

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

WRIT PETITION NO.7848 OF 2019

Jaspal Singh Malhar Singh

...Petitioner

Versus

Smt. Jijabai Dattatreya Patil and
Ors.

...Respondents

...

Mr. Niranjan P. Shimpi for the Petitioner.

Mr. Hemant Prabhulkar with Ms Sayalee Dolas i/b. M/s. Jurisperitus
for CIDCO.

Mr. Rohan Barge for Respondent No.2.

Mr. P.Y. Shankar for Respondent Nos.3 and 4

Mr. Girish Menon for Respondent Nos.1, 5 and 6.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATE : 09th APRIL, 2021.

P. C. :-

. Being aggrieved by concurrent orders dated 29/06/2018 and 03/07/2019 passed by the Trial Court and the First Appellate Court, rejecting the relief of temporary injunction, the Petitioner herein has invoked the writ jurisdiction of this Court under Article 227 of the Constitution of India.

2. The subject matter of the suit is the land admeasuring 700 sq. meters from plot no.98 allotted to Respondent No.1 by CIDCO. The said plot shall be hereinafter referred to as the 'suit plot'.

3. The Petitioner was the Plaintiff and the Respondents were the Defendants in the suit and shall be hereinafter referred to as the 'Plaintiff' and 'Defendants' respectively.

Brief facts necessary to decide this petition are as follows:-

The CIDCO had allotted to Defendant No.1 Plot no.98 admeasuring 2499.66 sq. mtrs. The Plaintiff claims that Defendant No.1 transferred all the rights, title and interest in favour of Defendant No.2 by an Agreement for sale dated 04/09/2004 with irrevocable power of attorney in respect of the suit plot. By Agreement dated 04/09/2004, Defendant No.2 agreed to sell the suit plot to the Plaintiff for Rs.32,13,000/-. The Plaintiff paid 25% of the sale consideration on the date of the Agreement and agreed to pay the balance amount within the time stipulated in the Agreement.

4. The Plaintiff claims that the Defendant Nos.1 and 2 in collusion with CIDCO entered into a Tripartite Agreement with Defendant Nos.3 to 6 and thereby transferred the suit plot in favour of Defendant Nos.3 to 6. The Plaintiff claims that the said transfer in favour of Defendant Nos.3 to 6 is illegal and is in breach of the earlier Agreement. The Plaintiff therefore filed a suit for specific performance with an application for temporary injunction sought to

restrain the Defendant Nos.3 to 6 from transferring and/or alienating the suit plot in favour of third party and further sought to restrain them from doing any construction in the suit plot and/or to sell any of the constructed premises to the third party. The Plaintiff has also sought to restrain the CIDCO and his Officers from giving any permission to Defendant Nos.3 to 6 to transfer the suit plot.

5. The Defendant No.2 claims that the Plaintiff had not fulfilled his obligation under the Contract and is therefore not entitled for the relief of specific performance. Defendant Nos.3 to 6 claim that the Plaintiff has no right to enforce the contract after a lapse of over 11 years. The Defendants claim that the Agreement dated 14/06/2005 is a sham document and that the Defendant No.1, who was the allottee of plot had not received any consideration in respect of the suit plot.

6. The Trial Court as well as the Appellate Court has dismissed the Application on the ground that there was no Privity of Contract between the Plaintiff and the Defendant No.1. Both the Courts below have held that the Plaintiff has failed to prove that he was put in possession of the suit plot. It is further held that the Plaintiff has also failed to prove that he was ready and willing to perform his part of the contract. On the basis of these findings, the

Trial Court has dismissed the Application for injunction, which order has been confirmed by the First Appellate Court.

7. The records *prima facie* reveal that the CIDCO has allotted to Defendant No.1 plot no.98 admeasuring 2499.66 sq. mtrs. Even before the allotment of the plot, the Defendant No.1, Defendant No.2 and one Nilkanth Gharat as a confirming party had entered into an agreement for sale in respect of the suit plot. CIDCO was not a party to this agreement and had not accorded permission for such transfer. The records reveal that Defendant No.1 had also executed a power of attorney in favour of Defendant No.2 and thereby authorized the Defendant No.2 to sell and transfer the plot which has proposed to be allotted to her by CIDCO. Acting on the said power of attorney, Defendant No.2 entered into an agreement dated 04/09/2004 with the Plaintiff and agreed to sell to him the suit plot, which was proposed to be allotted to Defendant No.1 for sale consideration of Rs.32,13,000/-.

8. The Agreement stipulates that 25% of the sale consideration was to be paid on the date of the agreement, 25% of the balance amount was to be paid within a period of 30 days from the date of the allotment letter and 25% was to be paid from 30 days of the date of the Agreement of lease between the CIDCO and the

allotee and 15% was to be paid within a period of 30 days thereafter. The balance 10% was to be paid at the time of the transfer.

9. The records reveal that the suit plot was allotted to Defendant No.1 on 09/07/2008 and Agreement of Lease was entered between CIDCO and Defendant No.1 on 08/03/2011. A perusal of the said Agreement *prima facie* reveals that the Plaintiff had paid to the Defendant No.2 an amount of Rs.8,30,250/- being 25% of the total consideration on the date of the Agreement. The Plaintiff did not pay the balance amount as on the date of the allotment or as on the date of the execution of the Agreement of Lease as stipulated in clause (1) (ii) (iii) and (iv) of the Agreement.

10. It is relevant to note that CIDCO, the Licensor, was not a party to the transaction between the Plaintiff and the Defendant No.2 or Defendant No.1 and *prima facie* there being no privity of contract between them the Agreement cannot be enforced against CIDCO. It is also pertinent to note that Defendant No.1, CIDCO and Defendant Nos.3 to 6 had entered into a Tripartite Agreement on 29/04/2011 whereunder CIDCO granted permission to Defendant No.1 to transfer her rights in Plot No.98 to Defendant Nos.3 to 6 and accordingly leased the said plot to Defendant Nos.3 to 6. The records thus reveal that Defendant No.1 was put in possession of the

land in pursuance of the lease agreement dated 09/03/2011. The said lease has been validly transferred in favour of Defendant Nos.3 to 6 by Tripartite Agreement dated 29/04/2021. The Plaintiff has *prima facie* failed to prove that he is in possession of the suit plot.

11. The Plaintiff, who claims right to the suit plot by virtue of Agreement dated 04/09/2004 has approached the Court in the year 2014. There is considerable delay in approaching the Court, which would disentitle the Plaintiff in seeking equitable relief of injunction. The findings of fact recorded by the Trial Court and the first Appellate Court are based on material on record. These orders do not warrant any interference in the Writ jurisdiction. Hence, the Writ Petition is dismissed.

12. At this stage, learned counsel for the Plaintiff prays that the interim relief may be continued so as to enable the Plaintiff to approach the Supreme Court.

13. Interim relief to continue for a period of four weeks from today.

(SMT. ANUJA PRABHUDESSAI, J.)