

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3391 OF 2007
WITH
INTERIM APPLICATION NO. 179 OF 2021
(Contempt Application)
IN
COMMERCIAL SUMMARY SUIT NO. 2511 OF 2007

Manjula S. Chauhan . .. Plaintiff
Vs.
G.A. Builders Pvt. Ltd.
& Ors. Defendants

WITH
INTERIM APPLICATION NO. 173 OF 2021
IN
COMMERCIAL SUMMARY SUIT NO. 2511 OF 2007

G.A. Builders Pvt. Ltd. .. Applicant

In the matter between :

Shantilal Amrutlal Chauhan & Ors. . .. Plaintiffs
Vs.
G.A. Builders Pvt. Ltd. & Ors. Defendants

WITH
INTERIM APPLICATION NO. 373 OF 2020
IN
NOTICE OF MOTION NO. 3391 OF 2007
IN
COMMERCIAL SUMMARY SUIT NO. 2511 OF 2007

Mr.Chirag Kamdar i/b Mr. Janu V. Gulati for applicant/original defendant
No.1 in IA/173/2021.

Ms. Anushka Shreshtha for plaintiff.

Mr.Ajit Tamhane and Mr. Amit Potnis, Adv. Kiran Gawalwad i/b Tamhane &
Co. for defendant No.2.

Mr.P.G. Lad a/w. Ms. Priyanka Naik for defendant No.4.

CORAM : N.J. JAMADAR, J.
DATE : 15th FEBRUARY 2021

ORAL ORDER :-**INTERIM APPLICATION NO. 173 OF 2021**

1. The defendant No.1 has taken out this application seeking directions against defendant No.2-Pantnagar Gangasagar Co-Operative Housing Society Limited to execute and register a Supplementary Lease Deed with defendant No.4-Maharashtra Area Development Authority (MHADA), in compliance with the order dated 12th January 2016 in Notice of Motion No.3391 of 2007 and order dated 11th February 2019 in Notice of Motion No. 2288 of 2016, (taken out by the defendant No.2 to recall the order, dated 12th January 2016.) The defendant No.1 has also sought a direction for appointing a Court Commissioner to execute and register the Supplementary Lease Deed in the event of default on the part of defendant No.2.
2. The substance of the application is that, the defendant No.2-Society is under an obligation to execute a Supplementary Lease Deed with defendant No.4-MHADA in respect of tit-bit land, which came to be allotted to defendant No.2-Society, and on the strength of which the society building came to be redeveloped with additional F.S.I. The defendant No.2-Society has, however, not executed the Supplementary Lease Deed despite specific directions by this Court.

3. The plaintiff, who is a member of defendant No.2-Society, has instituted the instant suit, *inter-alia*, for the relief that the Development Agreement, dated 30th May 2006, executed between defendant No.1-developer and defendant No.2-Society is void and is not executable and, in any event, it has been validly terminated, rescinded and revoked and the said Development Agreement does not bind defendant No.2-society and its members.

4. In the suit, the plaintiff had taken out a Notice of Motion No. 3391 of 2007. The notice of motion, *inter-alia*, sought the relief of appointment of a Court Receiver in respect of a certain flats in the society building. In the order dated 12th January 2016, this Court adverted to the circumstances which then operated as impediments in the grant of occupation certificate by the defendant No.3-Municipal Corporation. After analysis, this Court found that only the requisition in respect of execution of a Supplementary Lease Deed by defendant No.2-society in favour of defendant No.4-MHADA awaited compliance. Having noted that the draft of the Supplementary Lease Deed was shared and it was to be finalised, the defendant No.2-Society was directed to execute the Supplementary Lease Deed.

5. The observations in paragraphs 2 and 3 of the said order dated 12th January 2016 are material. They read as under :

“2 Of the requisitions forming part of the communication of MHADA dated 5 October 2015, admittedly only three

requisitions remain to be fulfilled. The first, Item No.2 of that letter, is about the supplementary lease deed in respect of additional land of 102.60 sq. mtrs. allotted by MHADA to Defendant No.2 Society. In this behalf, it is submitted by both Defendant No.1 and Defendant No.2 that a draft supplementary lease deed has been handed over by them to MHADA and that MHADA needs to finalise this draft. Learned Counsel for MHADA (Defendant No.4) states that MHADA shall finalise the draft within a period of two weeks from today. Learned Counsel for Defendant Nos. 2 and 4 state that Defendant No.2 Society and MHADA shall execute the supplementary lease deed in terms of the finalized draft within a period of two weeks thereafter.

3. Accordingly, MHADA is directed to issue the requisite NOC after the supplementary deed is executed by Defendant No.2 Society in accordance with this order. Such NOC shall be issued within a period of four weeks of execution of the supplementary agreement. The motion to come up on board for further directions after eight weeks.”

6. The defendant No.2-Society took out Notice of Motion No. 2288 of 2016, in the abovenumbered notice of motion, and sought recall of the aforesaid order dated 12th January 2016. This Court, by order dated 11th February 2019, was persuaded to dismiss the said notice of motion observing, *inter-alia*, as under :-

“2. If one has regard to the facts of the case, MCGM had already approved and sanctioned amended plans, which included this tit-bit land. After the plans were sanctioned and Defendant No.2 Society gave an undertaking to Defendant No.1 for constructing buildings as per the amended plans, there is now no merit in the submission that this particular portion of land cannot be allotted to the society. The society has not only made use of this land whilst calculating the FSI for its construction, but even consideration has changed hands for the additional construction based on the FSI relatable to this particular piece of land and on the basis that it is comprised in the leasehold in favour of the society. Defendant No.2 Society has, in its resolution of 3

November 2012, accepted the developer's proposal to construct in accordance with the amended plans, which included the FSI of this particular portion of land. The record, thus, indicates that it was the society's own case that they were entitled to this additional tit-bit area and which alone could make the construction legitimate.

3. Having regard to these circumstances, and considering that the original order of 12 January 2016 was passed in the backdrop of these facts and by consent of parties, it is not possible to grant relief sought in prayer clause (a) of the notice of motion. Notice of motion is, accordingly, dismissed. It is, however, clarified that so far as prayer clauses (c) to (e) of the motion are concerned, Defendant No.2 Society shall be at liberty to seek appropriate remedy before such forum as it may be advised to go before. All rights and contentions of the parties on merits in that behalf are kept open."

7. Defendant No.2-Society assailed the aforesaid order by preferring an appeal, being Appeal (Lodg.) No. 149 of 2019, before the appellate court. By an order dated 12th July 2019, the appeal came to be dismissed with the clarification that the order under challenge does not preclude or prevent defendant No.2 from instituting substantive proceedings and claiming such reliefs as are permissible in law.

8. It is the grievance of the defendant No.1-applicant that despite the aforesaid order passed by the Appeal Bench, the defendant No.2-Society has neither executed any Supplementary Lease Deed nor any proceeding has been instituted to agitate the grievance regarding the allotted land not falling under the description of tit-bit land. Resultantly, defendant No.4-MHADA has not issued the 'No Objection Certificate' to facilitate the

defendant No.1 to obtain occupation certificate from defendant No.3-the Municipal Corporation. Resultantly, the defendant No.1 continues to be saddled with the liability to pay the transit rent for no fault on the part of defendant No.1, despite having complied with all the obligations as regards the development of the society premises.

9. The defendant No.2-Society has resisted the application by filing an affidavit in reply. Certain allegations of unlawful acts and forgery of the record are made against defendant No.1. The substance of the resistance is that under the garb of tit-bit land the premises, over which the gutter runs, has been allotted to the defendant No.2-Society by defendant No.4 MHADA. Having discovered the said fact, the defendant No.2-Society is resisting the attempts on the part of the authorities, who are in collusion with the defendant No.1, to coerce it to execute the Supplementary Lease Deed. The defendant No.2-Society now proposes to institute appropriate proceedings to agitate the said grievance. On these, amongst other, grounds the defendant No.2-Society has prayed for rejection of the application.

10. I have heard the learned counsel for the applicant-defendant No.1, the learned counsel for defendant No.2-Society and the learned counsel for defendant No.4.

11. The principal prayer in the instant application is to direct the defendant No.2-Society to execute the Supplementary Lease Deed in terms

of the order dated 12th January 2016. There is no quarrel over the fact that the occupation certificate could not be obtained for want of no objection certificate from defendant No.4-MHADA, who, in turn, is insisting for the execution of the Supplementary Lease Deed. The order passed by this Court on 12th January 2016, extracted above, indicates that in the circumstances which then obtained, a statement was then made that a draft Supplementary Lease Deed has been shared by defendant No.4-MHADA with the office bearers of defendant No.2. Evidently, at that point of time, the grievance now sought to be agitated was not made. The claim that, at that point of time, the defendant No.2 was unaware of the parcel of land which was being allotted under the description of tit-bit land was also adverted to by this Court in the order dated 11th February 2019. The facts that the commencement certificate was granted taking into account the additional land which was thus allotted, increased FSI having been granted on the strength thereof and even consideration having changed hands for the additional construction based on the FSI relatable to the said particular piece of land weighed with this Court to decline the prayer to recall the order dated 12th January 2016.

12. In the aforesaid view of the matter, at this stage, it is not now open for the defendant No.2 Society to reagitate the same issue, at least before this court. It is imperative to note that under the order dated 11th February

2019 itself, this court had clarified that so far as prayer clauses (c) to (e) of the said motion, the defendant No.2-Society would be at liberty to seek appropriate remedy before such forum as it may be advised. Furthermore, the appeal court had also expressly clarified that the order under challenge does not preclude or prevent defendant No.2 from instituting substantive proceedings and claiming such relief as are permissible in law.

13. The inaction on the part of defendant No.2 to institute the proceedings, for agitating the grievance on the strength of which the execution of the Supplementary Lease Deed was sought to be resisted is to its own peril. The defendant No.2-Society cannot be permitted to put hindrance in the grant of occupation certificate by withholding the execution of the Supplementary Lease Deed in the face of aforesaid three orders of this Court. It undoubtedly causes prejudice not only to defendant No.1 but also the occupants of the said building.

14. In the aforesaid view of the matter, and the fact that the defendant No.1 has also taken out an application for initiating the contempt proceeding against the defendant No.2-Society, being Interim Application No.179 of 2021, this Court considers it expedient in the interest of justice to provide further opportunity to defendant No.1 to execute the Supplementary Lease Deed with defendant No.4-MHADA, within a period of four weeks from today.

15. The interim application thus stands allowed in terms of prayer clause (a).

16. The default on the part of defendant No.2-Society to execute the Supplementary Lease Deed would be construed as an aggravated contempt.

17. Interim application No. 173 of 2021 stands disposed of in the aforesaid terms.

18. List Interim Application No.179 of 2021 on 15th March 2021.

Shraddha
K.
Talekar

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K. Talekar
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[N.J. JAMADAR, J.]