

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 132 OF 2017
WITH
APPEAL FROM ORDER (ST.) NO. 2935 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 2936 OF 2017**

Govardhan Budhaji Gharat & Ors.	...	Applicants
V/s.		
Manmohan Gopiram Agarwal & Ors.	...	Respondents

- Mr.Vineet Naik, Senior Advocate a/w. Mr.Sachin Dhakephalkar & Mr.Vinod Shinde i/b. Mr.Dagdu Pandit Gaikwad for the Applicants.
- Mr.Y.S. Jahagirdar, Senior Advocate a/w. Mr.P.S. Dani, Senior Advocate i/b. Mr.Jagdish G. Reddy for Respondent No.1.
- Mr.Sachin Koregave i/b. Mr.Haridas Rajendra Madhukar for Respondent Nos.2 to 9.
- Mr.Rohit P. Sakhadeo for Respondent Nos.10.1 to 10.3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JANUARY, 2018.

P.C. :

- 1] Heard learned counsels for both the parties.
- 2] Both the parties have arrived at amicable settlement of the dispute and filed the minutes of the order, which are taken on record

and marked as **Annexure "A"** along with documents enclosed therewith.

3] In view of the minutes of the order, it is ordered as follows:

- "2. The present Civil Revision Application impugns an order dated 24th January 2017 passed by learned Civil Judge (S.D.) Panvel in Special Civil Suit No. 313 of 2016 below Exh. 68. The said Application below Exh. 68 was filed under section 151 of the Code of Civil Procedure by the Applicants herein for dismissal of the Suit on the ground that the cause of action did not survive.*
- 3. The present Applicants as well as Respondent Nos. 2 to 9, vide letter of allotment dated 20th May, 2011, were allotted by CIDCO a Plot No.405 admeasuring 750 Sq. Mtrs, Sector 17, at Ulwe. This was agreed to be sold to the Respondent No. 1 herein vide Agreement dated 5th November, 2012.*
- 4. The Respondent No.1 herein filed Special Civil Suit No. 342 of 2013 for Specific Performance of the Agreement dated 5th November 2012, wherein Consent Terms came to be filed and a Consent decree to that effect was passed on 01.10.2013.*

5. *Clause-6 of the Consent Terms provides that the decree holder (i.e.Respondent No.1) is entitled to any other land in place of the subject allotment of Plot No.405, Sector-17, Ulwe, if allotted by CIDCO.*
6. *By letter dated 30th June, 2016, CIDCO cancelled the earlier allotment dated 20th May, 2011 in respect of Plot No.405, Sector-17, Ulwe in favour of the Applicants and Respondent Nos.2 to 9 herein.*
7. *The Present Applicants alone, under a different entitlement were allotted a Plot admeasuring 1749.03 Sq. Mtrs. At Ulwe Sector-19 bearing Plot No. 268 on 4th July, 2016 by CIDCO.*
8. *The Respondent No.1 herein therefore filed the subject Suit being Special Civil Suit No.313 of 2016 against the present Applicants as well as Respondent Nos.2 to 9 herein for possession and allotment of plot admeasuring 750 Sq. Mtrs. from and out of the allotment of Plot No.268, Sector-19, Ulwe dated 4th July, 2016.*
9. *The Applicants and Respondent Nos.2 to 9 herein have now filed their respective Affidavits and stated and undertake that, in lieu of the Original allotment of Plot*

*No.405, Sector-17, Ulwe of 20th May, 2011 now the CIDCO has made a fresh allotment vide its letter of Intent dated 27th March 2017 and allotted Plot No. 261 at Sector-19 admeasuring 750 Sq. Mtrs. At Ulwe and that the Applicants and Respondent Nos.2 to 9 are ready and willing to handover this plot No.261 to the Respondent No.1 subject to the Respondent No.1 complying with the terms and conditions of agreement dated 5th November 2012 and Consent decree dated 01.10.2013. The copy of Letter of Intent dated 03.04.2017 issued by CIDCO to that effect is annexed herewith and marked as **Exhibit-"A"**.*

- 10. Even the Applicants and Respondent Nos.2 to 9 have agreed and undertake to execute a Tripartite Agreement with CIDCO and Respondent No.1 in respect of new Plot No.261, Sector-19, Ulwe admeasuring 750 sq. meters.*
- 11. In view of the above, it is hereby ordered, agreed, and decreed that the Consent Decree dated 01.10.2013 passed in Special Civil Suit No. 342 of 2013 is modified and substituted by plot No. 261 at Sector-19, Ulwe,*

admeasuring 750 sq. meters in place of Plot No.405, Sector-17, Ulwe admeasuring 750 sq. meters, in view thereof consequential amendment is permitted to amend the pending Darkhast proceeding No.51 of 2014, Trial Court to pass a decree in these terms and decree be drawn up accordingly forthwith.

- 12. The Affidavit of Applicants dated 15.01.2018 and the Affidavit of Respondent Nos.2 to 9 dated 22.01.2018 are taken on record and marked as **Exhibit A-1 and A-2** for identification and undertakings therein and in these consent terms are accepted.*
- 13. The ad-interim order of status quo passed below Exh.15 dated 19.08.2016 and which is continued by order dated 24.01.2017 in present suit being Special Civil Suit No. 313 of 2016 is hereby accordingly vacated and Civil Revision Application and Appeal From Order is disposed off on the basis of the above terms.*
- 14. The Applicants and Respondent Nos.2 to 9 hereby state and admit that they have not created any third party right, title or interest in anyone's favour in respect of plot No.261 at Sector-19, Ulwe, admeasuring 750 sq.*

meters and they will not create any third party right, title or interest except in favour of the present Respondent No.1.

- 15. Respondent No.1 to produce the authenticated Copy of this order before the Learned Civil Judge (S.D.), Panvel and Trial Court to pass appropriate order amending the decree dated 01.10.2013 passed in Special Civil Suit No. 342 of 2013 as mentioned in above para No.11 forthwith.*
- 16. On production of this order Civil Suit No. 313 of 2016 and Applications therein, Civil Misc. Application No. 713 of 2016 and Application below Exh.49 in Darkhast Petition No. 51 of 2014 to stand disposed off and Trial Court to pass appropriate order forthwith in above terms.*
- 17. It is not necessary to mention that the transfer of the land will be subject to the Rules and Regulations of the CIDCO.*
- 18. The parties or their Advocate to appear before the Learned Trial Court alongwith the copy of this order on 05.02.2018.”*

4] In view of this, Civil Revision Application and Appeal from Order, stand disposed of.

5] In view of disposal of Appeal from Order, nothing survives in Civil Application (Stamp) No.2936 of 2017 and therefore, it stands disposed of.

6] The concerned parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]