

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No.881/2016
with
Civil Application No. 1099/2016

Surekha Jagdish Madke Appellant

Vs

M/s. Sagar Developer & Ors. Respondents

Mr.Rakesh Agrawal for the Appellant
Mr.Rupesh R. Lanjekar for Respondent NO.1.

CORAM : K.K.TATED, J.
DATED : APRIL 22, 2019

P.C.

Heard.

By this appeal, the Appellant – Plaintiff challenges the order dated 29.06.2016 passed by the Bombay City Civil Court in Notice of Motion No.1186/2014 in S.C.Suit No.1076/2014 declining to grant any interim relief in favour of the Appellant – Plaintiff and dismissing the Notice of Motion.

2 In the present proceedings, the Appellant – Plaintiff has deleted Respondent No.2 – Defendant No.2 on 20.03.2019. Respondent No.1 – Defendant No.1 is a developer of the suit property.

3 In the present proceedings, the Plaintiff has filed S.C.Suit No.1076/2014 in the Bombay City Civil Court for the following reliefs:

“a) This Hon'ble Court be pleased to declare that the documents purported to be Indemnity Bond - Cum Declaration dated 03.06.2011 is not only forged and fabricated but also against public policy and contrary to slums Act and Development Control Rules, 1991 and same is non-est, not having any effect in law, non-operative and not binding on the Plaintiff.

b) This Hon'ble Court be pleased to pass consequential order impounding said forged and fabricated document purported to be Indemnity Bond-Cum-Declaration dated 03.06.2011.

c) Pending hearing and final disposal of this suit, this Hon'ble Court be pleased to grant staying effect and operation of the forged and fabricated documents purported to be Indemnity Bond-Cum-Declaration dated 03.06.2011.

d) Pending hearing and final disposal of present suit, this Hon'ble Court be pleased to direct Defendant No.1 to provide temporary alternate accommodation to the Plaintiff as per orders of Ld.Administrator and Divisional Commissioner, Konkan Division dated 12.05.2011 which is confirmed by the Hon'ble Court in Writ Petition No.791/2014.

e) Ad-interim reliefs in terms of prayer clause (c) and (d) be granted.

f) Cost of the suit be provided for

g) Any other relief may be granted in favour of the Plaintiffs as this Hon'ble Court may deem fit and proper.”

4 In that suit the Plaintiff has preferred the Notice of Motion No.1186/2014 for the following reliefs:

“(a) Pending hearing and final disposal of this suit, this Hon'ble Court be pleased to grant stay on effect and operation of the forged and fabricated documents

purported to be Indemnity Bond – Cum Declaration dated 03.06.2011.

(b) Pending hearing and final disposal of present suit, this Hon'ble Court be pleased to direct Defendant No.1 to provide temporary alternate accommodation to the Plaintiff as per orders of Ld. Administrator and Divisional Commissioner, Konkan Division dated 12.05.2011 which is confirmed by the Hon'ble High Court in Writ Petition No.791/2014.

(c) Ad-interim reliefs in terms of prayer clause (a) and (b) be granted.

(d) Cost of the motion be provided for.

(e) Any other relief may be granted in faovur of the Plaintiffs as this Hon'ble Court may deem fit and proper.”

5 Bare reading of the prayer clauses in the suit as well as the Notice of Motion show that at the stage of interim relief, the Plaintiff is seeking declaration that the document dated 03.06.2011, indemnity bond cum declaration is forged and fabricated and therefore, that cannot be relied upon by the Respondent in the present proceedings. Prayer clause (b) of the Notice of Motion is for direction to the Respondent to provide the Petitioner an alternate accommodation as per the order passed by the learned Administrator and Commissioner dated 12.05.2011.

6 The learned counsel for the Plaintiff submits that in the present proceedings, the competent authority has held that the Plaintiff is eligible for an alternate accommodation under the SRA scheme. In support of this contention, he relies on the

eligibility certificate issued by the Dy. Collector and the Competent Authority, SRA, Andheri. He submits that as the developer has failed and neglected to provide the alternate accommodation, the Plaintiff has preferred Application No.3/2011 under the Slum Act. In that Application also, the authority has held that the Plaintiff is entitled to the alternate accommodation. As the developer has failed to provide the alternate accommodation, the Plaintiff had preferred Misc. Application before the Administrator and the Divisional Commissioner, Konkan Division, Mumbai u/s.35 of the Maharashtra Slum Area (Improvement, Clearance and Removal) Act, 1971. He submits that in that, the Administrator and the Divisional Commissioner, Konkan Division, Mumbai has specifically held that if the developer does not provide an alternate accommodation, the Plaintiff can move the civil court. On the basis of this submission, the learned counsel for the Plaintiff submits that the impugned order passed by the Trial Court is liable to be set aside directing Defendant No.1 to provide an alternate accommodation, till hearing and final disposal of the suit.

7 The learned counsel for the Plaintiff submits that at the time of declining to grant any interim relief in favour of the plaintiff, the Trial Court has mainly relied on the indemnity bond cum declaration dated 03.06.2011 executed between the Plaintiff and Defendant Nos.1 and 2 i.e. the developer and the society. He relied on Clause III and V of the said document which read thus:

“(iii) I say, indemnify and declare that, I have produced/submitted documents, but the same were not sufficient to prove my eligibility and/or structure on the above said property and other than that I am not having any documents with me which can show the proof of eligibility of structure/myself since or before 1995, as per the guideline of the SRA/Collector Office. Due to which my name in the Annexure-II is showing as non-eligible member.

(v) I say, indemnify and declare that, I have no documents for my eligibility and my structure/room required to be demolished for development of SRA Scheme on the said property and therefore, I have no choice but to surrender my all rights, titles, benefits and interest in respect to the structure at above said property to the Developer and against that I am accepting a compensation of Rs.12,00,000/- (Rupees Twelve Lacs Only) from the developer.”

8 The learned counsel for the Plaintiff submits that the said document is not maintainable in law as it is not registered. Not only that, the learned counsel for the Plaintiff submits that the Division Bench of this court in the matter of HDFC Ltd. & Anr. Vs. State of Maharashtra & Ors. in Writ Petition No.2499/2013 with Writ Petition No.926/2013 held that the allotment made in favour of the slum dweller cannot be transferred by any document. In support of this contention, he relies on para 37 of the said judgment, which reads thus:

“37. The public policy reflected from the provisions of the said Act of 1971 and in particular Section 3Z is to ensure that a protected occupier can be evicted from his dwelling house only in larger public interest provided he is rehabilitated or relocated under a scheme. It is provided in the scheme under Regulation 33(10) that an eligible hutment dweller is entitled to self-contained residential accommodation of the requisite

area free of cost. Even if he does not join the scheme, he gets a small pitch on which he can construct upon. A judicial notice will have to be taken of the fact that in the City of Mumbai, the cost of such constructed self contained accommodation granted by way of rehabilitation is very high running into lacs. An indefeasible right is conferred by the said Act of 1971 on a protected occupier against eviction. That right can be taken away only in the larger public interests provided he is either relocated or rehabilitated. The intention is to confer the said right on a person who was occupying a dwelling structure on 1st January, 1995 or 1st January, 2000 as the case may be. If the sale transactions of the protected dwelling structures are allowed to be executed, it will virtually permit an unscrupulous developer or any other person to defeat the rights conferred on the protected occupiers. It is quite possible that anti social elements may force the protected occupiers of slums to give up their right to claim permanent accommodation by forcing them to enter into such transactions. The protected occupiers can be evicted only when it is required in larger public interest. Such sale transactions by the eligible occupants/ protected occupiers in respect of their original dwelling structures are completely against the very object of the said Act of 1971 and contrary to the public policy. Therefore, a prohibition on contracting out by effecting a transfer of a hutment or a dwelling structure will have to be read by implication in the statute consistently with the public policy underlying the provisions of the welfare statute (the said Act of 1971). Thus, the petitioners cannot get any relief on the basis of the sale transactions which are prohibited.”

9 The learned counsel for the Plaintiff further submits that the apex court in the matter of ***Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana & Anr. AIR 2012 SC 206*** has decided as to how to transfer the right in the immovable property. He relied on para 12 and 16 of the said judgment

which read thus:

“12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

10 The learned counsel for the Plaintiff submits that the apex court has held that, for transfer of right in the immovable property, the document is required to be duly stamped and registered. That is not the case in hand. Therefore, the Trial

Court has failed to rely on the said document dated 03.06.2011. On the basis of these submissions, the learned counsel for the Plaintiff submits that this Hon'ble Court be pleased to allow the Appeal from Order directing the Respondent No.1 - Defendant No.1 to provide an alternate accommodation to the Plaintiff till hearing and final disposal of the suit and also restrain them from relying on indemnity bond-cum-declaration dated 03.06.2011.

11 It is to be noted that in the present proceedings whether the Plaintiff is entitled for an alternate accommodation or not is required to be decided at the time of final hearing itself. Not only that, the prayer clauses made by the Plaintiff in the suit as well as the Notice of Motion are in the nature of final declaration and therefore, that cannot be considered at the time of interim reliefs. These facts are considered by the Trial Court at the time of passing the impugned order dated 29.06.2016.

12 Considering these facts and the law declared by this court in the matter of HDFC (supra) and the apex court in the matter of Suraj Lamp and Industries Pvt. Ltd. (supra), I am of the opinion that the Appellant - Plaintiff has failed to make out any case to interfere with the order passed by the Trial Court.

13 Hence, the Appeal from Order stands rejected.

14 No order as to costs.

15 In view thereof, the Civil Application stands dismissed as infructuous.

16 At this stage, the learned counsel for the Plaintiff submits that in the interest of justice, hearing of the suit pending before the Trial Court be expedited.

17 I do not find any urgency in the matter. Hence, no order.

(K.K.TATED, J.)