Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 126 OF 2019

IN

NOTICE OF MOTION NO. 1062 OF 2015

IN

SUIT NO. 208 OF 2015

WITH

NOTICE OF MOTION NO. 987 OF 2019

IN

APPEAL NO. 126 OF 2019

Kukreja Construction Company ...Appellant

Versus

Shyamsunder Peswani & Ors ...Respondents

Dr B Saraf, Senior Advocate, *with Rohaan Sawant, i/b Jayakar & Partners for the Appellant.*

Mr Kedar Dighe, AGP, *for the Respondent-State.*

Ms Pooja Yadav, *for Respondent-MCGM.*

Mr Abhijeet C Mahadeokar, *for Respondent No. 1.*

Mr Nishant Sasidharan, *with Darshan Mehta, Aaditya Mapara, i/b Dhruve Liladhar & Co for Respondents Nos. 6 to 8.*

CORAM **G.S. Patel &**
Gauri Godse, JJ.

DATED: **24th August 2022**

PC:-

1. The appeal is directed against an order dated 15th October 2018. The learned Single Judge, SC Gupte J, dismissed the Plaintiff's Notice of Motion for interim injunctive relief in a suit for specific performance for sale of land. The prayer before Gupte J was for the appointment of the Court Receiver and for a temporary injunction against the Defendants from creating third party rights in the suit property.

2. There was no ad interim relief in favour of the Plaintiffs who are before us in Appeal.

3. While the suit was pending, the property was acquired by Defendants Nos. 10 and 11, namely, the Collector and Deputy Collector. Thus, specific performance for conveyance of the land in question was no longer possible and the prayers for appointment of Court Receiver and temporary injunction did not survive before Gupte J. But the submission before him, and also before us today, is that there ought to have been order of injunction against the MCGM and Deputy Collector from granting any compensation in any form relating to the acquisition of the suit property to Defendants Nos. 1 to 8. Before Gupte J, the argument was that had the Defendants Nos.1 to 8 not committed breach of the agreement it is the Plaintiff who would have got the title and therefore the right to compensation. Gupte J correctly rejected that submission, as do we.

4. Gupte J further held that the only surviving claim is now for a money decree and there is no special reason why in this suit, a money claim ought to be secured by such injunctive relief.

5. Dr Saraf for the Appellant invites our attention to the agreement at page 167 and to some portions of it. For our purposes, it is enough to note that the agreement itself recites that portion of the property was already under reservation in the development plan and that the Plaintiffs purchasers signed the agreement with full notice and knowledge of this reservation. Then in clause 8, it was noted that the Plaintiffs, who are developers, had entered into agreement with a view to obtain transferrable development rights. This is the basis of Dr Saraf's submission that TDR is a benefit arising from the land agreed to be sold, and therefore, if there cannot be an injunction regarding the land, there must at least be an injunction in regard to the benefit that arises from it.

6. We are unable to appreciate this submission. TDR is marketable subject to the usual conditions imposed by the MCGM's TDR policy. A Development Rights Certificate is issued and this can be freely negotiated. This is therefore effectively an injunction sought against a benefit that is capable of being transacted multiple times in an open market condition. It is as good as seeking an injunction against payment of cash compensation.

7. We do not find any infirmity in the impugned order. We see no reason for interference. The Appeal is without merit. It is dismissed. All contentions are left open for the trial of the Suit.

8. If the Plaintiffs file any proceedings before the land acquisition authorities, those will be assessed on their own merits. All contentions are kept open for such proceedings too.

9. In view of the dismissal of the Appeal, the pending Notice of Motion is disposed of as infructuous.

(Gauri Godse, J) **(G. S. Patel, J)**