

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 186 OF 2020
IN
WRIT PETITION NO. 4255 OF 2011

Jairaj Devidas and ors .. Petitioners
Versus
M/s.Arun Bhoomi Corporation & Ors .. Respondents

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Mr.Ashutosh Gole for the petitioner in CP 186/20.
Mr. Navroz H. Seervai, Sr. Counsel with M.Shrinivas Bobde,
Ms.Lizum Wangdu i/b Sandeep Maurya and Ms.Kavita
Vishwakarma for the respondent nos.1, 2 and 4a in CP No.186 of
2020.

CORAM: BHARATI DANGRE, J.
DATED : 7th DECEMBER 2021

P.C:-

1 The Contempt Petition is filed alleging disobedience
of the order passed by this Court on 11th November 2011 in Writ
Petition No. 4255 of 2011.

2 Heard learned counsel Mr.Ashutosh Gole for the
petitioner. Learned counsel submit that despite the specific
direction issued in paragraph no.7 of the order dated 11/11/2011,
the respondents have created third party interest subsequent to
the passing of the order. It is alleged that respondent no.1 has

handed over physical possession of several shop premises to the third parties and when a title search of the suit property is carried out, it is revealed that pursuant to the order, several residential flats and shops in almost all wings of the building are being constructed. The copy of the search reports along with copies of Index-II, reflecting the right of the third party in the residential and commercial units in the building are placed on record.

The Contempt Petition is filed on 27th February 2020 by specifically asserting that the petitioners came to know about the third party interest/sale of the agreements entered into by the respondents only on or about 12/12/2019 and therefore, the Petition is well within limitation. The proceedings are sought to be initiated against respondent nos.1 to 24 being guilty of disobedience and a prayer is made to punish them for wilfully disobeying the order of this Court. Prayer clauses (c) and (d) of the Contempt Petition seek appointment of receiver for taking possession of the suit property, which at the outset, must be rejected, since the prayer is invoked in an application seeking cognizance of the contempt and since no independent application to that effect is filed, it deserves a rejection.

3 I have heard learned senior counsel Mr. Seervai in response to the Contempt Petition and the learned counsel has placed on record a chart reflecting several details including the date on which the earnest money/booking amount was paid by

the purchase/allottee. The submission advanced is the booking amount/earnest money is accepted prior to 11/11/2011, though the agreement is executed subsequent to the said date. The chart placed on record bifurcate the agreements with reference to the affidavits which are filed in response to the contempt petition and since the chart depict the gist of the stand taken in the two affidavits filed by the contemnor on 2nd November 2020 and 19th February 2021, it is divided in two parts (i) agreements covered under reply dated 2/11/2020 and (ii) agreements covered under reply dated 19/4/2021.

4 In the first reply, there is a mention of 19 flats/shops in which rights were created by Jagruti, the sub-developer from its 58% share and the flats in which rights were created by the contemnor i.e. respondent no.1 prior to the order. This cover 19 flats, the details of which including the name of the allottee, the date of allotment/deposit of earnest money, the date of agreement is reflected. Part 2 of the chart cover the agreements which find mention in the affidavit dated 19.2.2021 and this include serial nos.20 to 45 giving details of the name of the flat purchaser/allottee, date of deposit of earnest money and the date of the agreement. This also cover the agreements referred to in the rejoinder and include 7 flats/shop, in which the rights were created by Jagruti and also six flats/shops in the rights were created by respondent no.1 prior to the order of the learned Single Judge

on 11/11/2010.

5 The aforesaid chart being tendered to learned counsel Mr.Gole, he has not been in a position to contradict the same, but according to Mr.Gole, these are the flats which are not reflected on the website of RERA. His submission is that the list contain 79 flats but the flats which are allotted are more in number and to avoid any action under the Contempt of Court Act, a jugglery is attempted by the contemnor.

6 Pertinent to note that in para 17 of the order dated 11/11/2011, this Court had made it clear that the respondent nos.1 to 22 may proceed to develop the property in question but they were restrained from creating third party rights from 11/11/2011 onward and the rights already created were made subject to the result of Regular Civil Suit 144 of 2010. Mr.Seervai has tendered on record the list of premises which are ready for possession in the ongoing construction of the suit property and unit numbers are as under :-

SR.NO.	UNIT NO.	CARPET AREA + ANCILIARY AREA/ UNIT TYPE
A WING		
1	803	638 sq.ft + 127 sq.ft/2 BHK
2	1101	638 sq.ft + 127 sq.ft/2 BHK
3	1103	638 sq.ft + 127 sq.ft/2 BHK
4	1301	638 sq.ft + 127 sq.ft/2 BHK
5	902	791 sq.ft + 194 sq.ft/3 BHK

6	1102	791 sq.ft + 194 sq.ft/3 BHK
7	1302	791 sq.ft + 194 sq.ft/3 BHK
B WING		
8	602	638 sq.ft + 127 sq.ft/2 BHK
9	703	638 sq.ft + 127 sq.ft/2 BHK
10	1102	638 sq.ft + 127 sq.ft/2 BHK
11	1301	638 sq.ft + 127 sq.ft/2 BHK
12	1303	638 sq.ft + 127 sq.ft/2 BHK
C WING		
13	203	638 sq.ft + 127 sq.ft/2 BHK
14	603	638 sq.ft + 127 sq.ft/2 BHK
15	1201	638 sq.ft + 127 sq.ft/2 BHK
16	1301	638 sq.ft + 127 sq.ft/2 BHK
D WING		
17	1004	413 sq.ft. + 77 sq.ft.
18	1202	413 sq.ft. + 77 sq.ft.
19	1301	413 sq.ft. + 77 sq.ft.
20	1303	413 sq.ft. + 77 sq.ft.
21	1304	413 sq.ft. + 77 sq.ft.
22	1401	413 sq.ft. + 77 sq.ft.
23	1402	413 sq.ft. + 77 sq.ft.
24	1403	413 sq.ft. + 77 sq.ft.
25	1404	413 sq.ft. + 77 sq.ft.
E WING 1 BHK		
26	903	413 sq.ft. + 77 sq.ft.
27	1003	413 sq.ft. + 77 sq.ft.
28	1301	413 sq.ft. + 77 sq.ft.
29	1302	413 sq.ft. + 77 sq.ft.
30	1304	413 sq.ft. + 77 sq.ft.
31	1401	413 sq.ft. + 77 sq.ft.
32	1402	413 sq.ft. + 77 sq.ft.
33	1403	413 sq.ft. + 77 sq.ft.
34	1404	413 sq.ft. + 77 sq.ft.

7 The balance cost of construction is approximated by the respondents as Rs.45 crores plus 18% GST. The status of the project is described as "RCC structure upto 13th slab completed for D and E wing, RCC structure upto 6th slab for A, B and C wing and other internal work as per norms".

Out of the aforesaid flats, I have recorded the proposal of Mr.Seervai to the effect that by way of security, six flats would be freezed in favour of the petitioners. Since I have accepted the said proposal, and I have already modified the restrain order contained in para 17, I am of the opinion that *prima facie* there is no disobedience of the order and in any case, the disobedience, if any, is not yet wilful and intentional. The observation being made on the basis of the material brought on record to establish that the flats received its booking prior to the order of this Court and the agreements are executed at a subsequent point of time. Had it been the case that the contemnor wanted to be deceptive, he could have shown all the bookings of all the flats in different wings to be before the date of the order, but he has chosen not to do so. However, at the same time, it is desirable that the petitioners should also be kept in loophole and they shall be appraised about the number of the flats which were allotted prior to the order of 11/11/2010 and which received booking but in the wake of the restrain order, the booking amount is not accepted by the respondent no.1 within a

period of two weeks from today by tendering a list, marking the aforesaid distinction.

8 In the wake of the above, recording that there is no wilful disobedience of the impugned order, the Contempt Petition against the respondents are dropped, in absence of any material brought on record to show any wilful and deliberate attempt to show any disrespect to the order passed by this Court.

SMT. BHARATI DANGRE, J