

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order (A.O.) No. 265 / 2021

Alongwith

Interim Application No. 2424 / 2021

in

Appeal from Order (A.O.) No. 265 / 2021

Navrang Co-operative Housing Society Limited ... Appellant

Versus

**M/s Tanna Housing a Partnership Firm
and Others. ... Respondents**

Mr. Shreepad Murthy a/w Clarissa Miranda i/by Abhishek Patil,
Advocate for the Appellant.

Mr. Vishal Kanade i/by Mr. Haresh J. Lulia, Advocate for the
Respondent Nos. 1 to 3.

Mr. Ravindra Sirsikar, Advocate for MCGM/Respondent No.4.

CORAM : SANDEEP K. SHINDE, J.

RESERVED ON : 12th JANUARY, 2022.

PRONOUNCED ON : 17th JANUARY, 2022.

[Through Video Conference]

P.C.

Heard. Mr. Shreepad Murthy, learned Counsel for the Appellant,
Mr. Vishal Kanade, learned Counsel for the Respondent Nos. 1 to 3
and Mr. Sirsikar, learned Counsel for the Corporation.

1. This appeal under Order-43 Rule-1(r) of the Code of Civil Procedure, 1908 is preferred by the Plaintiffs, against the order dated 20th August, 2021 in Notice of Motion No. 1504/2021, by which, the learned Judge, City Civil Court declined ad-interim injunction to restrain the Defendants from developing or making construction on Plot No. 93-B.

2. **Facts in Brief :**

Plaintiff is a Co-operative Housing Society, consisting of thirty six flats/ members in, a building ground plus three floors, constructed and developed by M/s Ratilal Parekh & Sons (Developer for short), on Plot No. 93-A. Their case is Plot No. 93-A is part of larger Plot bearing City Survey No. 93A/1 to 11 ad-measuring 3185.90 square meters. The said larger plot came to be divided into plot no. 93-A and 93-B. Plaintiffs would contend their building is on plot no. 93-A, which admeasures 1942.1 sq. mtrs. After constructing building on Plot No.93-A, later, M/s Ratilal Parekh by registered deed of assignment cum conveyance dated 29th August, 2009 assigned rights in Plot No.93-B, a part of the larger plot in favour of the Defendant

No.1. It is Plaintiffs' case that they are in possession of 1914 sq.mtrs. of larger Plot and has consumed FSI equivalent thereto. Yet, Mr. Ratilal Parekh in collusion, assigned development rights to the Defendant No.1, not only in respect of plot no. 93-B, but also assigned balance and available development rights in respect of plot no. 93A. In other words, Plaintiffs would assert that Mr. Ratilal Parekh in collusion with Defendant No.1 deprived the Plaintiff-Society of the development rights of land admeasures 1914 sq.mtrs., on which their building has been constructed.

3. That being reason to protect the rights, the Plaintiffs instituted suit seeking various reliefs including that the Defendant No.1 be restrained from developing the plot no. 93B. Pending suit, the Plaintiffs moved Notice of Motion No. 996/2014 to restrain Defendant No.1 from putting up construction on Plot No.93-B. However, by the time, the said motion was taken up for the hearing, the Defendant No.1 to 3 had put up construction, up to plinth level and therefore the interim relief was not sought.

4. Pending one motion, Plaintiffs moved second Notice of Motion No. 1504/2021, to injunct and restrain the Defendant No.1 to 3 from constructing building on plot no. 93B in pursuant to approved plan dated 7th May, 2010; 14th September, 2015; 17th May, 2021; 18th May, 2021 and 21st May, 2021 under File No. CHE/A-4751/BP(WS)/AR/337/2/Amend.

5. The learned trial Court refused the ad-interim relief vide order dated 20th August, 2021 and directed the Defendants to file affidavit-in-reply and motion was scheduled for the hearing on 26th August, 2021.

6. It appears the Plaintiffs have moved Second Notice of Motion for almost identical reliefs, which were sought in first N.M. No. 996/2014, which is not yet disposed of. For that reason, the order of the learned trial Court refusing the ad-interim relief cannot be faulted with. Bearing in mind, facts of the case, in my view, it would be expedient in the interest of justice, if the trial Court disposes the Motion No. 996/2014 and Motion No. 1504/2021

together expeditiously and preferably before 30th April, 2022.

7. Needless to state, that the Corporation shall comply with the directions contained in the order dated 21st September, 2021 which reads as under :

“Learned Counsel appearing for respondent no.4-Corporation, seeks time to take instructions and in particular with respect to sub-division of plots annexed at page-126 of the Appeal and FSI made available to the respective plots i.e. Plot No.93/A and 93/B.”

Mr. Murthy, learned Counsel for the appellant, submits, these directions have not been complied with.

8. As a result, the Appeal from Order is disposed of with directions to the learned Judge, City Civil Court to conclude hearing in Motion No. 996/2014 and Motion No. 1504/2021 in L.C. Suit No. 703/2014 on or before 30th April, 2022, in accordance with law.

9. All contentions of the parties are kept open.
10. Appeal from Order and all Applications therein, are disposed of accordingly.

(SANDEEP K. SHINDE, J.)

Digitally signed
by
MOHAMMAD NAJEEB
MOHAMMAD QAYYUM
Date:
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