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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8356 of 2018**

Sonata Realty

.....Petitioner

V/s.

Parkland Co-operative Housing Society

.....Respondent

Mr. Y. S. Jahagirdar Senior Advocate a/w Mr. N. V. Walawalkar
Senior Advocate i/b Mr. Suresh M. Sabrad a/w Mr. Amey Sawant
a/w Mr. Dhanraj Chavan for the Petitioner
Mr. Hitesh P. Vyas for respondent

CORAM : NITIN W. SAMBRE, J.**RESERVED ON : OCTOBER 14th 2019.****PRONOUNCED ON : JANUARY 22nd 2020****P.C.**

This petition is by original defendant questioning the concurrent findings recorded by both the Courts below granting injunction thereby restraining the petitioner from proceeding ahead with the construction/development of the suit property i.e. Building 'C' in project Parkland as described in the schedule to the suit.

2] The facts necessary for deciding the petition are as under:

(I) Regular Civil Suit No. 1183 of 2016 is preferred by respondent in relation to Building 'C' in project Parkland situated at Mouje Balewadi, Taluka Haveli, District Pune located at survey no. 1, Hissa No. 5 & 6, Survey No. 51 Hissa No. 2, 3, 4A & 4B, survey no. 45, Hissa No. 8 & 9 (Hereinafter referred to as 'the suit property'). The suit property was initially owned by one Mr. Balwadkar and others who executed a development agreement in favour of one Yash Enterprises which rights after change in hands were lastly passed in favour of present petitioner in the year 2007.

(II) Petitioner declared a scheme of construction of ownership of flats and circulated requisite documents to the members of the respondent-society. The building plan was revised which was sanctioned by Pune Municipal Corporation on 17/10/2008. An agreement was entered into between members of the respondent-society in 2008-2009 and same came to be registered with the office

of Sub-Registrar.

(III) The possession of the developed property was delivered in favour of the members of the respondent-society in the year 2009-2010 who in turn formed respondent-Cooperative Housing Society.

(IV) Society consisted of 4 buildings, A, B, D & E as was sanctioned by Pune Municipal Corporation. There was also 5th building consisting of 4 flats i.e. ground + two upper floors as was reflected in the revised sanctioned plan.

(V) The said 5th building consisting of ground + two floors underwent a further development in May 2016 at the behest of petitioner wherein the petitioner alleged to have planned of constructing 65 flats, 3 flats on each floor of 11 storied.

(VI) Alleging that in the initial document which were shown to members of respondent-society of building consisting of only three flats on each floor, plaintiff sought injunction based on provisions of

Section 7 & 7A of The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act. (Hereinafter referred to as 'MOFA' for the sake of brevity) As such, the sum and substance of the allegation against the petitioner were respondent-developer/promoter is carrying out additional construction which was not part of the earlier sanction plan which was shown to the members of the respondent-plaintiff society when an agreement was entered into. It is further claimed that without obtaining consent of the members of the society, respondent was carrying out illegal construction.

(VII) The claim was resisted by petitioner by denying the entire claim of respondent-plaintiff. It is claimed by the petitioner that power of attorney in respect of survey no. 45/9 admeasuring 20R was executed by M/s. Satish Bora and Associates and that being so, amalgamation of lay out of survey no. 52/2 & 52/3 came to be sanctioned on 04/08/2006 by planning authority. It is further claimed that initially building A & B were constructed and after amalgamation of survey no. 41/4B, lay out plan was sanctioned on

21/08/2016. It is also claimed that further amalgamation plan of survey no. 1/5, 51/2, 51/3, 51/4B, 51/4A was sanctioned on 05/02/2007 and as such, construction of building A, B, D & E was carried out.

(VIII) It is also claimed that DP plan provides for reservation of DP road, however, reservation of 9 meters of DP road was cancelled on 30/08/2013 and as such, potential FSI of amenities was made available in view of cancellation of proposed DP road which has resulted into proposed construction of 'C' building consisting of 11 floors which is not beyond permissible FSI available on the existing lay out. As such, it is urged that construction was in accordance with building by-laws and available FSI and there is no violation whatsoever. In such eventuality, relying on the alleged consent extended by members of the society at the time of entering into agreement way back in 2008, it is the case of the petitioner that further consent of the members of the respondent-society is not warranted and there is no violation of provisions of Section 7 & 7A of the MOFA.

(IX) Based on the above, application Exhibit 5 came to be moved seeking injunction which was allowed by learned Civil Judge Junior Division, Pune vide order dated 11/01/2017 which was confirmed in an Appeal preferred by petitioner being Misc. Civil Appeal No. 44 of 2017 vide order dated 27/03/2018. As such, this petition.

3] Submissions of learned senior counsel Shri. Jahagirdar is, in view of building plan was sanctioned on 17/10/2008, building 'C' was sanctioned upto ground + two upper floor consisting of 4 flats, building A, B & D were sanctioned upto parking and 11 floors consisting 7 flats in each building. Reservation of 9 meter proposed DP road was cancelled on 30/08/2013 and as such, additional FSI was made available on the spot and accordingly, planning authority has sanctioned plan of construction of 'C' building on 13/12/2014 in view of potential FSI of the amenity space. According to him, after sanction of the building plan on 17/10/2008, it was never promised that there will be restricted construction of 32 flats in the 'C' building. Assuming without admitting the alleged promise,

subsequent developments i.e. cancellation of DP reservation on 30/08/2013, since the petitioner is carrying out construction in accordance with sanction plan, written consent of flat owners of the respondent-plaintiff society for carrying out 65 flats in 'C' building is not contemplated. According to him, claim of the respondent that there is violation of Section 7 & 7A of the MOFA is wrongly applied to the facts of the case in hand particularly when construction is based on additional amenity FSI available. According to him, development project cannot be stalled as same will have adverse impact over the economy of the petitioner so also public exchequer. As such, he has prayed for quashing of orders impugned.

4] Learned counsel Shri. Vyas for respondent supported the order impugned and would urge that promoter and developer is carrying out construction of the building beyond the consent extended by members of the respondent-society. While supporting the orders impugned, he would urge that there is *prima facie* violation of Section 7 & 7A of the MOFA and as such, he sought dismissal of the petition.

5] Considered rival submissions.

6] It is not in dispute that structure at 'C' building was consisting of ground + 2 floors and initially it had sanction only for 3 flats on each floor and total 32 flats including parking area, however, it is claimed that in view of abandoning the reservation of DP road, additional amenity FSI was made available. Accordingly sanction was awarded for 11 storied building with construction of 65 flats i.e. almost 6 flats on each floor. The fact remains that when the agreement was entered into between the members of the flat owners of respondent-society i.e. at the time of sanction of initial plan on 17/10/2008, members were made to understand that there will be 'C' building with construction of 32 flats and not 65. Both the courts below have rightly appreciated the factual matrix and recorded a finding against the petitioner and granted injunction thereby temporarily restraining the petitioner from carrying out construction of 'C' building for more than ground + two floors.

7] Both the courts below appreciated complete factual matrix including that of available consent on record and resolutions passed by the members of the respondent-society and had proceeded to issue temporary injunction against the petitioner. The injunction ordered against the petitioner is based on earlier promise made by the petitioner in 2008 when building A, B, D & E were constructed and wherein 'C' building was to be constructed only of 32 flats. The subsequent sanction of 'C' building on 31/12/2014 *prima facie* speaks of non availability of said 'C' building sanction of 66 flats on the date when members of the respondent-society had entered into an agreement of purchase of their own apartments/flats. It is based on the cancellation of DP lay out plan in 2013, sanction obtained on 31/12/2014 for construction of 'C' building whereas members of the respondent-society were shown sanction plan of 17/10/2008 wherein 'C' building i.e. 5th building was shown to be consisting of ground + two upper floors. The DP reservation was cancelled on 30/08/2013 and the fact remains that members of the respondent-society pursuant to their communication, which are relied by senior counsel Shri. Jahagirdar, had agreed for construction of 32 flats like

other wings i.e. A, B, D & E. As such, in my opinion, award of injunction against the petitioner is very much justified.

8] In view of above, order of injunction as is concurrently recorded by both the Courts below and reasons recorded herein above, in my opinion, in extraordinary jurisdiction, no interference is warranted.

9] Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]