

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order (A.O.) No. 458 / 2021

Alongwith

Civil Application (CAA) No. 19 / 2021

in

Appeal from Order (A.O.) No. 458 / 2021

Smt. Chandraprabha Babasaheb @ Tulshiram

Tupe and Ors.

... Appellants

Versus

City Corporation Limited

Thr. Aniruddha Praddumna Deshpande

... Respondent

**Senior Advocate Mr. Prasad Dani i/by Pavan S. Patil, Advocate
for the Appellants.**

**Mr. G.S. Godbole a/w S.B. Pawar, Amit Karle and Swati Sawant
i/by S.K. Legal Associates LLP, Advocate for the Respondent.**

CORAM : SANDEEP K. SHINDE, J.

RESERVED ON : 02nd MARCH, 2022.

PRONOUNCED ON : 15th MARCH, 2022.

Oral Judgment.

1. Pending Special Civil Suit 353/2019, instituted by M/s. City Corporation Ltd.-Respondent herein, the trial Court vide order dated 17th June, 2019 restrained, Appellants-Defendant Nos.1 to

11 from causing obstruction to possession of Plaintiff over the suit property, till the disposal of the suit.

2. The order dated 17th June, 2019 is challenged by the Defendants in this appeal under Order-43 Rule-1(r) read with Section 104 of the Code of Civil Procedure.

3. Heard. Mr. Dani learned Senior Counsel for the Appellants and Mr. Godbole, learned Senior Counsel for the Respondents.

4. The only question that falls for consideration is, whether the order impugned calls for interference ?

5. Background facts are as under ;

Plaintiffs are Land-developers. They applied to State of Maharashtra for locational clearance to the Special Township Project, proposed at Hadapsar and Mundhwa Villages.

Therefor, vide joint development agreement dated 24th September, 2004, Plaintiffs acquired, rights to develop the suit lands, a part of township project, from the Defendants, to the extent 3 hectores and 16 R, upon certain terms and conditions more particularly set out therein. In like manner Plaintiffs acquired the development rights in land Survey Nos. 187 to 201, 243 to 245 and 173, adjacent to the suit lands. The State of Maharashtra in exercise of the powers conferred by Section 18(3) of the Maharashtra Regional and Town Planning Act vide notification dated 8th March, 2006, notified Special Township Project, submitted by Plaintiffs. The project is spread over on tract of land ad-measuring 168.163 HA, in village Hadapsar and Mundhwa, of different Survey Numbers, described in Annexure 'A' appended to the notification. Suit land is part of it. Whereafter, Tahsildar Haveli vide order dated 28th July, 2007 consolidated these lands in, one block. Plaintiffs proposed to implement the Special Township Project, in phases (25 sectors)

by developing the plots, with necessary infrastructures including internal roads. Plaintiff has constructed about 5500 flats and proposes to construct many more. Besides the suit lands, the Plaintiffs have purchased other ancestral lands of the Defendants, bearing Survey No. 184/7 and Survey No. 184/8, 184/9, 184/10, 184/11 for the same project, vide registered sale deed dated 28th September, 2004. Insofar as suit lands are concerned; vide joint development agreement dated 24th September, 2004, it was agreed between the Plaintiffs and Defendants that;

- (i) suit lands would constitute a part of a 'block', for implementing the Special Township Project;
- (ii) Plaintiffs shall develop suit lands by constructing the internal access roads with infrastructure like drainage, electricity etc.
- (iii) Once Plaintiffs develop the suit land, 60% of it, would be handed over to Defendants of their choice and 40% would be

retained by the Plaintiffs in lieu of cost incurred for developing the suit land.

(iv) Once suit land is developed and master layout is sanctioned, the Defendants would exercise the option, which part of the suit developed plot, they would like to retain for themselves.

(v) Defendants were to exercise the said option, within thirty days from the date on which, sanctioned layout plan was offered to them by the Plaintiffs.

6. In the backdrop of the aforesaid facts, it is Plaintiffs case that after the layout was sanctioned by the Competent Authority, they called upon Defendants, repeatedly since February, 2010 to exercise the option for retaining 60% of the developed plot. This fact is evident from correspondence/letters, dated 8th February, 2010; 28th June, 2010; 26th April, 2012 followed by notice dated 14th December, 2012 issued through

Advocate Barkunde and further notice dated 1st August, 2013.

In a reply to notice on 12th August, 2013, the Appellants pleaded ignorance of the joint development agreement dated 24th September, 2004 and order amalgamating the suit land in a larger block. It appears on 25th January, 2019, the Plaintiffs called upon one of the Defendants to exercise the option and cautioned, if option was not exercised it would be presumed, that the Defendants were not interested in a joint development agreement. In reply, on 28th February, 2019, Mr. Sudhir Tupe, one of the Appellants, informed the Plaintiffs that, although he explained the option to family members, there was no consensus/ agreement amongst them, on ONE OPTION. Therefore, response of Mr. Tupe admits the execution of a development agreement dated 24th September, 2004.

7. In the backdrop of the facts aforesated, Plaintiff case is, that since Defendants were deliberately avoiding to exercise the

option, township project could not be proceeded with, although, the layout was sanctioned by the Competent Authority. Thus, pleaded, that deliberate omission on the part of Defendants to exercise the option has forestall their project. Equally, that prevented the Plaintiffs from making road through the suit land, a facility to the flat purchasers in project to access the other plots. Therefore, Plaintiffs notionally, demarcated the suit land and earmarked a portion of it for the Defendants, as per joint development agreement and proposed a road through it. However, since Plaintiffs were apprehending the resistance from the Defendants in developing the suit property including road and since deliberate omission and/or avoidance by the Defendants to exercise the option, has largely affected the progress of Township Project, they were constrained to institute the Special Suit in the Court of Civil Judge, Senior Division, being Special Suit No. 653/2019 in March, 2019. In the suit, the Plaintiffs are seeking;

- (i) declaration of their rights to develop the suit plot and to make the road through it;
- (ii) mandatory injunction that Defendants to take possession of 60% area of suit developed plot, earmarked and shown in a plan annexed to the application and;
- (iii) damages Rs. 4 Crores towards consequential loss caused to them.

. Pending suit, the Plaintiffs moved an application, Exhibit-5, for seeking temporary injunction to restrain the Defendants from causing obstruction in developing and/or making road in/through the suit plot as shown in map annexed to the application.

8. The foremost defense and contention of the Defendants was that they did not execute the joint development agreement dated 24th September, 2004. So also, contented that inclusion of the suit land, in the township project, was done by misleading

the Government Authorities. It is therefore, Defendants contention that the amalgamation of 7x12 extract of the suit land and the layout were illegal and not binding on them. Furthermore, the Defendants argued that development agreement dated 24th September, 2004 being not a concluded contract, it cannot enforced, as sought by the Plaintiffs. To put it differently the Defendants denied the Plaintiffs right to develop the suit land, which is a part of a special township project.

9. The learned trial Judge upon appreciating the pleadings and documents on record, held that the Plaintiffs have prima facie shown their possession over the suit land and taking note various sanctions, permissions by local authorities, progress in township project and amount invested in the project, held balance of conveniences tilts in Plaintiffs' favour and also held if injunction was refused, Plaintiffs would suffer irreparable loss.

On these considerations, learned trial Court restrained Defendants from obstructing the Plaintiffs possession over the suit land, till the decision in the suit.

10. Herein, the joint development agreement was executed in September, 2004; project was sanctioned by the State of Maharashtra in March, 2006; whereafter Tahasildar in July, 2007 consolidated the lands in one block. Notification under MRTP shows suit property is part of township project and part of a block of land. In the backdrop of these admitted facts, the contention of the Defendants that they had not executed the joint development agreement and amalgamation of that suit land was done by misleading the Government Authorities, was not only abrupt, but equally untenable, in view of evidence available on record. Reasons being; in February, 2019 Mr. Sudhir Tupe, one of the Defendants, admitted that the family members could not come to a common understanding as to

which portion of the suit land (60% of the developed plot) was to be opted and retained. This piece of evidence is enough to reject Appellants' contention, that they did not execute joint development agreement. Next reasons is that, although the Defendants were aware of township project that was sanctioned in 2006 and in consequence suit land stood amalgamated in larger block of land, neither they made efforts to protect their interest in the suit lands, nor challenged the notification under the MRTP Act or order of Tahasildar, amalgamating the suit lands in larger block of land, nor instituted the suit to rescind/ challenge the development agreement dated 24th September, 2004. It is discernible, from the facts of the case that the Defendants-Appellants, were selective in their defence. They chose to be 'silent spectator', since 2004. Thereafter as the Township Project, progressed substantially, obviously potentials of project lands, also started increasing gradually. It appears for that reason Defendants avoided the development

agreement deliberately with an intention to block the project so as to force the Plaintiffs to come to their 'terms'. As a matter of fact, once suit lands have been notified as a part of Special Township Project sanctioned under the MRTP Act, unless there is evidence, contrary thereto it is to be presumed that inclusion of the suit lands in notified Special Township Project are in possession of the Plaintiffs for its implementation. Not just the notification, under MRTP Act, but various sanctions, orders and permissions granted by the Planning Authorities and Revenue Authorities to develop project land ad-measuring 168.613 H., also reinforces the Plaintiffs possession over the suit land. Indisputably the land abutting the suit lands have been developed by the Plaintiffs by constructing the buildings thereon. Material on record shows the flats in the project have been sold out to flat purchasers. In these facts and circumstances, the arguments of Appellants that they had not executed the joint development agreement and had not handed

over a possession of the suit lands, to the Plaintiffs, is not only improbable but inconceivable. Having regard to these facts, the learned Judge has rightly observed that the Plaintiffs have prim a facie proved their possession over the suit lands and their right to develop it. Likewise, upon taking into consideration the documents on record and pleadings of the parties, has correctly held that if injunction was not granted the Plaintiffs would suffer irreparable loss. These findings have been recorded in wake of the various sanctions and permissions granted by the various Authorities for implementing Special Township Project spread over a land ad-measuring 168 hectors. Therefore I do not see any reason to interfere with the impugned order. Even otherwise the settled law is that in an appeal against the granting or refusing injunction the Appellate Court could not interfere with a exercise of discretion of the Court of First instance and substitute its own discretion except where discretion has been shown to have been exercised arbitrarily or

perversely. Here impugned order is neither arbitrary nor perverse. Thus, in my view the impugned order does not call for interference. The point is answered accordingly. As a consequence, the appeal is dismissed alongwith Civil Application.

(SANDEEP K. SHINDE, J.)

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