

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.8362/2019

Balaji Venture Pvt. Ltd.

..V/s..

Shri Ram Gopal Soni

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.A. Mardikar, Advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 6.1.2020.

1] The petitioner, original plaintiff in Special Civil Suit No.755/2014, is aggrieved by the order dated 16.11.2019 passed by the trial Court vide which the application (Exh. 54) filed by the defendant, seeking a direction for sending the agreement to sell for impounding and assessment of stamp duty, is allowed.

2] The grievance of the petitioner is that the said document is not a conveyance and considering Clause 12 of the said agreement, the possession is to be transferred after a registered sale-deed is executed.

3] I have considered record available with the assistance of the learned Advocate.

4] I find from Clause 3 of the agreement to sell that the vendor has agreed to transfer the immovable property, which is plot, through the M.I.D.C. in favour of the purchaser on or before 3 months from the date of the execution of the said agreement to sell. The condition of handing over the possession is found in this agreement.

5] It requires no debate that if the document is not impounded and requisite stamp duty and penalty are not assessed, the document would not be a conveyance.

6] The learned Advocate for the petitioner has relied on the decision delivered by this Court in the matter of *Shri Jugalkishore Jiwandas Arora V/s. Shri Sunil S/o Vinayakrao Kokje and another* reported in **2006 (6) ALL MR 576** wherein this Court has held that the contingency in which the possession is agreed to be delivered either before the execution of the agreement for sale or at the time of execution, would not render the said document a conveyance.

7] However, in the agreement to sell involved in this case, there are several other contingencies described in the various clauses and clause 12 deals with the transferring of the fixtures, machineries, electrical and electronic equipments, goods and articles and other assets at the time of the execution of the sale-deed. However, Clause 3 casts an obligation of transferring the plot in the name of the purchasers.

8] Considering the above and keeping in view the law laid down in the matters of *Syed Yakoob Vs. K.S.Radhakrishnan and others* [AIR 1964 SC 477] and *Surya Dev Rai Vs. Ram Chander Rai* [2003(6) SCC 682], the impugned order cannot be branded as perverse or erroneous.

9] As such, this petition, being devoid of merits is, therefore, **dismissed**. No costs.

(RAVINDRA V. GHUGE, J.)