

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 319 OF 2023

Fasubai Dashrath Thange and Ors.

...Appellants

V/s.

Mahesh Mohandas Lalchandani and Ors.

..Respondents

Mr. Prasad Dani, Senior Advocate a/w. Mr. Ajit Hon, for the Appellants.

Mr. Amrut Joshi a/w. Mr. Sameer Pendse a/w. Mr. Syuash Gadre, for Respondent No.1.

Mr. Pratik B. Rahade i/by Mr. Pandit Kasar, for Respondent Nos. 2 to 7.

Mr. A.S. Rao, for KDMC.

CORAM : SANDEEP V. MARNE, J.

DATED : 18 DECEMBER 2023.

P.C. :

1. *Admit.* With the consent of the learned counsel for the parties, the Appeal is taken up for final disposal.

2. The challenge in the present Appeal is to the Order dated 11 April 2023 passed by the 2nd Joint Civil Judge Senior Division, Kalyan allowing the application filed by Respondent No.1/Plaintiff at Exhibit-5 for grant of temporary injunction. By the impugned Order, the Trial Court has temporarily restrained Defendant No.12–Kalyan Dombivli Municipal Corporation (**KDMC**) from granting Transferable Development Rights (**TDR**) in respect of the suit properties in favour of Defendant Nos.7 to 11, or to anyone else on their behalf, till the disposal of the suit.

3. I have heard Mr. Dani, the learned senior advocate appearing for the Appellants, Mr. Joshi, the learned counsel appearing for Respondent No.1, Mr. Rahade for Respondent Nos. 2 to 7 and Mr. Rao the learned counsel for KDMC.

4. After having considered the submissions canvassed by the learned counsel appearing for the rival parties and after perusal of the findings recorded by the Trial Court for passing the impugned Order dated 11 April 2023, in my view there were five major factors for the trial Court for refusal of temporary injunction in favour of the Plaintiff. The factors are:

- (i) Firstly, at the time when the Plaintiff entered into an agreement with Defendant Nos.1 to 3, names of Defendant Nos.7

to 10 were already reflected in the revenue records in respect of the land in question. Plaintiff thus ventured to enter into transaction with Defendant Nos. 1 to 3, whose names were not appearing in the revenue records.

(ii) Secondly, by the time he entered into Agreement with Defendant Nos. 1 to 3, Defendant Nos. 7 to 10 had already transferred the land in favour of Defendant No.11.

(iii) Thirdly, further transaction had taken place by which Defendant No.11 had transferred the land in favour of KDMC. Thus by the time, the Plaintiff entered into agreement with Defendant Nos. 1 to 3, two chain transactions of transfer had taken place and the suit properties stood in the ownership of the KDMC.

(iv) Fourthly, Defendant Nos. 1 to 3, who were initially claiming right, title and interest in the land in question, had filed a Suit against Defendant Nos. 7 to 10 to seek declaration of ownership. After execution of the Agreement with the Plaintiff, Defendant Nos. 1 to 3 have withdrawn their Suit and have thereby recognized the right, title and interest of Defendant Nos. 7 to 10 in respect of the land in question. Plaintiff's claim hinges on declaration of title in favour of Defendant Nos. 1 to 3 (which is the first prayer in the Suit) and now Defendant Nos. 1 to 3 admit title of Defendant Nos. 7 to 10.

(v) Lastly, the only investment made by the Plaintiff while entering into agreement with Defendant Nos. 1 to 3 is Rs.51,000/ out of agreed consideration of Rs.1,64,49,000/. Whether he could claim injunction having effect of stalling the two chain transactions on the strength of payment of such paltry sum of consideration, becomes questionable.

5. In my view, considering the above five factors, it is difficult to arrive at a finding that any *prima-facie* case existed in favour of the Plaintiff for grant of any temporary injunction in his favour. Plaintiff thus faced an uphill task of first proving the title of Defendant Nos. 1 to 3 in the suit property. His first prayer in the plaint is that Defendant Nos. 1 to 3 be declared as owners of the land in question. Now, Defendant Nos.1 to 3 are not interested in getting themselves declared as owners of the suit property. In such circumstances, neither any *prima-facie* case was made out by the Plaintiff nor other twin tests of balance of convenience and irreparable loss are satisfied for grant of any temporary injunction. In my view, considering the above factors, the Trial Court ought to have rejected the application for grant of temporary injunction.

6. Plaintiff apparently feels cheated by Defendant Nos.1 to 3, who initially entered into agreement with him and later made a compromise with Defendant Nos.7 to 10 as well as with Defendant No.11 by withdrawing the suit. By doing so, Defendant Nos. 1 to 3 have

made the case for Plaintiff even more difficult. For such conduct of Defendant Nos.1 to 3, Plaintiff may be in a position to seek necessary relief against Defendant Nos. 1 to 3 for damages suffered by him, if any. For having paid insignificant consideration of Rs.51,000/- (out of the agreed amount of consideration of Rs.1,64,49,000/-) to Defendant Nos.1 to 3, the Plaintiff cannot seek to wipe off the chain of transactions that have taken place in favour of Defendant No.11 and later, in favour of KDMC. Though Mr. Joshi points out that in addition to the amount of Rs.51,000/-, Plaintiff has paid further amount of Rs.11,50,000/- in pursuance of the Agreement executed with Defendant Nos.1 to 3, Mr. Dani would clarify that the said amount of Rs.11,50,000/- is not paid to Defendant Nos.1 to 3 but the same is paid to real estate agents (Defendant Nos.4, 5 and 6). In my view therefore, no case was made out for grant of any injunctive relief in favour of the Plaintiff.

6. The Plaintiff has taken the risk of entering into agreement with Defendant Nos. 1 to 3 with full knowledge of the fact that Defendant Nos. 7 to 10 had already transferred the property in favour of Defendant No.11, who in turn had transferred the same further in favour of KDMC. Having taken the risk of entering into a transaction with Defendant Nos.1 to 3, who are now not willing to support the case of the Plaintiff and who admit title of Defendant Nos.7 to 10 in respect of the suit property, Plaintiff cannot be permitted to restrain Defendant No. 11

from enjoying the fruits of the TDR grantable in respect of the suit property by seeking any restraint order against KDMC.

7. In my view, therefore the impugned Order passed by the Trial Court is indefensible. The Appeal accordingly succeeds. The Order dated 11 April 2023 passed by the Trial Court is set aside. The Appeal is **allowed**. There shall be no order as to costs.

9. After the Order is pronounced, Mr. Joshi would request for continuation of the Order of injunction granted by the Trial Court for a period of six weeks. The request is opposed by Mr. Dani. Considering that injunction is operational since 11 April 2023, the same is extended for a period of six weeks from today.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.12.20
10:30:13 +0530