

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

**CIVIL APPLICATION NO.1093 OF 2019
IN
FIRST APPEAL NO.1759 OF 2007**

Ganga Co-operative Housing Society .. Applicant

In the matter between

M/s.Patil and Sons & Ors. .. Appellants

Vs.

Bhagwantrao B. Patil (Bahirat) & Ors. .. Respondents

Mr. Suryajeet P. Chavan for Applicant

Ms.Raksha Thakkar i/by M/s.ALMT Legal for the Appellants.

Mr.Sandeep Pathak i/by Mr. Sugandh B.Deshmukh for the Respondent
Nos.1 to 5.

Mr.Vijay Killedar for the Respondent Nos.6A and 6B.

Mr.Devendranath Joshi for the Applicant in CAF/603/2014 present.

CORAM : R.D.DHANUKA, J.

DATE : 2nd December 2019

P.C.:

. Leave to amend is granted to correct the description of the property mentioned in prayer clause (a) of the civil application. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. By this civil application, the applicant seeks modification of the order dated 18th December 2017 passed by the Division Bench of this Court in Civil Application No.6626 of 2007 in First Appeal No.1759 of 2007 thereby granting status-quo.

3. My attention is invited to the order dated 18th December 2007 passed by this Court in Civil Application No.6626 of 2007 in First Appeal No.1759 of 2007 filed by M/s.Patil and Sons & Ors. against Shri Bhagwantrao B. Patil & Ors. granting order of status-quo in respect of the property described in prayer clause (a) which was the subject matter of the suit bearing Special Civil Suit No.396 of 1996.

4. My attention is also invited to the order dated 18th December 2007 passed by the Division Bench of this Court in Civil Application No.2629 of 2007 in First Appeal No.1760 of 2007 stating that for the reasons recorded in the order dated 18th December 2007 in Civil Application No.6626 of 2007 in First Appeal No.1759 of 2007, the respondents are restrained from creating further third party rights and also from carrying out any construction work. The applicants to the civil application are also restrained from carrying out any further construction and creating third party rights.

5. It is submitted by the learned counsel for the applicant in this civil application that the applicant is concerned with the land mentioned in prayer clause (a) of the civil application. The applicant-society is not party-defendant to any of those three suits which were the subject matter of these three appeals i.e. First Appeal Nos.1759 of 2019, 1760 of 2007 and 1764 of 2007.

6. Learned counsel invited my attention to the order passed by this Court on 21st June 2018 in Writ Petition No.7531 of 2016 which was filed by the applicant herein against Alhad Raghunath Patil & Ors. impugning the order dated 9th February 2016 passed by the Competent Authority rejecting the application of the applicant for deemed conveyance. By the said order, this Court had granted liberty to apply for clarification of the order passed by this Court in First Appeal Nos.1760 of 2007, 1759 of 2007 and 1764 of 2007 pending before this Court to that effect as to whether interim relief granted by this Court would be binding on the applicant or not. Pursuant to the said order, the applicant has filed this civil application inter alia praying for modification of the order dated 18th December 2007 passed by the Division Bench of this Court.

7. During the course of the arguments, learned counsel for the applicant submitted that this Court may clarify that those interim orders passed by this Court in those three appeals would not be binding on the applicant. He submits that in view of the pendency of these three appeal and the order of status-quo or injunction, the application made by the applicant under Section 10 of MOFA before the Competent Authority is kept pending.

8. None of the parties present before this Court has disputed

that the applicant society was not party-defendant to any of those suits in which the trial Court passed various judgments and decrees which are the subject matter of those three appeals.

9. In my view, various judgments and decrees passed by the trial Court and interim orders passed by this Court in the aforesaid three civil applications filed in three first appeals i.e. First Appeal Nos.1759 of 2019, 1760 of 2007 and 1764 of 2007 thus would not be binding on the applicant in respect of the property described in prayer clause (a) of the civil application.

10. The order dated 18th December 2017 passed by this Court in Civil Application No.6626 of 2007 in First Appeal No.1759 of 2007 is clarified as under :-

- (i) The interim orders passed by this Court in those three appeals would not be binding on the applicant;
- (ii) It is made clear that this Court has not expressed any views on merit of the application filed by the applicant under Section 10 of MOFA before the Competent Authority and the same would be disposed of on its own merit.
- (iii) The Competent Authority is directed to proceed with the hearing of the said application filed by the applicant expeditiously.

11. Civil application is disposed of on aforesaid terms. There shall be no order as to costs.

12. Learned counsel for the respondent nos.1 to 5 seeks stay of this order. Since this Court has only clarified the order passed by this Court on the application filed by the applicant, in view of the liberty granted by this Court on 21st June 2018, application for stay of this order is rejected.

13. If any of the parties who are parties to these proceedings applies before the Competent Authority by filing an application in the pending application filed by the applicant under Section 10 of MOFA, the Competent Authority would decide the said applications on its own merits.

R.D.DHANUKA, J.