

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 40 OF 2022
IN
WRIT PETITION NO. 6018 OF 2013

Aspandiar Rashid Irani and Anr. ... Applicants/Petitioners

V/s.

The Additional Collector and ... Respondents
Competent Authority, Thane Urban
Agglomeration and Ors.

Mr. D.S. Mhaispurkar for Petitioner in WP/6018/2013 & applicant in
CAW/40/2022.

Ms. M.P. Thakur-AGP for Respondent nos. 1, 2 and 4-State.

**CORAM : SUNIL B. SHUKRE &
M.W. CHANDWANI, J.J.**

DATE : 6TH JANUARY 2023.

PC. :

. Heard.

2. Dispute is basically confined to obligation of the petitioners to sell 5% of the total built-up area in the form of tenements to the Government nominees as per the scheme sanctioned by the order of the competent authority passed under section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (now Repealed).

3. This Court vide order dated 24th March 2014 and modified

order dated 23rd September 2022 while staying the effect and operation of the impugned notice / communication has directed the petitioners not to create third party right.

4. It is informed by the learned counsel for the petitioners that the SLP challenging enforcement of the liability imposed under the scheme after the act was repealed has already been disposed of by the Apex Court.

5. The intention of this Court in imposing the condition that the petitioners should not create any third party right or interest in the property without the leave of the Court could not have been of such nature as to impose restrictions on the sale of the other tenements and to obtain leave of the Court while selling the other tenements which are not part of 5% of the total built-up area. Even the notices in respect of which interim relief has been sought in prayer clause (a) relates to 5% of the total built-up area, which comes to seven flats in the building in question as per the submissions of learned counsel for the petitioners.

6. We are, therefore, inclined to allow this application and accordingly, we, direct modification of the order passed by this Court on 24th March 2014. The condition imposed upon the petitioners is modified in the terms as follow:-

- a) The petitioners will not create any third party right or interest in respect of 5% of the actually constructed premises, which comes to seven flats, which

are to be provided to the State Government nominees, as per the order sanctioning the scheme, under section 20(1) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, without the leave of this Court.

7. The Civil application is disposed of accordingly.

(M.W. CHANDWANI, J)

(SUNIL B. SHUKRE, J)