

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2698 OF 2023**

Siddhivinayak Construction Co & Anr ...Petitioners
Versus
The State of Maharashtra & Ors ...Respondents

**WITH
WRIT PETITION (ST) NO. 6892 OF 2023**

Adeshwar Corporation & Ors ...Petitioners
Versus
State of Maharashtra through Revenue and Forest Department & Ors ...Respondents

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**WITH
WRIT PETITION (ST) NO. 9417 OF 2023**

Dreams Nirman Developers & Anr ...Petitioners
Versus
State of Maharashtra through Revenue and Forest Department & Ors ...Respondents

**Mr Karl Tamboly, with Hrushi Naravekar, Rohaan P & Mustafa
Nulwala, i/b DSK Legal, for the Petitioner in all matters.
Mr SB Kalel, AGP, for the Respondent-State in all matters.**

**CORAM G.S. Patel &
 Neela Gokhale, JJ.
DATED: 10th April 2023**

PC:-

WRIT PETITION NO. 2698 OF 2023:

1. The challenge in this Petition is to a communication dated 11th January 2023 at page 271, at Exhibit “M”, from the 5th Respondent, the Joint Sub Registrar Vasai-I (Class-2) declining to register sale agreements in respect of construction carried out by the 1st Petitioner. Petitioners Nos. 2 and 3 are partners of Petitioner No. 1.

2. Respondents Nos. 6 to 9 are owners of the land at Survey No. 187, Hissa B in village Nilemore, Taluka Vasai, District Palghar. It falls within the jurisdiction of the Vasai-Virar City Municipal Corporation. The larger land is substantial, more than three acres, about 13,500 sq mtrs. Respondents Nos. 6 to 9 assigned development rights to the 1st Petitioner in respect of a portion of this property. The larger land was part of an even larger tract originally owned by three persons named in paragraph 6, Atu, Mingu and Manya. Their purchase agreement was registered and there was a mutation entry to that effect. They divided this land and Mingu became the sole owner of the 13,500 sq mtr property. Mingu died in 1983. One of his legal heirs, one Bejami, was the sole owner and occupier of that land. There is a mutation entry to that effect. Bejami conveyed the property to Respondents Nos. 6 to 9 in 1987.

3. The development agreement between Respondents Nos. 6 to 9 and the 1st Petitioner is of 10th January 2014.

4. It seems that in the Court at Vasai, a Special Suit No. 157 of 2013 came to be filed by one Santana. She says she is Mingu's sister and Bejami's aunt. The Petitioners and Respondents Nos. 6 to 9 are not parties to this suit. It is only between Santana on the one side and Bejami and his heirs on the other. In that suit, Santana filed an Interim Application at Exhibit "5" for an injunction restraining the defendants to that suit, i.e., Bejami and his heirs from creating any further development rights.

5. It is only on the basis of this that the 5th Respondent has declined to register any further agreements for sale. He has completely lost sight of the fact that not only is the development agreement of 2014 registered but various other property transactional documents regarding the property under development have also been registered thereafter. He has completely lost sight of the fact that Respondents Nos. 6 to 9 and the Petitioners are not parties to the suit and are therefore not bound by an injunction, and that even before the suit was filed or any injunction was obtained, Bejami had already executed a conveyance in favour of Respondents Nos. 6 to 9 in June 1987. No injunction passed by any Court could operate retrospectively, and no injunction would run against parties not arrayed or joined to the lis.

6. The entire action in refusing to register documents is ex facie unsustainable. It betrays a complete non-application of mind and is contrary to law.

7. For these reasons, ***Rule***, made returnable forthwith and made absolute in terms of prayer clauses (b) and (c). The 5th Respondent is directed to proceed with the registration of all documents presented by the Petitioner No. 1 or any of its transferees or both in respect of the property in question.

8. The Petition is disposed of in these terms.

WRIT PETITION (ST) NO. 9417 OF 2023

9. The order in Writ Petition No. 2698 of 2023 will cover this Petition also. It is also made absolute in similar terms.

WRIT PETITION (ST) NO. 6892 OF 2023:

10. The order in Writ Petition No. 2698 of 2023 will cover this Petition also. The only other factor is that the original transferor who transferred the property to the persons from whom the Petitioner took development right has not been joined in the suit before the civil court.

11. Hence, this Petition is also made absolute in similar terms.

(Neela Gokhale, J)

(G. S. Patel, J)