

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 870 OF 2018

M/s Tricom Developers ... Appellant

Versus

Suresh B. Patel & Ors. ... Respondents

.....

Mr. Drupad Patil for the Appellant.

Mr. Sham V. Walve for Respondent Nos. 2 to 5.

Mr. Rohit Sakhadeo for the Respondent No.6.

.....

CORAM : K.K. TATED &  
PRITHVIRAJ K. CHAVAN, JJ.

DATE :JULY 28, 2021.

P.C. :-

. Heard.

2. The learned counsel for the Appellant and Respondent Nos. 2 to 5 submits that the matter is settled out of the Court. They have tendered the consent terms dated 12/07/2021 duly signed by all the parties as well as notarised. The same is taken on record and marked 'X' for identification. The same is accepted. The consent terms between the Appellant and Respondent Nos. 2 to 5 reads thus:

*"1. The Appellant by the above First Appeal has challenged the Judgment and Decree dated 25.04.2018*

*passed by the Civil Judge Senior Division, Panvel, Raigad in Special Civil Suit No.97 of 2012.*

*2. Several Land situated at Village-Vahal were owned by Shri. Vijay Babu Gharat and others. On 28.01.1987, the Land Acquisition Officer, Panvel passed and Award under Section 11 of the Land Acquisition Act, 1984 in respect of the said lands. The said Award was passed in the names of Vijay Gharat and 9 others. As per the said Award, the land was acquired and possession was handed over to the Government.*

*3. One of the Owner Shri. Vitthal Nama Gharat died on 31.12.1993. Therefore, his heirs filed Misc. Application No.541 of 2007 for heirship Certificate. Said Application was allowed and Bhagubai, Ganubai, Savitri, Gopal and Amrut were declared as heirs.*

*4. After the aforesaid Acquisition, CIDCO was appointed as the Planning Authority. The Government introduced the Scheme, commonly called as 12.5% Scheme. As per the said Scheme, the owners of the land whose lands were acquired were held to be eligible for allotment of Plots, on lease, situated within the Planning Limits of CIDCO. As per the said Scheme the owners i.e. the Respondent No.2 to 5 were eligible to get a Plot of Land admeasuring 1700 Sq.mtrs. on lease.*

*5. On 13<sup>th</sup> July 2007 a lottery was drawn for allotment of Plots under the said 12.5% Scheme. In the said Lottery plot No. 84, admeasuring 1200 Sq.Mtrs. situated at Sector 20, Ulve, Tal-Panvel, Dist-Raigad (hereinafter referred to as the Said Plot) was allotted to the Vijay Gharat and others. After the completion of formalities a lease deed in respect of the said plot was to be executed in the name of allottees.*

*6. The above referred plot was to be allotted in the name of 14 persons. However, on 17<sup>th</sup> October 2008 Bhagubai, Ganubai and Savitri executed a registered release deed in favour of Gopal Vitthal Gharat and*

*Amrut Vitthal Gharat. Similarly on 2<sup>nd</sup> April 2009, Sitabi, Parvati, Gangula, Anandi, Bebibai and Barkubai executed a registered release Deed in favour of Vijay Babu Gharat and Balaram Babu Gharat.*

7. *In the year 2009, said Shri. Vijay Gharat and others approached Shri. Suresh Patel i.e. the present Respondent No.1, with a proposal to assign the leasehold rights in respect of the Said Plot No.84. Accordingly, an agreement was executed on 100Rs. Stamp purchased on 28.07.2009. Total consideration of Rs. 1,32,00,000/- was fixed.*

8. *For some reasons, it was not possible for Suresh Patel to make the payment of Balance consideration. Therefore Shri. Suresh Patel approached the Appellant and showed readiness to assign his right, title and interest in favour of the Appellant. Thereafter the Appellant accepted the said proposal on a condition that the amount payable to the Original Allottees would be directly paid to them.*

9. *After deliberation, an agreement date 25<sup>th</sup> March 2010 was executed. The total consideration was fixed at Rs.3 Crores. An amount of Rs. 21 Lacs was paid to Suresh Patel. Whereas, amount of Rs.90 Lacs was paid to Shri. Vijay Babu Gharat, Shri. Balaram Babu Gharat, Shri, Gopal Vitthal Gharat and Shri. Amrut Vitthal Gharat Respondents thereafter failed to comply with the terms of the Agreement dated 25.03.2010.*

10. *The Appellant therefore had filed a Suit for seeking Specific performance of the Agreement dated 25.03.2010 against the Respondent No. 1 to 5. The said Suit was dismissed by the Learned Civil Judge Senior Division, Panvel by its Judgment and Order dated 25.04.2018. However, the Learned Judge directed the Respondents to refund the earnest amount of Rs. 1,11,00,000/- to the Appellant herein.*

11. *The Appellant being aggrieved and dissatisfied by*

*the refusal of the prayer of Specific performance of the Agreement dated 25.03.2010, the Appellant has preferred a First Appeal No. 870 of 2018. The First Appeal No. 870 of 2018 is admitted by this Hon'ble Court on 08.08.2018. The Hon'ble Court further by an Order dated 18.12.2019 has granted temporary injunction in favour of the Appellant that the Respondent No.1 to 5 shall not create any third party rights in respect of the said Plot.*

*12. Respondent Nos. 2 to 5 have executed a Power of Attorney dated 14.02.2020 in favour of Mr. Mohammed Feroz Siddiqui of M/s. SGNS Developers Pvt. Ltd. Copy of said Power of Attorney is enclosed herewith and marked as Exhibit A. Power of Attorney holder is authorized to execute the consent terms.*

*13. The Appellant and the Respondent No.2 to 5 have settled their disputes amicably and have agreed to dispose off the present Appeal on following terms and conditions:-*

*A. Respondent Nos. 2 to 5, through their constituted attorney M/s. SGNS Developers Pvt. Ltd. Undertakes to this Hon'ble Court that said Respondents shall pay amount of Rs. 2,10,00,00000/- (RUPEES TWO CRORE TEN LAKHS ONLY) to Appellant as consideration for cancellation of Agreement dated 25.03.2010 and for releasing of all its rights, title and interest in the suit property. The payment shall be made in following installments;*

*i) An amount of Rs. 21,00,00000/- (RUPEES TWENTY ONE LAKHS ONLY) is paid upon execution and submission of these consent terms.*

*ii) An amount of Rs. 60,00,000/- (RUPEES SIXTY LAKHS ONLY) shall be paid within 3 months from the date of filing of these consent terms or on same day of registration of Tripartite Agreement between CIDCO and Respondent Nos. 2 to 5 and SGNS Developers Pvt. Ltd.*

*Whichever is earlier.*

*iii) An amount of Rs. 30,00,000/- (RUPEES THIRTY LAKHS ONLY) shall be paid within 5 months from the date of filing of these consent terms or within 2 months of registration of Tripartite Agreement between CIDCO and Respondent Nos. 2 to 5 and SGNS Developers Pvt. Ltd. whichever is earlier.*

*iv) An amount of Rs. 39,00,000/- (RUPEES THIRTY NINE LAKHS ONLY) shall be paid within 9 months from the date of filing of these consent terms or within 6 months of registration of Tripartite Agreement between CIDCO and Respondent Nos. 2 to 5 and SGNS Developers Pvt. Ltd, whichever is earlier.*

*v) An amount of Rs. 30,00,000/- (RUPEES THIRTY LAKHS ONLY) shall be paid within 11 months from the date of filing of these consent terms or within 8 months of registration of Tripartite Agreement between CIDCO and Respondent Nos. 2 to 5 and SGNS Developers Pvt. Ltd, whichever is earlier*

*vi) An amount of Rs. 30,00,000/- (RUPEES THIRTY LAKHS ONLY ) shall be paid within 11 months from the date of filing of these consent terms or within 8 months of registration of Tripartite Agreement between CIDCO and Respondent Nos. 2 to 5 and SGNS Developers Pvt. Ltd, whichever is earlier.*

*Vii) An amount of Rs. 30,00,000/- ( RUPEES THIRTY LAKHS ONLY) shall be paid within 13 months from the date of filing of these consent terms or within 10 months of registration of Tripartite Agreement between CIDCO and Respondent Nos. 2 to 5 and SGNS Developers Pvt. Ltd, whichever is earlier.*

*Viii) Failure of Respondent Nos. 2 to 5 to comply with undertaking recorded in clause No. A will give right to Appellant either to file contempt petition and/or*

*execution application for appropriate reliefs including a relief to recover balance amount along with interest @ 15% PM*

*B. Respondent Nos. 2 to 5 and their Power of Attorney holder M/s SGNS Developers Pvt. Ltd gives undertaking to this Hon'ble Court that they shall not create further third party rights in respect of suit property till full and final payment of above referred amount is made to Appellant, save and except Tripartite agreement in favour of said M/S SGNS Developers Pvt. Ltd.*

*14. Subject to above referred terms and conditions, the First Appeal may be disposed.”*

3. The learned counsel for the Appellant submits that as the matter is settled, the Appellant may be permitted to withdraw the first appeal against Respondent No.1

4. The Appellant is permitted to withdraw the present appeal against Respondent No.1 and amendment to be carried out immediate to that effect.

5. The first appeal stands disposed of in terms of the consent terms and the same to be treated as part and parcel of the decree.

6. No order as to costs.

( PRITHVIRAJ K. CHAVAN J. )

( K.K. TATED, J. )