

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

CIVIL APPLICATION NO.3119 OF 2016
IN
WRIT PETITION NO. 9359 of 2009

Sai Heritage Co-op. Hsg. Society
Ltd.

... Applicant

V/s.

Pune Municipal Corporation & ors.

... Respondents

Mr. J.S. Kapre for the applicant.

Mr.R.S.Khadapkar for respondents 1 and 2.

Mr. M.M.Pabale, AGP for respondent no.3.

Mr. Nachiket Khaladkar for respondent no.4.

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

12th October, 2018.

P.C.

The learned Counsel appearing for the applicant submits that by an order dated 5th January, 2010 the Division Bench of this Court admitted the petition and granted ad-interim relief in terms of prayer clause (f) but inadvertently the order of the Court reflected ad-interim order in terms of prayer clause (a). Immediately thereafter the applicant moved the Court on 18th February, 2010 for correction of

the order. The Farad-sheet note dated 18th February, 2010 indicates that the matter was kept after two weeks for correction in the last line of order dated 5th January, 2010 to be corrected and read as "ad-interim order in terms of prayer clause (f)."

2. The prayer clause (f) of the petition reads as under:

“(f) Pending the final disposal of this petition on merits, an order be passed restraining the respondents from acting further and taking decisions in respect of the reservation of Otta Market on S.No.240 Hissa no.1/1+2+3 of Baner Pune and or amenity space of the said scheme on S.No.240 Hissa no.1/1+2+3 of Baner Pune and or transfer of TDR in lieu of amenity space, without following due procedure of law and or without giving opportunity of being heard to the petitioner who is person interested in the matter.”

3. The Counsel for applicant submits that unfortunately thereafter the applicant could not further pursue the matter. In the meanwhile,

the advocate of the applicant has also changed.

4. This Civil Application is filed in the year 2016. The Counsel appearing for the Corporation submits that Developer submitted a revised plan of the subject premises to the Corporation in which developer claims the FSI of Otta premises as under reservation and has handed over the possession of the same to the Corporation. This statement of handing over possession by the developer in favour of the Corporation is disputed by the Counsel appearing for the petitioner Society.

5. The matter is listed at this stage since then. Both the Counsel submits that no construction is carried out on the said Otta plot as per the revised plan.

6. The learned Counsel appearing for applicant submits that some movement is going on in and around the said plot. Some persons are seeing marking the trees and applicant has serious apprehension that

probably some third party interest would be created which would prejudice the interest of the Society and its members.

7. The learned Counsel appearing for Corporation submits that individual members have filed a Suit in the Civil Court which is pending. The learned Counsel appearing for applicant submits that issue in the Suit is entirely different than the issues raised in the present petition by the Society.

8. The learned Counsel appearing for Builder submits that he is engaged yesterday only, therefore, he is not in a position to make any statement.

9. It is crucial to note that present scheme was completed by developer on 10th August, 2002 and Completion Certificate was granted by Corporation in January, 2003.

10. Taking into consideration the record placed before us, submissions advanced and aforestated circumstances, we find prima-

facie substance that until the petition is heard, the subject plot shall be preserved and protected as also no third party rights can be permitted to be created or FSI/TDR dealt.

11. The issues raised as above by the parties would be dealt with as and when the petition is taken up for hearing.

12. Pending the hearing and final disposal of the petition, we direct the respondent not to take any further steps in respect of the subject plot i.e. Otta space as described in prayer clause (f) of petition. No third party interest of whatsoever nature shall be created in respect of subject plot. None of the parties shall deal with the aspect of TDR/FSI in respect of subject plot.

13. With aforesaid observations and directions, Civil Application stands disposed of.

G.S.KULKARNI, J

ACTING CHIEF JUSTICE

L.S. Panjwani, P.S.