

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7549 OF 2017

LOKMANYA SEVA TRUST NANDED
VERSUS
NANDED TOWN MARKET AREA HOUSING

...

Advocate for Petitioner : Shri Gangakhedkar S.S.
Advocate for Respondent 1 : Shri Patnurkar V.D.
Advocate for Respondent 2 : Shri Rudrawar S.G.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: June 06, 2018

...

PER COURT :-

1. The petitioner / original plaintiff is aggrieved by the interlocutory order dated 15.2.2017 passed by the trial Court in RCS No.457 of 2016, by which, the application Exhibit 5 filed by the plaintiff seeking injunction has been rejected and the application Exhibit 60 filed by the defendants along with their counter claims has been allowed and injunction has been clamped on the petitioner. The petitioner is also aggrieved by the judgment dated 12.4.2017, delivered by the appellate Court in MCA No.34 of 2017, thereby, rejecting the Misc. Civil Appeal filed by the plaintiff.

2. I have heard the strenuous submissions of the learned

Advocates for the respective sides.

3. It appears that the plaintiff had acquired the possession of the suit property free of consideration from the defendant / society on 24.11.1985. It claims to have constructed a large hall, primarily used as a venue for marriages and reception celebrations, named as Lokmanya Mangal Karyalaya. The record produced by the defendant / Society indicates that a resolution was passed by the said society on 11.9.2016 and the possession of the said plot, on which the hall has been constructed, is claimed to have been taken back by the society.

4. The plaintiff has filed a suit for perpetual injunction seeking restraining orders against the society and its employees / office bearers / persons connected with it. It is not in dispute that by the resolution passed in 1985, the plaintiff was handed over the possession of the suit property without any consideration. The taxes towards the commercial activity over the said property appear to have been paid by the plaintiff. The Nanded Waghala City Corporation has issued a certificate dated 16.8.2016 under the signature of the Assistant Commissioner that the property bearing No. 1-20-168, which is the suit property, has been recorded in the name of the plaintiff.

5. After considering the extensive submissions of the litigating sides and after going through the petition paper book and the impugned orders, it appears that the conclusion as to who is the owner and possessor of the suit property can be arrived at only after recording oral and documentary evidence. Learned counsel for the society submits that the society shall not create any third party interest with regard to the suit property till the disposal of the suit.

6. Considering the above and the concurrent findings emerging from the impugned orders at an interim stage, coupled with the statement made by the society, I deem it appropriate to cause no interference in the impugned orders. Learned Advocates for the respective sides pray that the suit may be expedited since the commercial activity undertaken by the plaintiff after making huge investments has been brought to a stand still on account of the impugned orders. Learned counsel for the plaintiff submits that it would demand compensation from the defendant / Society for the loss caused to it by virtue of the injunctory orders, in the event the plaintiff succeeds in the suit.

7. As such, this petition is disposed off in the light of the

above and after recording the statement of the defendant / Society. The trial Court would endeavour to decide RCS No.457 of 2016 expeditiously and in any case on/or before the 15th day of June,2019. Adjournments sought on unreasonable and frivolous grounds by any of the litigating sides can be rejected by the trial Court. The contention of the plaintiff / Trust that it would claim damages from the respondent / society for the commercial loss caused to it, is kept open to be considered along with all other issues by the trial Court, on it's own merits.

(RAVINDRA V. GHUGE, J.)

...

akl/d