

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1234 OF 2019
WITH
WRIT PETITION NO.1235 OF 2019
WITH
WRIT PETITION NO.1236 OF 2019

The Suvarnayug CHSL through Chairman / Secretary
Mr. D. C. Sood ... Petitioner
Vs.
Abrar Muhammed Umar Chunawala ... Respondent

Mr. Kishor Patil i/b. Ms Rukmini Khairnar for Petitioner.
Mr. P. G. Chavan for Respondent.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 13, 2019

P.C. :

Parties being seen and the issues being inter-related, all the three writ petitions were heard together on 06.11.2019 and are being disposed of by this common order.

2. Heard Mr. Patil, learned counsel for the petitioner and Mr. Chavan, learned counsel for the respondent.

3. Basic issue relates to car parking by the respondent in the apartment building managed by the petitioner where respondent is a flat owner.

3.1. Some of the flat purchasers had earlier approached the District Consumer Disputes Redressal Forum at Pune raising various grievances against the builder - M/s. Suvarnayug Developers. The complaint was registered as Consumer Complaint No.PDF/137/04. Subsequently, petitioner, which is a co-operative housing society formed by the flat purchasers of the apartment building and registered under the

Maharashtra Co-operative Societies Act, 1960, also joined as a complainant.

4. District Consumer Disputes Redressal Forum at Pune (Consumer Forum) disposed of the complaint vide order dated 27.01.2010 by directing the builder to obtain completion certificate and to execute final conveyance deed in favour of the petitioner within 4 months; the builder was further directed to handover vacant and peaceful possession of all the parking spaces in favour of the petitioner within 4 months with further direction to provide other utilities.

5. It appears that builder had obtained completion certificate and also executed final conveyance whereafter the flat purchasers were put in possession.

5.1. In due course of time, several resolutions were adopted by the petitioner, which were objected to by the respondent.

6. Respondent lodged a dispute against the petitioner before the Co-operative Court at Pune (Co-operative Court), which was registered as Dispute No.45 of 2016.

6.1. During pendency of the dispute, another resolution was adopted in the Annual General Meeting (AGM) of the petitioner on 23.07.2017 resolving to construct office premises of the society i.e. petitioner in one part of the parking area which the respondent claims belongs to him.

6.2. In view of the subsequent development, amendments were carried out in the dispute.

6.3. In dispute No.45 of 2016, respondent as the disputant had filed 3 injunction applications seeking different reliefs. The injunction applications were filed under exhibit-38, exhibit-5 and exhibit-28.

7. In the injunction application under exhibit-38, disputant i.e. respondent sought for a temporary injunction against the opponent i.e. petitioner from acting upon the resolution adopted on 23.07.2017 for construction of the office of the society on the car parking area allotted to the respondent. Further prayer made was for demarcation of the parking spaces.

7.1. By order dated 31.07.2018, the Co-operative Court rejected the aforesaid injunction application of the respondent.

7.2. Thereafter, respondent preferred appeal before the Co-operative Appellate Court at Pune (Appellate Court) under Section 97 of the Maharashtra Co-operative Societies, 1960 (Act hereinafter) against rejection of the injunction prayer vide order dated 31.07.2018. The appeal was registered as M.C.A.No.30 of 2018, which was duly contested by the petitioner.

7.3. By order dated 03.12.2018, Appellate Court set aside the order dated 31.07.2018 and partly allowed the injunction application of the respondent under exhibit-38 by restraining the petitioner and persons claiming through it from carrying out construction in any manner in the suit property or from modifying the suit property by constructing office, mediation room, telephone room or by other means during pendency of the dispute. It was further made clear that petitioner would not implement the resolution adopted on 23.07.2017 in respect of obtaining sanction or for carrying out construction on the suit premises.

7.4. Aggrieved by the aforesaid order dated 03.12.2018, petitioner has preferred Writ Petition No.1234 of 2019 before this Court.

8. Insofar the injunction application under exhibit-5 is concerned, respondent sought for temporary injunction against the petitioner from disturbing his possession over his car parking area and to remove all

encroachment, obstructions and blockages from the said area.

8.1. By order dated 31.07.2018, the aforesaid injunction application of the respondent was rejected.

8.2. Against the said order, respondent preferred appeal before the Appellate Court which was registered as A.O.No.28 of 2018. The appeal was duly contested by the petitioner. By the order dated 03.12.2018, the Appellate Court set aside the order dated 31.07.2018 and partly allowed the injunction application under exhibit-5 restraining the petitioner from disturbing the possession of the disputant (respondent) over the suit property (car parking area) during the pendency of the dispute. In addition, Appellate Court ordered that respondent would be entitled to park his car in the suit property subject to payment of Rs.29,500.00 by the end of December, 2018 towards parking rent commencing from April, 2014 to December, 2018 and thereafter paying Rs.500.00 per month on or before 10th of every month till decision of the dispute was rendered which would be made and accepted as under protest.

8.3. Assailing the legality and correctness of the aforesaid order dated 03.12.2018 passed by the Appellate Court, petitioner has preferred the second writ petition, which has been registered as Writ Petition No.1235 of 2019.

9. Coming to exhibit-28, it is seen that the said injunction application was filed by the respondent for preventing the petitioner from construction of mediation room or telephone / EPBX room or any other modification of the suit property (parking area claimed by the respondent) as per resolution adopted in the special general meeting of the petitioner dated 10.04.2016.

9.1. By order dated 31.07.2018, the Co-operative Court rejected the said injunction application.

9.2. This order was assailed by the respondent in appeal before the Appellate Court, which was registered as A.O.No.29 of 2018. The appeal was duly contested by the petitioner.

9.3. The Appellate court vide order dated 03.12.2018 allowed the appeal by setting aside the order dated 31.07.2018 and partly allowed the injunction application under exhibit-28 by restraining the petitioner from implementing any of the resolutions impugned by the respondent cancelling permanent allotment of car parking made in favour of the respondent and from levying car parking charges at five times the rate and from carrying out construction of office, mediation room or from carrying out modification of the suit property. Further order was passed directing the respondent to pay parking rent of Rs.500.00 per month from April, 2014 till decision was rendered in the dispute.

9.4. This order dated 03.12.2018 of the Appellate Court has been assailed by the petitioner by filing Writ Petition No.1236 of 2019.

10. Respondent has filed a common affidavit. Stand taken in the affidavit is that Mr. Subhash Shenoy and Mrs. Shilpa Shenoy (Shenoy hereinafter) had purchased flat No.201 along with the covered car parking area in the apartment building of the petitioner from the builder in the year 2002. The covered car parking provision is clearly mentioned in the registered agreement entered into between the Shenoy and the builder on 07.06.2002, which was followed by allotment letter dated 20.06.2002 issued by the builder which clearly stated that covered car parking area was allotted along with the said flat.

10.1. According to the respondent, he started residing in the said flat on rental basis from October, 2012 onwards and also used the allotted car parking space by paying the due rental. In the month of May, 2013, respondent had purchased the subject flat i.e. flat No.201 along with the covered car parking space from the Shenoy.

10.2. It is contended that the builder had allotted 25 covered car parking spaces and 18 open car parking spaces to the flat purchasers including the parking space in question.

10.3. Petitioner had made illegal construction in the car parking area allotted to the respondent. By following due process, Pune Municipal Corporation had demolished the illegal office structure on 31.12.2015.

10.4. It is contended that car parking area cannot be converted into a shop or an office. Without the approval of Pune Municipal Corporation, petitioner again encroached upon the car parking space allotted to the respondent and attempted to illegally erect an office structure over the said land, but that was also demolished by the Pune Municipal Corporation on 22.12.2017.

11. While learned counsel for the petitioner has contended that the injunction order granted by the Appellate Court was not justified, learned counsel for the respondent has however supported the same. In addition to that, he has also referred to various documents to show that the builder had clearly allotted car parking area / space to the original flat purchaser, which was subsequently purchased by the respondent.

12. In reply, learned counsel for the petitioner has referred to a Division Bench judgment of the Supreme Court in ***Nahalchand Laloochand Private Limited Vs. Panchali Co-op. Hsg. Soc. Ltd., (2010) 9 SCC 536*** to contend that a promoter has no right to sell any portion of a building, which is not a flat. More specifically, a promoter has no right to sell stilt parking spaces as these are neither a flat nor appurtenant or attachment to a flat.

13. Submissions made by learned counsel for the parties have been considered; also perused the materials on record.

14. It is seen from the materials on record that the dispute lodged by the respondent against the petitioner being Dispute No.45 of 2016 is still pending before the Co-operative Court. In the said dispute, respondent had filed three injunction applications, which were rejected by the Co-operative Court. On appeal filed by the respondent, Appellate Court had partly allowed the said three injunction applications in the manner indicated above.

15. Having noticed the undisputed facts as above, question for consideration is whether the said orders of injunction passed by the Appellate Court are liable to be interfered with by the Writ Court in exercise of its powers under Article 227 of the Constitution of India.

15.1. Be it stated that all the three writ petitions have been filed under Article 227 of the Constitution of India.

16. There is no dispute to the proposition that the Co-operative Court as well as the Appellate Court has the jurisdiction to either grant injunction or not to grant injunction.

16.1. Power to grant injunction is a discretionary power which is required to be exercised by the Courts below having regard to the well established principles governing grant of injunction. In so far the present *lis* is concerned, while the trial Court had declined injunction, the Appellate Court exercising its discretion had granted injunction.

16.2. While granting injunction, the Appellate Court had observed that respondent had made out a *prima facie* case and that balance of convenience was in favour of the respondent, further clarifying that if injunction as sought for was declined, there could be material alteration of the suit property thereby creating further complications which in the facts and circumstances of the case would cause irreparable loss and injury to the respondent.

17. This Court in exercise of its powers under Article 227 of the Constitution of India does not find any error or infirmity in the appellate orders impugned in the three writ petitions. Therefore, no interference is called for.

18. However, having noticed the above, Court is also conscious of the fact that Dispute No.45 of 2016 is still pending before the Co-operative Court and it would be in the interest of justice if the said dispute is adjudicated upon expeditiously.

19. Accordingly and in the light of the above, while declining to interfere with the impugned orders, it is hereby directed that Dispute No.45 of 2016 may be disposed of in accordance with law within a period of 4 months from the date of furnishing of an authenticated copy of this order. All contentions of the rival parties are kept open.

19.1. During the interregnum, the impugned orders would continue to hold the field.

20. All the three writ petitions are accordingly disposed of.

(UJJAL BHUYAN, J.)

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