

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.432 OF 2018
WITH
CIVIL APPLICATION NO.572 OF 2018

Balbir Kaur Bagga W/o Surjit Bagga
Aged 58 years, Occupation Business of Mumbai Indian
Inhabitant, having address at E-501, Building
No.2/3/4, Manish Nagar, J.P. Road, Andheri (West),
Mumbai – 400 053
Also having address
2003, Silver Arch, Shastri Nagar,
Lokhandwala, Andheri (West),
Mumbai – 400 053.

.. Appellant

Versus

1. M/s. Shubh Enterprises
A partnership Firm of Defendant
No.2, 3 & 4 having their office at
J/102, Nisarg, Opp. Panchsheel Heights,
Mahavir Nagar, Kandivali (West),
Mumbai – 400 070
2. Rajendra Kapoorchand Shah
3. Uday Surve
4. Govind Samani

All are adults of Mumbai Indian Inhabitant
And the partners of Respondent No.1,
Having their office at J/102, Nisarg, Opp.
Panchsheel Heights, Mahavir Nagar,
Kandivali (West), Mumbai – 400 070
AND

Also having office at 312, Western Edge II,
Kanakia Spaces Off. W.E. Highway,
Magathane, Borivali (East),
Mumbai – 400 066.

5. M/s. Samudra Darshan Gruhapraves
LLP, a Limited Liability Partnership Firm,
Incorporated under provisions of the Limited Liability
Partnership Act, having
their office at B-106, Concord, 2nd Cross Lane,
Lokhandwala Complex, Andheri (West), Mumbai –
400 053, and

Also having address at 1st Floor, Premsons Shopping
Centre, Station Road,
Jogeshwari (East), Mumbai 400 060.

6. Samudra Darshan Co-op. Housing Society Ltd.,
a Co-operative Society
Registered under the Maharashtra Co-operative
Societies Act, 1960,
having its Registered Office at Dadabhai Navroji Nagar Respondents
(Vibhag 2), Andheri (West), Mumbai – 400 058

WITH
APPEAL FROM ORDER NO.433 OF 2018
WITH
CIVIL APPLICATION NO.573 OF 2018

Surjit Singh Bagga
Aged 66 years, Occupation Business of Mumbai Indian
Inhabitant, having address at E-501, Building
No.2/3/4, Manish Nagar, J.P. Road, Andheri (West),
Mumbai – 400 053
Also having address
2003, Silver Arch, Shastri Nagar,
Lokhandwala, Andheri (West),
Mumbai – 400 053.

... Appellant

Versus

1. Shubh Enterprises
A partnership Firm of Defendant
No.2, 3 & 4 having their office at
J/102, Nisarg, Opp. Panchsheel Heights,
Mahavir Nagar, Kandivali (West),
Mumbai – 400 070

2. Rajendra Kapoorchand Shah

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All are adults of Mumbai Indian Inhabitant
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Registered under the Maharashtra Co-operative
Societies Act, 1960,
having its Registered Office at Dadabhai Navroji Nagar ... Respondents
(Vibhag 2), Andheri (West), Mumbai – 400 058

APPEAL FROM ORDER NO.434 OF 2018
WITH
CIVIL APPLICATION NO.574 OF 2018

Jasmit Singh Bagga S/o Surjit Bagga
Aged 33 years, Occupation Business of Mumbai Indian
Inhabitant, having address at E-501, Building
No.2/3/4, Manish Nagar, J.P. Road, Andheri (West),
Mumbai – 400 053
Also having address
2003, Silver Arch, Shastri Nagar,
Lokhandwala, Andheri (West),
Mumbai – 400 053.

... Appellant

Versus

1. M/s. Shubh Enterprises
A partnership Firm of Defendant
No.2, 3 & 4 having their office at
J/102, Nisarg, Opp. Panchsheel Heights,
Mahavir Nagar, Kandivali (West),
Mumbai – 400 070
2. Rajendra Kapoorchand Shah
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All are adults of Mumbai Indian Inhabitant
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(Vibhag 2), Andheri (West), Mumbai – 400 058

Shri Anil R. Mishra, Advocate for appellants.

Shri P. K. Dhakephalkar, Senior Advocate i/b Shri Arun Panicker, Advocate for
respondent No.6.

CORAM : A. S CHANDURKAR, J.

DATE : December 03, 2018

Common Judgment :

Since all these appeals raise challenge to an identical order
passed in three notice of motions filed in three separate suits, these appeals
are being decided by this common judgment. For the sake of convenience
the facts in Appeal From Order No.432 of 2018 are being referred to.

2. It is the case of the appellant-plaintiff that pursuant to an allotment letter issued in favour of each plaintiff by M/s Shubh Enterprises, each plaintiff has been allotted a flat admeasuring 1500 sq. ft. built up area. The said letter of allotment is dated 29/09/2006. It is the further case that pursuant to the said letter of allotment payments have been made to the concerned Firm that had issued the letter of allotment. The defendants were avoiding to execute and register an agreement under provisions of The Maharashtra Ownership of Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, the said Act). They were pursuing the defendants in that regard. An agreement of development was executed by defendant No.6 in favour of defendant No.1 and pursuant thereto the construction work had been undertaken. The plaintiff however was not given benefit of the letter of allotment and his rights therein were sought to be defeated by the defendant Nos.5 and 6. On that premise each plaintiff filed suit for declaration that the defendants should execute the agreement of sale in their favour as per the letter of of allotment and in the alternate one flat admeasuring 1500 sq. ft be reserved for them. In that suit each plaintiff moved a notice of motion that with a prayer that during pendency of the suit such agreement of sale be executed in favour of each plaintiff. By the impugned order dated 26/04/2018 said notice of motions have been dismissed.

3. Shri Anil R. Mishra, learned counsel for each appellant referred to various documents on record and especially the letter of allotment to indicate the existing right in each plaintiff. Referring to the development agreement between defendant Nos.5 and 6 it was submitted that as per the various clauses therein, the rights of the present plaintiffs were sought to be defeated. The same ought not be permitted in the light of the allotment letter that was issued by the defendant No.1 in the year 2006. It was then submitted that though the agreement between the Housing Society and the defendant No.1 was terminated prior to aforesaid development agreement being signed between defendant Nos.5 and 6 but that aspect should not operate against the plaintiffs herein. The learned counsel also referred to the intimation of disapproval as issued on 16/02/2006 to indicate that the trial Court ought to have granted injunction as prayed for.

4. On the other hand Shri P. K. Dhakephalkar, learned Senior Counsel for respondent No.6-Housing Society opposed the aforesaid contentions. He submitted that the rights claimed by each plaintiff were merely on the basis of an allotment letter dated 29/09/2006. It was submitted that as per that allotment letter a further agreement of sale was to be entered into and therefore in absence of any such agreement of sale in favour of each plaintiff, it was not permissible for them to seek any relief. Out of the total consideration agreed to be paid by the plaintiff only 10%

thereof was paid in the year 2006. Thereafter no steps whatsoever were taken by any plaintiff to have the agreement of sale duly executed. It was further submitted that the rights claimed by each plaintiff were not in the building that was constructed towards rehabilitation of its occupants. The rights claimed was in the saleable building which was still not constructed. The trial Court therefore was justified in refusing to grant any interim relief. The learned Senior Advocate referred to the judgment dated 01/12/2014 in *Notice of Motion No.961 of 2013 (Vaidehi Akash Housing Pvt. Ltd. vs. New D. N. Nagar Co.op. Housing Society Union Ltd. and ors.)* in support of his submissions.

5. I have heard the learned counsel for the parties at length and I have perused the documents placed on record. As per the plaint averments each plaintiff has sought to agitate his legal rights on the basis of letter of allotment issued by defendant No.1 in the year 2006. Prima facie, said letter of allotment pertains to the saleable component of the building to be constructed after rehabilitation of the erstwhile occupants. As per the said letter of allotment an agreement of sale was to be executed only on obtaining the intimation of disapproval and completion certificate. According to the Housing Society, the defendant No.1 had constructed only seven flats and had abandoned the construction in the year 2011. Thereafter the Housing Society had terminated the agreement with

defendant No.1 on 05/08/2014 after which the Housing Society executed a fresh development agreement with defendant No.5.

6. In the aforesaid factual backdrop it is found that the trial Court did not commit any error while refusing to exercise discretion in favour of each plaintiff by not granting any interim relief. The defendant No.6-Housing Society comprises of members who are entitled for possession in the rehabilitation building and therefore prima facie the nature of injunction sought was rightly not granted in the building sought to be so erected for those members who were to be rehabilitated. The plaintiffs even under the letter of allotment of 2006 did not have any right in that building. The observation in the impugned order that each plaintiff did not take diligent steps is also justified in the light of the documentary material on record. I therefore do not find any reason to interfere with the impugned order. Accordingly each Appeal From Order stand dismissed. It is clarified that the observations made in the impugned order as well as in this order would not come in the way of the plaintiffs when the suit is adjudicated on merits. The contentions of the parties are kept open for being urged before the trial Court. All pending Civil Applications are also disposed of.

(A. S. CHANDURKAR, J.)