and Ginger Hotels went on in the month of August 2009. The plaintiffs have also strongly placed reliance upon the letter dated 19th August, 2009 addressed by the defendants to the plaintiffs seeking permission of the plaintiffs to permit the defendants to deploy additional security on the ground that the suit property at their own cost. On 18th October, 2009, the defendants have terminated the development agreement. It is also the case of the plaintiffs that during the period between October 2009 till November 2012, various meetings took place between the parties during which the defendants alleged to have waived the termination of the development agreement.

37. Insofar as the first submission of the learned senior counsel that even if the plaintiffs were granted licence to enter upon the property even for limited

purpose and even a licensee cannot be dispossessed by without due process of law is concerned, the learned senior counsel placed reliance on various judgments referred to aforesaid in support of this submission. Learned counsel for the defendants does not dispute the proposition of the law laid down by the Supreme Court in case of **Krishna Ram Mahale** (supra), in case of **Rame Gowda** (supra), judgment of this court in case of **Mumbai International Airport Pvt.Ltd.** (supra) and judgment in case of **Arun Bhaskar Adarkar** (supra). He however submits that in a suit under section 6 of the Specific Relief Act, the Court has to ascertain whether on the date of alleged dispossession, the plaintiffs were in settled possession of the suit property or not.

38. The termination of the Development Agreement by the defendants on 18th October, 2009 by the defendants is not disputed by the plaintiffs. The only case of the plaintiffs in respect of the termination urged before this court is that the defendants have alleged to have waived the termination during the period between October 2009 till November 2012 in view of the ongoing discussion between the parties for conversion of the project as Apartment Hotel. The plaintiffs have not produced any document on record in support of his submission that the negotiation between the parties was going on during the period between October 2009 till November 2012 and as a result thereof, the plaintiffs continued to be in possession of the suit property. The plaintiffs never placed these allegations on record during the period of the said alleged negotiations between October 2009 till November 1992.

39. Insofar as the letter addressed by the plaintiffs to the defendants for handing over 11000 sq.ft. premises on the ground floor as godown is concerned, the said letter would not support the case of the plaintiffs that on the date of the

dispossession of the plaintiffs by the defendants, the plaintiffs were in possession of the remaining property. The said letter addressed by the plaintiffs thus would not assist the case of the plaintiffs to show its alleged settled possession in respect of the suit property prior to the date of alleged dispossession.

40. Insofar as letter addressed by the defendants for seeking permission of the plaintiffs to deploy their own security guards on the property prior to the date of termination i.e. 18th October,2009 also would not *prima facie* prove the case of the plaintiffs that on 17th September,2012, it was in settled possession of the suit property.

41. Insofar as the bills of the security agency relied upon by the plaintiffs which are annexed as Exs.F1 to F21 are concerned, none of those bills would indicate that the plaintiffs had deployed the security guards on the suit property. The address of the suit property is not mentioned on any of those bills. The bills are alleged to have been issued by Roshan Enterprises for the period between 1st May, 2008 till 1st November,2012. On the other hand the defendants have placed reliance on the bills issued by R.K.Detective and Security Service in the name of the defendants showing the address of the suit property. All such payments appeared to have been made by the cheque by the defendants for the period from the date of termination till date by cheques. The electricity bills produced by the defendants *prima facie* indicates that atleast from the date of termination, the defendants have paid all the electricity bills by cheque. The defendants had also applied for a separate electricity connection which is not disputed by the plaintiffs. The record further *prima facie* indicates that the plaintiffs had no funds to carry out any development activities in the suit property as is reflected in the letter of termination dated 14th October,2009.

42. In the letter dated 26th October, 2009 it was not the case of the plaintiffs that the plaintiffs were in possession of the suit property all throughout till the date of alleged dispossession. The plaintiffs for the first time in their advocates' letter dated 23rd November, 2009 to the advocates for the defendants alleged that the plaintiffs had been in possession as the developers under valid, subsisting and binding agreement for valuable consideration which was denied by the defendants vide their advocates' reply dated 26th November, 2009.

43. A perusal of the record further indicates that the plaintiffs have annexed bills alleged to have been issued by Zcop Security Services for the month of December 2009. A perusal of the record further indicates that the Roshan Enterprises had issued another bill dated 1st December, 2009 for the month of November 2009. A perusal of the police complaint made by an alleged security guard and averments made in the plaint clearly indicates that in the police complaint, the said complainant has not alleged any dispossession of the plaintiffs or any servant or agent of the complainant including the said security guard. In my view, the case of the plaintiffs that the plaintiffs were dispossessed by the defendants is contrary to the contents of the said police complaint made by the alleged security guards of the plaintiffs. A perusal of the record further indicates that the learned Magistrate has already dismissed the criminal complaint filed by the plaintiffs against the defendants. The plaintiffs thereafter filed a separate complaint with the Sessions Court against the defendants in which it was alleged that that the said security guard was deployed with another agency viz. Vishal Security Force and was not working with Ex-Mens' Security Force, who was deployed at site by the plaintiffs. In the statement of the complainant recorded by the concerned police station, the complainant stated that since last one and half

year he was working with Vishal Security Force seeking investigation was filed under section 156(3) of the Indian Penal Code filed by the applicant also came to be dismissed. In my view in view of the gross inconsistency in the averments made in the plaint and in the police complaint filed by the alleged security guard of the plaintiffs, the case of the plaintiffs of alleged dispossession by the defendants without due process of law does not inspire confidence.

44. A perusal of the record further indicates that the defendants have also made various payments to the Municipal Corporation in response to various notices issued by the Municipal Corporation in respect of the treating of mosquito on the suit property which are annexed at Ex.G. The defendants have also paid municipal taxes during the period of alleged dispossession and thereafter.

45. Insofar as the photographs annexed by the plaintiffs to the plaint is concerned, those photographs would not indicate the possession of the plaintiffs on the date of alleged dispossession or even prior thereto. Insofar as reliance placed between the correspondence between the Municipal Corporation of Greater Mumbai and the architect of the plaintiffs after termination of the Development Agreement is concerned, I am inclined to accept the case of the defendants that the said correspondence was exchanged by and between the Municipal Corporation and the architect of the plaintiffs without knowledge of the defendants. The Development Agreement was already terminated by the defendants. In my *prima facie* view, the architect appointed by the plaintiffs would not have entered into between the correspondence with the defendants. Be that as it may, those correspondence between the architect and the Municipal Corporation would not indicate the possession of the plaintiffs prior to the date of the alleged dispossession. The said correspondence in my view thus would not assist the case

of the plaintiffs.

46. Insofar as the judgment of Supreme Court in case of ***Bondar Singh and others*** (supra) relied upon by Mr.Joshi, learned senior counsel for the plaintiffs is concerned, whether the said Development Agreement was required to be registered or not or whether appropriate amount of stamp duty is paid or not need not be gone into by this court at this stage. Learned counsel for the defendants does not dispute the proposition laid down by the Supreme Court in those judgments.

47. Supreme Court in case of ***Maria Margarida Sequeira Fernandes and others*** (supra) has held that no one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property. It is held that the protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour. The said suit before the Supreme Court was not filed under section 6 of the Specific Relief Act and thus would not assist the case of the defendants.

48. Insofar as submission of the learned counsel for the defendants that the plaintiffs have fabricated the Deed of Declaration and also the rubber stamp of the stamp authority is concerned and has thus not come to this court with clean hands is concerned, a perusal of the averments made in the plaint indicates that it is the case of the plaintiffs that the Development Agreement was registered. Admittedly the said Development Agreement was not registered by the plaintiffs when the said agreement was executed by and between the parties and also along

with the Deed of Declaration. The plaintiffs have however sought to give an impression to this court that the Deed of Declaration was registered along with the Development Agreement and Supplemental Deed of Development Agreement. In my *prima facie* view, the plaintiffs have not come to this court with clean hand. The plaintiffs have failed to prima facie establish before this court that prior to the date of alleged dispossession, the plaintiffs were in settled possession of the suit property.

49. Insofar as the submission of the learned senior counsel that if an order of *status-quo* is not passed by this court, the suit will become infructuous is concerned, in my view, there is no merit in this submission of the learned senior counsel. The plaintiffs have not at all be even able to *prima facie* demonstrate that the plaintiffs were in settled possession of the suit property prior to the date of the alleged dispossession or was in possession on the date of its dispossession. I am inclined to accept the submission made by the learned counsel for the defendants that the plaintiffs had abandoned the property after termination of the contract and thus the defendants were in dire and exclusive possession of the suit property and thus the question of the defendants dispossessing the plaintiffs on the date of the alleged dispossession did not arise. I, therefore, pass the following order :-

- (a) Notice of Motion No.416 of 2013 is dismissed.
- (b) There shall be no order as to costs.

(R.D. DHANUKA, J.)

50. Learned counsel for the plaintiffs seeks continuation of the ad-interim relief granted by this court on 29th November,2012 which is vehemently opposed by Mr.Ankhad, learned counsel for the defendants.

51. In view of the reasons recorded by this Court in the order passed today and more particularly about the conduct of the plaintiffs, I am not inclined to continue the ad-interim protection granted by this court. Application for continuation of the ad-interim relief is rejected.

(R.D. DHANUKA, J.)