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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 628 OF 2022**

Shri Sureshkumar Jawaharlal
Shanklesha and Ors.

.....Petitioners

V/s

Gopaldham Cooperative
Housing Society Ltd. and Ors.

.....Respondents

Mr. Girish Godbole a/w Mr. Sumit Kothari i/b Atharva Dandekar,
Advocates for the Petitioners.

Mr. Prafulla Shah i/b Ms. Gunjan Shah for Respondent No.1.

Mr. Sandeep D. Shinde for Respondent Nos. 4 and 5.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 20, 2022

P.C.:-

1] Present Petition is directed against the order dated 15th December 2021 passed in Misc. Civil Appeal No. 62 of 2021 (Gopaldham Co-operative Housing Society Limited vs. Jai Malhar Builders and Developers and 9 Others) wherein the Appellate Court ordered injunction, restraining Defendant Nos. 3 to 8 or persons claiming through or under them from carrying out construction over the suit property.

2] Facts necessary for deciding present Petition are as under:-

3] One Suresh Teli was an owner of the land bearing CTS Nos.2089 and 2090 together admeasuring 389.6 sq. mtrs. and 63.5 sq. mtrs., totaling to 453.10 sq. mtrs. On the said property, stood a building being House No.26 which is identified as 'Gopal Niwas'. The said Suresh Teli in the capacity of Proprietor of M/s Dhanshri Builders, developed said plot, thereby constructing a building consisting of ground plus four floors, which is identified as 'Gopaldham'. The aforesaid construction was carried out pursuant to the permission granted by the Planning Authority on 24th April, 1991. Flats in the said building Gopaldham were purchased by various persons pursuant to agreement of sale and in view of provisions of the Maharashtra Ownership of Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 and in accordance with the provisions of the Maharashtra Apartment Ownership Act, 1970, Plaintiff-Society was formed.

4] It is the case of the Petitioners/Defendants that vide registered Sale Deed dated 17th March, 2009, they have purchased the land admeasuring 194.8 sq. mtrs out of City Survey No. 2089 alongwith the

structure Gopal Niwas bearing House No.26. It is claimed that the said structure Gopal Niwas was occupied by four tenants viz. Gala No.4 and Room Nos. 1, 3, 4 and 10. Vide various surrender deeds these tenants surrendered their tenancy rights from 24th March, 2009 to 28th January, 2010.

5] On 28th December, 2010, an application was moved for measurement of the aforesaid property and C.T.S. No.2089/1 was carved out from original City Survey No. 2089, consisting of 194.80 sq. mtrs. The aforesaid area of 194.8 sq. mtrs was rectified vide Rectification Deed dated 17th June, 2010 to 140.10 sq. mtrs. to the extent of purchase made by the Petitioners/Defendants. The tenants were provided with permanent alternative accommodation vide agreement dated 4th June, 2015. It is then claimed that after aforesaid sub-division, pursuant to the request made, Municipal Corporation/Planning Authority granted permission for development of Plot No.2089/1 and Survey No.2090 vide Commencement Certificate dated 12th March, 2019, resulting into filing of the present suit.

6] Mr. Godbole, learned Counsel for the Petitioner while questioning the order of grant of injunction by the lower appellate court would make following submissions:-

(a) The Appellate Court committed an error of law in not remanding the matter to the Trial Court once having noticed that order of the Trial Court refusing injunction lacks reasons;

(b) the suit claim brought into action by the Respondents/Plaintiffs at much belated stage, particularly when the Sale Deed in favour of the Petitioners was executed way back in 2009 i.e. on 17th March, 2009, subsequent to which measurement was carried out, plans were sanctioned and the construction has commenced.

7] According to him, either matter needs to be remanded to the Trial Court for recording appropriate reasons or, in the alternative, this Court should quash and set aside the impugned order passed by the Appellate Court, whereby injunction is ordered. So as to substantiate the claim that injunction cannot be granted at belated stage and also relying on principles governing grant of temporary

injunction, support is drawn from the judgments of the Apex Court in the matter of *Mandali Ranganna and others vs. T. Ramchandra and others* reported in (2008) 11 SCC 1 and in the matter of *Ambalal Sarabhai Enterprise Limited vs. KS Infraspac LLP Limited and Anr* reported in (2020) 5 SCC 410.

8] While countering submissions, learned Counsel for Respondents/Plaintiffs would support the judgment of the Appellate Court, granting injunction based on the material available on record and as such prayer for rejection of the Petition is made.

9] Considered submissions.

10] Vide agreement dated 9th December 1994 M/s Dhanshri Builders through its Proprietor Suresh Teli who is also an owner of the suit property, has agreed to develop the property in favour of members of the Plaintiff-Society by various agreements. The Schedule in the said agreement reads thus:-

“ALL THAT PIECE & PARCEL of Gaonthan land,
lying and situated at kasbe of Kalyan, within

Registration District Thane, sub-Registration,
Kalyan, within the limits of Kalyan Municipal
Corporation bearing,

C.T.S. No.	Area (sq. mtrs.)
2089	389.60
2090	63.50

	453.10

as bounded as follows:

ON OR TOWARDS EAST: Road (kasarhat lane)

ON OR TOWARDS WEST: C.T.S. NO.2087 & 2092

ON OR TOWARDS NORTH: C.T.S. NO.2088/1 to 7

ON OR TOWARDS SOUTH : Road.

together with all easement rights etc.”

11] The said owner has got sanctioned the structure which is particularly identified in the present proceedings as Gopaldham on C.T.S. Nos.2089 and 2090, area admeasuring 453.10 sq. mtrs. The sanction was granted vide building permission dated 24th April, 1991 given by Respondent-Municipal Corporation. The said property was developed in accordance with the provisions of the Maharashtra Ownership of Flats (Regulation of the romotion of construction, sale,

management and transfer) Act, 1963 (hereinafter referred to as “MOFA, 1963). The recitals in the said agreement for sale in categorical terms provide that rights are created in the said property mentioned in the Schedule referred to above of the occupiers who are residing in structure Gopaldham pursuant to various agreements. The said property is freehold land i.e. without any restrictions on the right to transfer and total FSI exhausted in the said construction is 453.10 sq. mtrs. The balance FSI/FAR, if any, after construction of Gopaldham, if available, was at the disposal of the promoter/builder till registration of the Society and post registration, the said FSI was to vest in Respondent/Plaintiff viz. Society. Recital in the agreement referred to above, particularly clause (4) reads thus:-

“(4) The residual F.A.R. (FSI) in the plot or the layout non-consumed will be available to the PROMOTERS / BUILDERS till the registration of the society whereas after registration of such society the residual F.A.R. (FSI) shall be available to such society.”

12] Apart from above, the said owner has agreed to conduct himself with members of Plaintiff-Society in accordance with the provisions of

the MOFA, 1963. The owner Teli further agreed to transfer the land and building in favour of the Co-operative Housing Society within 12 months of registration of the Co-operative Housing Society by executing or causing to execute necessary Conveyance Deed. Recital of the said agreement, particularly para 12 reads thus :

“(12) SUBJECT to the terms and conditions of this agreement the PROMOTERS/ BUILDERS shall within 12 moths of Registration of co-operative society as aforesaid cause to be transferred the land and the said new building in favour of such co-operative housing society by executing or causing to be executed the necessary conveyance deed as stated above.”

The said owner has agreed to execute Transfer Deed or any such documents as are necessary in respect of the premises.

13] In the aforesaid background, it is apparent that when the building Gopaldham was developed, what was agreed to by the owner, was to transfer the entire property being C.T.S. Nos. 2089 and 2090 and as such hardly any open land/F.S.I. was left at the disposal of the

said owner. It appears that the Petitioners purchased the land out of above City Survey Numbers. Contrary to the transfers already effected by the owner, Petitioners have secured permission from the local Planning Authority i.e. Kalyan Dombivali Municipal Corporation and has started developing the same. As such, primarily it appears that the erstwhile owner Mr. Suresh Teli, after developing the building Gopaldham, was not left with any land to transfer the same in favour of the Petitioners. The Transfer Deed was effected in favour of the Petitioners in 2009. The Petitioners thereafter have got executed Correction Deed, thereby correcting area from City Survey No. 2089 to 140.10 sq. mtrs. and thereafter secured permission from the Municipal Corporation for carrying out development.

14] In the aforesaid background, on merit, it is apparent that Petitioners have no lawful claim or title to the suit property. In my opinion, by very conduct of its owner Mr. Suresh Teli, as discussed hereinabove, land in question appears to have been prima faice vested in Plaintiff-Co-operative Housing Society. The very title of the Petitioners/Defendants is defective.

15] In the aforesaid backdrop, order of grant of injunction by the lower appellate court is quite justified as the order is in tune with the provisions of the MOFA, 1963, as the property mentioned in the Schedule or in the suit claim stood vested in the original Plaintiff.

16] The Appellate Court while considering the claim for grant of temporary injunction appears to be sensitive to the aforesaid conduct of the present Petitioners i.e. purchasing the land without verifying the title and noticed that in case if Petitioners are permitted to carry out the construction great and irreparable loss will be caused to the Plaintiff, as third party rights shall be created thereby destroying the original structure of the property. As such, considering the balance of convenience and prima facie case, Appellate Court was justified in granting temporary injunction.

17] As far as contention of Mr. Godbole, learned Counsel for the Petitioners that matter should have been remanded to the trial court for want of reasons is concerned, it appears that the Petitioners instead of consenting/agreeing for remand has contested the appeal on merit. After having suffered an order of temporary injunction, by way of

afterthought, Petitioners have come out with the prayer for remand. As such, said contentions are rejected, as the Petitioners themselves have invited findings on merit of the matter from the Appellate Court.

18] As far as second contention as regards preferring suit at belated stage is concerned, primarily it appears that Plaintiff-Society is not shown to be party to any of the Conveyance Deeds. Atleast, no such case is demonstrated by the Petitioners before the Court below or this Court. In view of provisions of the MOFA, 1963, particularly Sections 10 and 11, the statutory liability of erstwhile owner Mr. Suresh Teli does not empower him to enter into another Sale Deed of transfer of the property in favour of the Petitioners. In view of legal fiction, title of the suit property stood vested in the Plaintiff-Society. After the title stood vested in the Plaintiff-Society, the claim of the Petitioners/Defendants in getting building permission on 12th March, 2019 is not at all justified, particularly when the said act is contrary to the provisions of the MOFA, 1963. The Petitioners themselves have come out with a case that the Plaintiff-Society is consisting of purchasers of flats pursuant to the provisions of the MOFA, 1963. As such, after permission was granted on 12th March, 2019, it cannot be

said that Plaintiffs have approached the Trial Court at belated stage.

19] It is also not demonstrated by the Petitioners/Defendants as to whether during the course of carrying out measurement from City Survey, applying for sub-division of plot, getting sanction from the Planning Authority, the fact about development of 'Gopaldham' was brought to the notice of the authorities.

20] In the aforesaid backdrop, reliance placed by the learned Counsel for the Petitioners on the judgment of the Apex Court in the matter of *Mandali Ranganna* (supra) and *Ambalal Sarabhai Enterprise Limited* (supra) will be hardly of any assistance.

21] In that view of the matter, no case for interference in extraordinary jurisdiction is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)