

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

**FIRST APPEAL NO.1585 OF 2020
WITH
CIVIL APPLICATION NO.3939 OF 2020
IN
FIRST APPEAL NO.1585 OF 2020**

Changunabai Manglya Patil & Ors. ... Appellants
v/s.

Purushottam Omprakash Agarwal & ors. ... Respondents

Ms. Asha Bhuta a/w. Rahila Memon for the appellants.

Mr. Roshan S. Tanna a/w. Shardul Singh for respondents.

**CORAM : K.K.TATED &
N.R.BORKAR, JJ**

07th December 2020.

P.C.

Heard learned counsel for the parties.

2. Both the counsel submit that first appeal is settled between appellant and respondent no.1. Both the counsel submit that respondents 2,3 and 4 have not consented with the consent terms. They tender the consent terms dt.7.12.2020 duly signed by the appellants and respondent no.1.

3. Both the Counsel submit that the appellant and respondent no.1 are present in Court. Appellant and respondent no.1 entered into witness box. They admit the contents of consent terms and initials thereon. Hence, Consent Terms are taken on record and marked 'X' for identification. It reads thus:

"CONSENT TERMS

1. Under the 12.5% scheme, the City Industrial and Development Corporation Limited (hereinafter referred to as CIDCO) allotted the Suit Plot being Plot no. 2, Sector -19, Kamothe Phase- II Node, admeasuring 1729.40 square meters, Taluka: Panvel, District – Raigad, to the Appellants herein.

2. By an Agreement for Sale dated 17th July 2007 (hereinafter referred to as the 'Suit Agreement') the Appellants herein agreed to sell, assign and transfer all their right, title and interest in the Suit Plot to the Respondent No. 1 herein for a total consideration of Rs.4,40,99,700/- (Rupees Four Crores Forty Four Lakhs Ninety Nine Thousand Seven Hundred Only).

3. However, on account of disputes, the Respondent No. 1 filed Special Civil Suit No. 806 of 2007 against the Appellants for specific performance of the Suit Agreement in the Court of the Civil Judge, Senior Division, Panvel. In the meantime, CIDCO executed a Registered Agreement to

Lease dated 15th February 2012 (duly registered under Sr. No. PVL/2117/2012 with the Sub- Registrar of Assurance, Panvel) in favour of the Appellants herein.

4. By a Judgment and Decree dated 31st August 2012 the Civil Judge Senior Division, at Panvel decreed the Special Civil Suit No. 806 of 2007 and granted specific performance in favour of Respondent No. 1 herein. Aggrieved by the said Judgement and Decree dated 31st August 2012 the Appellants herein have preferred the present First Appeal.

5. On 26th November 2012 the present Appeal came to be admitted. By a separate Order dated 26th November 2012 passed in Civil Application No. 3939 of 2012, Clauses (2) and (5) of the operative part of the decree were stayed, however it was clarified that the perpetual injunction under Clauses (3) and (4) against the Appellants from dealing with the Suit Plot or creating third party rights would continue till the disposal of the present Appeal.

6. During the pendency of the present First Appeal, the contesting parties have settled their disputes and accordingly tender the present Consent Terms in this Hon'ble Court. **The terms and conditions upon which the contesting parties have settled their disputes are recorded hereunder;**

7. The Appellants agree and undertake to this Hon'ble Court to sell, transfer and assign all their right, title and interest in the Suit Plot in favour

of the Respondent No. 1 or his nominee for a total consideration of Rs.9,65,00,000/- (Rupees Nine Crores Sixty Five Lakhs Only) by executing and registering a Tripartite Agreement to which the Appellants, Respondent No. 1 or his nominee and CIDCO shall be parties.

8. The consideration amount of Rs.9,65,00,000/- (Rupees Nine Crores Sixty Five Lakhs Only) shall be paid by the Respondent No. 1 to the Appellants in the following manner:-

(I) A sum of Rs. 85,00,000/- (Eighty Five Lakhs Only) shall be paid by the Respondent No. 1 to the Appellants on the date of this Hon'ble Court disposing of the present First Appeal in terms of the present Consent Terms, in the following proportion as desired by the Appellants: -

- (a) A sum of Rs. 9,90,000/- (Rupees Nine Lakhs Ninety Thousand Only) to the 1st Appellant - Changuanabai Manglya Patil being the amount after deducting 1%, i.e. Rs. 10,000/- towards Tax Deductible at Source ('TDS').
- (b) A sum of Rs. 24,75,000/- (Rupees Twenty Four Lakhs Seventy Five Thousand Only) to the 2nd Appellant – Shri. Ganpat Manglya Patil being the amount after deducting 1%, i.e Rs. 25,000/- towards TDS.
- (c) A sum of Rs. 24,75,000/- (Rupees Twenty Four Lakhs Seventy Five Thousand Only) to the 3rd Appellant – Shri. Gurunath Manglya Patil being the amount after deducting 1%, i.e Rs. 25,000/- towards TDS.
- (d) A sum of Rs. 9,90,000/- (Rupees Nine Lakhs Ninety Thousand

Only) to the 4th Appellant - Smt. Babybai Vasant Mokal, being the amount after deducting an amount of 1%, i.e Rs. 10,000/- towards TDS.

(e) A sum of Rs. 4,95,000/- (Rupees Four Lakhs Ninety Five Thousand Only) to the 5th Appellant – Smt. Sarita Balaram Mhatre, being the amount after deducting an amount of 1%, i.e Rs. 5,000/- towards TDS.

(f) A sum of Rs. 9,90,000/- (Rupees Nine Lakhs Ninety Thousand Only) to the 6th Appellant - Smt. Reshma Ranjit Gharat, being the amount after deducting an amount of 1%, i.e Rs. 10,000/- towards TDS.

(II) The balance sum of Rs. 8,80,00,000/- (Rupees Eight Crores Eighty Lakhs only) shall be paid by the Respondent No. 1 to the Appellants on the date of execution and registration of the Tripartite Agreement referred to in paragraph 7 above. The said balance sum shall be paid on the date of execution and registration in the following proportions as desired by the Appellants:-

(a) A sum of Rs. 39,60,000/- (Rupees Thirty Nine Lakhs Sixty Thousand Only) to the 1st Appellant – Smt. Changuanabai Manglya Patil being the amount after deducting an amount of 1%, i.e. Rs. 40,000/- towards TDS.

(b) A sum of Rs. 3,91,05,000/- (Rupees Three Crores Ninety One Lakhs Five Thousand Only) to the 2nd Appellant – Shri. Ganpat Manglya Patil being the amount after deducting an amount of

1%, i.e. Rs. 3,95,000/- towards TDS.

(c) A sum of Rs. 3,91,05,000/- (Rupees Three Crores Ninety One Lakhs Five Thousand Only) to the 3rd Appellant – Shri. Gurunath Manglya Patil being the amount after deducting an amount of 1%, i.e. Rs. 3,95,000/- towards TDS.

(d) A sum Rs. 14,85,000/- (Rupees Fourteen Lakhs Eighty five thousand Only) to the 4th Appellant - Babybai Vasant Mokhal, being the amount after deducting an amount of 1%, i.e. Rs. 15000/- towards TDS.

(e) A sum of Rs. 19,80,000/- (Rupees Nineteen Lakhs Eighty Thousand Only) to the 5th Appellant – Smt. Sarita Balaram Mhatre being the amount after deducting an amount of 1%, i.e. Rs. 20000/- towards TDS.

(f) A sum of Rs. 14,85,000/- (Rupees Fourteen Lakhs Eighty five thousand Only) to the 6th Appellant Smt. Reshma Ranjit Gharat being the amount after deducting an amount of 1%, i.e. Rs. 15000/- towards TDS.

9. The Appellants and the Respondent No. 1 agree that except to the extent of the consideration set out in paragraph 8 above, the Judgment and Decree dated 31st August 2012 the Civil Judge Senior Division, at Panvel decreed the Special Civil Suit No. 806 of 2007 stands confirmed.

10. The Appellants represent and undertake to this Hon'ble Court that the total consideration referred to in paragraph 8 has been consensually portioned by them between themselves in the manner and proportions set out in paragraphs 8(I)(a) to (f) and 8(II)(a) to (f) above. The Appellants confirm that the said apportionment is as per their respective wish, consent and desire. Each of the Appellants agree and undertake to this Hon'ble Court to keep the Respondent No.1, his successors and nominees indemnified from any claim of unequal distribution of the consideration amounts as set out above.

11. The Appellants and the Respondent No. 1 represent, acknowledge and agree that for the purpose of execution and registration of the Tripartite Agreement referred to in Paragraph 7 the procedure of CIDCO has to be followed. The Appellants and the Respondent No. 1 represent, acknowledge and agree that the said procedure is lengthy and involves issuing of several correspondence, execution of documents, affidavits and issuing public notices etc. Therefore the Appellants and Respondent No. 1 (his nominee) agree and undertake to this Hon'ble Court that they shall render full co-operation to each other as and when called upon to execute and/or sign documents, letters, no objections etc, and to comply with all the formalities leading up to the execution and registration of the Tripartite Agreement, and finally leading to the Suit Plot being transferred in the name of the Respondent No. 1 or

his nominees as contemplated in these Terms.

12. 12. The Appellants agree, undertake and represent to this Hon'ble Court that they alone are in exclusive quiet, vacant and peaceful possession of the Suit Plot. The Appellants further agree, undertake and represent to this Hon'ble Court that the Suit Plot is unoccupied, vacant and without any encroachment by any one and further that they shall hand over the quiet, vacant and peaceful possession of the Suit Plot to the Respondent No. 1 or his nominee simultaneously upon execution of the Tripartite Agreement.

13. It is agreed by and between the parties that until the registration of the afore-referred Tripartite Agreement and hand over of possession of the Suit Plot to the Respondent No. 1, Clauses (2) and (5) of the impugned Judgement and Decree dated 31st August 2012 and Clause 2(ii) of the Order dated 26th November 2012 passed in Civil Application No. 3939 of 2012 preferred in the present Appeal shall continue to operate. As a result of the same, the Appellants further agree and undertake that except in the manner provided in these Terms, they shall not create any third party rights or create any encumbrances and / or sell, alienate or transfer the Suit Plot to any third party nor part with the quiet, vacant and peaceful possession thereof or change the vacant status of the Suit Plot.

14. The Appellants agree and undertake to this Hon'ble Court to indemnify and keep indemnified the Respondent No. 1, his successors, nominees or from any future adverse right, demand, claim or charge made by any person in respect

of the Suit Plot and the liability or responsibility to meet or clear such adverse right, claim, demand or charge made by anyone shall solely be of that of the Appellants.

15. It is agreed by and between the parties that the Respondent No. 1 shall be entitled to withdraw the entire amounts with interest up to date lying to the credit of Special Civil Suit No. 806 of 2007 in the Court of the Civil Judge, Senior Division, Panvel immediately after filing of the present Consent Terms.

16. It is agreed by and between the parties that upon this Hon'ble Court disposing of the present First Appeal in terms of the present Consent Terms, the Appellants shall deposit the Registered Agreement to Lease dated 15th February 2012 (duly registered under Sr. No. PVL/2117/2012 with the Sub-Registrar of Assurance, Panvel) with the Respondent No. 1.

17. Subject to the co-operation to be extended by the Appellants under these Terms, the Respondent No. 1 undertakes to this Hon'ble Court to make all possible endeavours to have the Tripartite Agreement executed and registered as contemplated herein, within a period of 180 days, with a further extension of 180 days, i.e (total 360 days), from the date on which this Hon'ble Court disposes of the present First Appeal in terms of the present Consent Terms.

18. The Appellants agree, admit and undertake that the present Consent

Terms have been read over and explained to them by their Advocate in Marathi. As and by way of caution, a translation thereof is appended to the present terms and signed by all parties to these terms. The Learned Advocate for the Appellants confirms the said translation. It is clarified that the translations is annexed as a cautionary measure and for all purposes this Consent terms in English alone shall prevail.

19. The present Appeal be disposed of as between the Appellants and the Respondent No. 1 on the above terms with no order as to costs.

20. As against the Respondent No. 2 to 4, the present Appeal be disposed of as withdrawn.

21. The Appellants shall be entitled for refund of Court fees, if any.

22. All concerned including CIDCO, may be directed to act upon an ordinary copy of the present Consent Terms and Order passed thereon.”

4. The learned counsel Mr.Tana, appearing on behalf of respondents, submits that as per order dt.26.11.2012 passed by this Court in Civil Application No.3939/2012, the trial Court invested entire decretal amount in fixed deposit. He submits that as per consent terms particular clause no.15 respondent no.1-plaintiff is entitled to withdraw the entire amount from the trial court alongwith

interest, if any. For this advocate appearing on behalf of appellants has no objection. Considering this fact following order is passed:

- (i) Consent Terms are taken on record and accepted.
- (ii) First Appeal stands disposed of in terms of Consent Terms.
- (iii) Respondent no.1 is entitled to withdraw the entire amount deposited by him in the trial Court without furnishing any security alongwith interest.
- (iv) Consent Terms to be treated as part and parcel of decree.
- (v) The undertaking given by both the parties in the consent terms are accepted.
- (iv) No order as to costs.

(N.R. BORKAR, J)

(K.K.TATED, J)