IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

LETTERS PATENT APPEAL NO. 317 OF 2012
IN
WRIT PETITION NO. 4628 OF 2012
WITH
CIVIL APPLICATION (L) NO. 503 OF 2012
IN
LETTERS PATENT APPEAL NO. 317 OF 2012

C.P. Menon .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35638 OF 2012

L.P. Panchala .. Appellant
Vs.
Palm Towers Co. Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35603 OF 2012

Meenal Shrivastava .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35608 OF 2012

Prakash V. Desai .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35645 OF 2012

Paresh S. Satra .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35653 OF 2012

Jayantibhai J. Rambiya .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35651 OF 2012

Sundari Sundar .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35643 OF 2012

Mrs. Manisha P. Satra .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35676 OF 2012

Sangeeta P. Desai .. Appellant
Vs.
Palm Towers Co.Op. Housing

Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35658 OF 2012

Sopan R. Jadhav .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35666 OF 2012

Nilesh S. Satra .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35663 OF 2012

C.P. Menon .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35670 OF 2012

Sanjay R. Jadhav .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35671 OF 2012

Chhaganlal D. Patel .. Appellant
Vs.

Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35677 OF 2012

Ashok M. Borkar .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35695 OF 2012

Sudershan S. Singit .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35681 OF 2012

Satish K. Kale .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35707 OF 2012

Shantiben S. Satra .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35682 OF 2012

Mr. Devashi J. Waghani .. Appellant

Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35697 OF 2012

Mrs. Vijaya S. Gokral .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35636 OF 2012

Shantilal B. Satra .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35628 OF 2012

Pramila N. Satra .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35702 OF 2012

Rajesh R. Thorwat .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35691 OF 2012

Shailesh M. Patel .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35640 OF 2012

Suresh B. Gokral .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35633 OF 2012

Gurpreet Kaur & Ors. .. Appellants
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35627 OF 2012

Mrs. Beena Borkar .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35689 OF 2012

Madan Shitole .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35703 OF 2012

Rajendra B. Chavan .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 35734 OF 2012

Vijaya Nimbalkar .. Appellant
Vs.
Palm Towers Co.Op. Housing
Society Ltd. & Ors. .. Respondents

Mr. G. S. Godbole a/w. Mr. Vijay Aggarwal and Ms. Shamim D. Shaikh for the Appellants/Applicants.
Mr. Madhur Rai i/b PRS Legal for Respondent No.1.
Ms. Nisha Mehra, AGP for Respondent Nos.2 & 3.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 7th NOVEMBER, 2019.

P. C. :

1. Additional affidavit filed by the Appellant in LPA No. 317 of 2012 is taken on record.

2. Learned Counsel for Respondent No.1 does not dispute the contents of the affidavit and Exhibit A annexed therewith which is a Memorandum of Understanding executed on 11.09.2015 between M/s. DSB Consultancy Pvt. Ltd., Shri C. P. Menon, the Appellant of LPA No. 317 of 2012 in his capacity as an authorized representative for all

the Appellants and M/s. Palm Tower CHS Ltd i.e. Respondent No.1.

3. Before we note the contents of the Memorandum of Understanding, which binds the Appellants and Respondent No.1, backdrop facts need to be noted.

4. CIDCO allotted Plot No.4 ad-measuring 12100 sq. mtrs. to IDBI at Sector 42A, Nerul, Navi Mumbai to enable IDBI to construct flats for its employees. CIDCO also constructed a complex named Seawood Estates in which IDBI purchased 70 flats. IDBI wrote to CIDCO that it was no longer interested in retaining the Plot No.4, Sector 42A, Nerul, Navi Mumbai and desired to surrender the same. For reasons unknown, CIDCO did not accept the surrender but permitted division of the plot into two parts, one ad-measuring 7260.182 sq. mtrs. and numbered it as Plot No.11. The other part ad-measuring 4840.03 sq. mtrs. was numbered as Plot No.11A.

5. The batch of Appeals concerns Plot No.11 ad-measuring 7260.182 sq. mtrs. The indenture of transfer by CIDCO to IDBI envisaged construction of residential flats (no shops). Respondent No.1 came to be registered as Co-operative Society on 30.05.2003. The bye-laws do not prohibit or restrict any class of persons alone to be eligible to be members of 1st Respondent. Under what circumstances rights came to be vested in Respondent No.1 qua Plot No.11 is not known and is not relevant to be known for the reason the dispute has now been settled between the parties as per the MOU dated 11.09.2015.

6. Respondent No.1-society issued tenders to construct 90 flats and 40 shops on the ground floor. The tender envisaged the builder to construct the towers and in consideration of the construction to have

rights in the 40 shops which could be disposed of by the builder. M/s. Trimurti Builders & Developers was the successful bidder and was given the right to construct the towers on the plot in question. From fund invested by them with the builder not only 40 shops but even the 70 flats were constructed. During construction the number of flats to be constructed was revised to 100 and number of shops to be constructed was reduced to 30. The 30 Appellants are the allottees of the said 30 shops. Respondent No.1 refused to accept the Appellants as members of Respondent No.1-Co-operative society and the dispute ensued. It reached this Court when 30 Writ Petitions came to be filed by the Appellants challenging the order passed in Revision against them. The Revisional order set aside and order passed by the learned Joint Registrar, Co-operative Society in favour of the Appellants.

7. The impugned decision dated 18.09.2012 which has been challenged in the Appeals would show that as per the learned Single Judge the terms of allotment of the land did not envisage construction of any shop on the land in question and thus the Society could not be foisted with the Appellants as its members.

8. We need not decide on the legality of the impugned order for the reason on 11.09.2015 a Memorandum of Understanding has been arrived at to which the 1st Respondent is a signatory and on behalf of Appellants Shri C. P. Menon, the Appellant in LPA No. 317/12 is the signatory. The 7 recitals to the agreement referred to the past history and highlight that the society would be entitled to 0.5 FSI additionally. The MOU records that once the benefit of said additional FSI translates into reality upon the Appellants paying ₹ 7.5 Crores to the developers

i.e. M/s. DSB Consultancy Pvt. Ltd., the Appellants would be inducted as members of Respondent No.1 and would be entitled to commercial premises comprising 1004 sq. mtrs. carpet area of the ground floor of the building constructed at the plot in question. We note that this is the requirement of Covenant 3 of the MOU dated 11.09.2015, with clarification that the reference to the said area with use of the word 'each' appears to be a typographical error for the reasons each Appellant would not be entitled to 1004 sq. mtrs. carpet area. All Appellants collectively would be entitled to 1004 sq. mtrs. carpet area.

9. The Appellants would divide the same with reference to the plan annexed with the MOU. The said plan is at page 559 of the Appeal paper-book in LPA No. 317/12.

10. Thus, we dispose of the Appeals declaring that the past proceedings between the parties are inoperative henceforth and the impugned order dated 18.09.2012 would not be a shield used by the 1st Respondent to deny the claims of the Appellants. We declare that the jural relationship between the parties would be as per MOU dated 11.09.2015. All rights, interest and liability of the parties would enure henceforth with reference to the said MOU.

[SMT. BHARATI DANGRE, J.] [CHIEF JUSTICE]

Arjun M. Kadam

Digitally signed by Arjun M. Kadam
Date: 2019.11.08 11:23:12 +0530