

**155 16.10.
2023**

Ct. No. 04

Ab

**FMA 521 of 2023
IA No. CAN 1 of 2023**

**M/s. Robust Construction
Vs.
Sri Bijoy Kumar Gupta and others.**

**Mr. Debjit Mukherjee,,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya,
Ms. Sinjini Chakraborty,
MS. Priyanka Jana.**

... for the appellant/applicant.

**Ms. Shebatee Datta,
Ms. Babita Dey.**

... for the respondent no. 1 and 2.

A suit for specific performance of a development agreement, declaration and permanent injunction is filed by the appellant/applicant before the trial Court wherein an application for temporary injunction was moved for an ex parte ad interim order of injunction.

It appears from the pleading that the respondent no. 1 entered into a development agreement with the plaintiff/appellant on 25th April 2006 in respect of the property and also executed a registered Power of Attorney. Subsequently, a supplementary agreement was entered into in the year 2011, but it appears to the appellant that the respondent no. 1 has clandestinely entered into a further development agreement with the respondent no. 2 and, therefore, in the event they continue to make construction that would jeopardize the interest of the plaintiff/appellant and cause an immense injury, which cannot be compensated in terms of the order.

However, in course of hearing, as reflected in the impugned order, the construction is over and three of the flats have already been transferred in favour of the intending purchasers.

The Counsel for the appellant vehemently opposes and disputed the aforesaid contention and submits that if anything is done on the teeth of the development agreement admittedly entered at prior period of time, such act cannot be legally permitted nor any right would accrue into a person, who purchased the flat. He, thus, submits that there are other flats, which are yet to be disposed of and, therefore, an interim protection is required to be passed in this regard.

The Counsel for the respondent no. 1 and 2 submits that only one flat is left to be sold and further submitted that the registered Power of Attorney, which was executed in favour of the appellant was cancelled prior to entering into another development agreement with the respondent no. 2.

The Counsel for the appellant vehemently opposes such contention and submits that there is no communication given to the said appellant regarding the cancellation of the Power of Attorney, in fact, those were communicated during pendency of the first proceeding and, therefore, mere cancellation does not defeat the right of the appellant conferred on the basis of the development agreement. It is further submitted that the completion certificate has not been issued by the concerned municipality/municipal corporation and, therefore, such sale is not legally tenable in the eye of law.

Be that as it may, the moment the aforesaid facts are discerned in course of the hearing of the instant appeal, we feel that an opportunity should be given to the contesting respondents to disclose the facts by way of an affidavit.

Since the application for temporary injunction is pending and it appears that the ad interim order of injunction was refused on 6th June 2023, we feel that justice would be sub-served if the application for temporary injunction is disposed of in presence of the

parties.

Obviously, the trial Court shall take into consideration the relevant facts disclosed by the respective parties on the well-known parameters required for consideration of the application for temporary injunction and shall not be swayed by the fact that this Court decline to interfere with the impugned order dated 6th June 2023.

Since the contesting respondents are before us, we direct the respondent no. 1 and 2 to file affidavit-in-opposition on the reopening of the trial Court after Puja Vacation; reply, if any, shall be filed within three days thereafter and the learned Judge in the trial Court is requested to dispose of the application for temporary injunction within fortnight from date of the expiry of period for exchange of affidavits by recording proper reasons in accordance with law.

Once again for abandon precaution we reiterate that the trial Court shall not be swayed by the fact that this Court decline to interfere with the order impugned in the instant appeal and shall take independent decision on the basis of the facts so disclosed in accordance with law.

With these observations, the appeal and the connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

