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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6104 OF 2018

1. Gulam Ali Sabir Khan and ors.

.. Petitioners

Vs.

City and Industrial Development
Corporation Ltd. And ors.

.. Respondents

Ms. Mayura Maru for petitioners.

Mr. G. S. Hegde for respondent nos.1, 3 and 4.

Ms. Nisha Mehra, AGP for respondent no.5 – State.

CORAM: NARESH H. PATIL, ACTING CJ. &
G. S. KULKARNI, J.

SEPTEMBER 28, 2018.

P.C.

1. Heard the learned counsel for the parties.
2. The petitioners are members of a proposed Co-operative Housing Society. It is the petitioners' case that they have purchased flats/shops in the constructed building from respondent no.2 – M/s. Universal Construction Co., who had represented them that it had entered into tripartite agreement with respondent no.1 - CIDCO and respondent

no.7 – Ganu Kana @ Kana Mhatre. It is the case of the petitioners that respondent no.6 had entered into an agreement with respondent no.7 for development of the subject plot.

3. There was a dispute between respondent nos.6 and 7 and suit was filed by respondent no.6 against respondent no.7 in which respondent no.2 was not made party. In the said suit an application below Exh. 5 was moved, which came to be rejected by the trial court by an order dated 5/3/2014. Against the said order, an Appeal From Order was filed in this court and a status quo which was granted was continued till the next date, as averred in the petition. The petition also avers that respondent no.2 entered into an agreement for sale of a flat/unit in the said building, against which action, respondent no.6 filed Contempt Petition. An order dated 27/4/2016 came to be passed by the trial court ordering attachment of the suit property where the building is standing and the petitioners are bonafide purchasers.

4. In these circumstances, petitioners have approached the court in this petition making the only prayer, which reads thus:-

(a) That this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the Respondent No.1 to issue

Occupation Certificate to the building known as Jasmine Avenue, situated at Plot No. 56, Sector 21, Ulwe, Taluka Panvel, District Raigad where the members of the petitioner are flat/shop owners in the interest of justice.

5. Having heard the learned counsel for the parties and having perused the petition, we are afraid that the relief as prayed for cannot be granted. It appears that there are disputes which are pending and which are subjudiced before the Civil Court. In any case there are disputed questions of fact which cannot be gone into in exercise of the writ jurisdiction under Article 226 of the Constitution. In such situation, it would be in the fitness of things that the petitioners resort to appropriate remedies as available to them in law.

6. Keeping all contentions of the petitioners open, petition is disposed of. No costs.

G. S. KULKARNI J.

ACTING CHIEF JUSTICE

Pravin
Dasharath
Pandit

Digitally signed
by Pravin
Dasharath Pandit
Date: 2018.09.29
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