

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 2509 OF 2000

Tata Housing Development Company Ltd ...Plaintiff

Versus

The Treasurer of Charitable Endowments for ...Defendants
India & Ors.

Mr Gautam Ankhad, with Mr Arun Unnikrishnan, i/b Crawford
Bayley & Company, for the Plaintiff.

Mr O Mohandas, i/b Little & Company, for Defendants Nos. 2 and 3.

Mr SR Rajguru, for Union of India.

CORAM: G.S. PATEL, J
DATED: 1st March 2019

PC:-

1. The 1st Defendant is the Treasurer of Charitable Endowments For India, a statutory corporation sole constituted under the Charitable Endowments Act 1890. The 2nd Defendant is the Board of Management of The Bombay Properties of the Indian Institute of Science. The 4th Defendant is the Union of India, and Defendants Nos. 3, 5 and 6 are officers of Defendants Nos. 1 and 4.

2. The suit was filed 19 years ago. It sought a mandatory order that Defendants Nos. 1 to 6 do execute a Deed of Confirmation to confirm a Deed of Release and Transfer dated 29th June 1989; that

they lodge this Deed of Confirmation for registration before the Sub-Registrar of Assurances; and a direction to them to admit the its execution. The alternative prayer was to direct the Sub-Registrar of Assurances to register the Deed of Release and Transfer of 29th June 1989 and issue a property registration card. Then there was a prayer for damages.

3. Mr Ankhad on behalf of the Plaintiff points out that on 8th September 2017, KK Tated J's attention was drawn to an earlier order of 8th August 2000 of FI Rebello J (as he then was), directing Defendants Nos. 1 and 2 to execute the Deed of Confirmation in question and to lodge it for registration.

4. Before Tated J, the Plaintiffs stated that, pursuant to Rebello J's order, the Prothonotary and Senior Master had executed the Deed of Transfer, and got it registered on 12th September 2013. For that reason, the Plaintiffs had instructions even then—two years ago—not to press the remaining claim (for damages), provided Defendants Nos. 1 and 2 made a statement on affidavit that they had no further objections. The 1st Defendant was absent before Tated J. The 2nd Defendant sought time to take instructions. The Plaintiffs were directed to forward a copy of the order to the advocates for 1st Defendant.

5. Today, Mr Ankhad tells me that the 2nd Defendant has indeed filed an affidavit in the required form. It is dated 5th October 2017 in the required form. What remains, therefore, is the confirmation from the 1st Defendant.

6. It is a matter of great regret that the Union of India has, despite this passage of time done nothing to instruct Mr Rajguru appropriately, other than telling him very recently, only last week, that its officers will revert. They have not. Mr Rajguru himself is not to blame for the situation, one that is not of his making but is thrust upon him. I do not see how the Union of India, or, for that matter any Government, can constantly delay matters in Court given that the single most significant litigant in this judiciary is the government in one avatar or the other, and yet complain about these very delays and backlogs, while constantly invoking this thing called the 'ease of doing business'. It is about time the Government started doing what it wants everyone else to do. In court, and in litigation, the 'ease of doing business' starts with the government displaying efficiency and promptness in handling litigations. Everything else will follow.

7. I do not need Mr Rajguru to take instructions from the State Government. I will not pander to the government's requests for adjournments. The orders of 8th August 2000 and 8th September 2017 are sufficient. The 1st Defendant is not entitled to impeach the document executed by the Prothonotary and Senior Master on 12th September 2003. Apart from anything else, the 1st Defendant appealed Rebello J's order all the way to the Supreme Court. Its appeal and Special Leave Petition were both dismissed. It has done nothing since. In any case, it has done nothing at all after the order of Tated J of 8th September 2017. These orders have therefore attained finality as against the Union of India. They cannot be assailed. The 1st Defendant is entirely foreclosed from mounting any challenge to the document or the transaction embodied in it. At the cost of repetition, the Prothonotary & Senior Master executed

the document under orders of this court, admitted its execution, and had it registered. No question remains or survives of a challenge to that.

8. Mr Ankhad statement that he is not pressing the claim in damages in this view of the matter is noted and accepted, but conditionally. It is not to be read in isolation. Mr Ankhad does not press the prayer for damages only in view of the affidavit of the 2nd Defendant and this order against the 1st Defendant. Obviously, if even despite this order, the 1st Defendant should at any stage seek to reverse this position in any form, the Plaintiffs will be entitled to revive and pursue their claim for damages as if this statement had never been made. So far as the provisions of Order 23 of the Code of Civil Procedure, 1908 are concerned, therefore, Mr Ankhad's statement on instructions is *not* read or accepted as an unconditional abandonment of the claim for damages.

9. The Suit is disposed of in these terms, with a decree in terms of prayer clause (a), and a noting that the decree is already fully satisfied. There is, therefore, no need for a drawn up decree.

10. Refund of Court fees, if any, in accordance with the Rules.

(G. S. PATEL, J)