

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2053 OF 2012
IN
SUIT NO. 482 OF 2006**

Kusum C More & Ors

...Plaintiffs

Versus

BK Appa & Sons

...Defendant

Mr Girish Kedia, *for the Plaintiffs/Applicants.*

Mr Surya Das, *i/b RR Sharma, for Defendants Nos. 9, 12 and 15.*

Mr Roop M Vasudeo, *for Defendants Nos. 21 to 25.*

CORAM: G.S. PATEL, J

DATED: 29th November 2018

PC:-

1. The Suit is for specific performance of an Agreement for Sale of 2nd October 1989 between the Plaintiffs and Defendants Nos. 1 to 6. The Plaintiffs allege that Defendants 7 to 15 are co-developers of the property. Several Defendants have, in the meantime, passed on including Defendants Nos. 7, 8, 10, 11 and 15. Mr Kedia for the Plaintiffs states that their heirs are already on record.

2. The property in question is a substantial tract of land of over 40,000 square yards at Malad. Defendants Nos. 21 to 25 have been entrusted with the development of part of the SRA scheme

proposed on at least a portion of this land. There is a dispute as to the stage of completion of the project as between Defendants Nos. 21 to 25 and the Plaintiffs. There is no Affidavit in Rejoinder to a reply that was filed by the Director of Defendant No. 21 on 15th October 2012, and I see no reason to grant time to the Plaintiffs six years later to now put in a Rejoinder.

3. Mr Kedia submits that the Plaintiffs were lessees of the land as agricultural tenants, and were induced into delivering possession on a promise of handsome consideration, but were actually given only a fraction of the amount promised. He therefore submits that the Plaintiffs continue to have an interest in the land, and its development, and are entitled to protection in the re-development or development of the land.

4. In their Affidavit in Reply, Defendants Nos. 21 to 24 dispute the Plaintiffs' contentions as to possession, title and ownership and entitlement to the land in question. They point out that the property, or at least a significant portion of it, falls under a sanctioned and notified SRA scheme, and that the scheme is already at an advanced stage.

5. I am informed that the Plaintiffs have registered a *lis pendens* notice. There is some controversy about whether third-party agreements reference this suit or not. If they do, that will undoubtedly serve as sufficient notice to those third parties. But there can be no order at this stage, on these facts, of demanding that

the SRA or the developers should incorporate a clause referencing this suit in all further agreements.

6. On 15th October 2008, SJ Kathawalla J passed an order of status quo against Defendants Nos. 7 to 15, and Mr Kedia says that in view of their breach of the order, a separate contempt proceeding is pending. Those proceedings are, of course, unaffected by the present order.

7. The question is whether in light of these circumstances, the Plaintiffs are entitled to interim relief of the nature claimed. Mr Kedia, in fairness, does not seek the appointment of a Receiver but limits himself to an injunction restraining the creation of third party rights or further alienation. While his fairness in approach is appreciated, I think it is difficult, in a situation like this, to grant any such relief. That prayer, even if orally made across the bar, is much too widely worded. Paragraph 5(c) and (f) of the Affidavit in Reply at page 117 speak of the SRA project. The Reply mentions that there are 445 slum dwellers who are to be rehabilitated. The project contemplates the construction of 10 rehab buildings and several free sale ones. There is a long tracing of the history of various agreements, and finally a statement of the several hundreds of thousands of square feet that Defendant No. 21 is to construct in the free sale buildings for a stated consideration.

8. Having regard to these circumstances, I do not think it is possible to grant the Plaintiffs the kind of injunctive relief that is sought. Third party rights would undoubtedly be affected and a

possible impact of any such injunction would be visited on the SRA project itself, of which the rehab and free sale components are both integral parts.

9. I believe these are sufficient reasons to decline the Plaintiffs interim relief. I will, however, require the Defendants to file their Written Statements at an early date. All Written Statements are to be filed and served on or before 18th January 2019. I will take up the Suit for framing issues and directions as to pre-trial process on 25th January 2019.

10. The Notice of Motion is dismissed with no order as to costs.

(G. S. PATEL, J)