

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3525 OF 2021

Seetai Corner Co-operative Housing Society Ltd. .. Petitioner

Versus

Popat Ganpat Dagade and Ors. .. Respondents

WITH

WRIT PETITION NO. 1513 OF 2019

Popat Ganpat Dagade and Ors. .. Petitioners

Versus

Sitai Sahakari Gruharachana Sanstha Maryadit
Through Mr. Parag Joshi and Anr. .. Respondents

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- Dr. Abhinav Chandrachud a/w. Mr. Pawan S. Patil, Advocates for Petitioner in WP No.3525/2021 and for Respondent No.1 in WP No.1513/2019.
- Mr. Vishwajit P. Sawant, Senior Advocate a/w. Mr. Rohan Savant, Mr. Nilesh Dagade, Mr. Nikhil Patil, Mr. Veerdhaval Kakade and Ms. Priyanka Ved, Advocates i/by Mr. Prabhakar M. Jadhav for Respondent Nos.1 to 5 & 8 in WP No.3525/2021 and for Petitioner in WP No.1513/2019.
- Mr. S.H. Kankal, AGP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 19, 2023.

P.C.:

1. Heard the learned Advocates / Senior Advocate appearing for the respective parties for some time.

2. Leave to amend to implead Respondent No.8 – M/s. Venkateshwara Vastu Purti LLP Designated partner Mr. Nitin B. Kulkarni, the Developer on the balance portion of the subject land.

Amendment to be carried out forthwith.

3. Mr. Sawant, learned Senior Advocate would submit that he has instructions to appear for newly added Respondent No.8 i.e. M/s. Venkateshwara Vastu Purti LLP Designated partner Mr. Nitin B. Kulkarni, the Developer who has been appointed by his clients.

4. In the meanwhile, considering the fact that Civil Suit filed by the Petitioner – Society under the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 for injunction and a declaration not to alter the original plans is pending before the learned Trial Court, both the parties are *ad idem* that the said suit is proceeded with expeditiously shall determined the outcome of the *lis* between them.

5. In that view of the matter, both the learned Advocates have taken instruction and submit that if the Suit be decided within a time bound programme. The instructions of both the learned Advocates is fair.

6. Hence, the following order:-

- (i) Special Civil Suit No.558 of 2020 pending before the learned Trial Court is expedited and the same shall be finally decided within a period of twelve (12) weeks from today;

- (ii) Both parties to the Suit shall co-operative and ensure that no adjournment are taken and the learned Trial Court shall grant adjournment to the parties only if necessary and ensure disposal of the Suit as directed above and if so required on the day to day basis;
- (iii) Both parties shall appear on 20th January, 2023 at 12:00 noon with a copy of this order before the learned Trial Court for fixing the schedule for hearing of the Suit by the learned Trial Court as per his convenience;
- (iv) The newly added Respondent No.8 i.e. M/s. Venkateshwara Vastu Purti LLP Designated partner Mr. Nitin B. Kulkarni is directed to incorporate in the agreement for sale of the flats which shall be sold after today that the rights of the proposed flat purchasers in the building under construction shall be subject to the rights of the Society as determined in the pending Special Civil Suit No.558 of 2020;
- (v) Needless to state that the Developer i.e. proposed Respondent No.8 shall also not claim any equity and shall abide by outcome of the decision in the Suit;
- (vi) The learned Trial Court shall not be influenced by any observations made by the learned Trial Court in its order dated 19.06.2021 as also in its order dated

09.11.2020 under Exhibit-5;

(vii) If the Petitioner makes an Application for impleadment of Respondent No.8 i.e. M/s. Venkateshwara Vastu Purti LLP Designated partner Mr. Nitin B. Kulkarni in the Suit, the same shall be decided immediately and as expeditiously as possible by the learned Trial Court;

(viii) The learned Trial Court shall not be influenced by the stay granted by this Court in Writ Petition No.1513 of 2019;

(ix) The learned Trial Court shall determine the Suit without being influenced by the order passed in the deemed conveyance as also the stay granted in the said Writ Petition;

(x) The learned Trial Court shall not be influenced by any of the observations made by this Court in Writ Petition No.3525 of 2021.

7. Writ Petition No.3525 of 2021 is disposed of. Liberty to apply.

8. List the Writ Petition No.1513 of 2019 on Board on **06th June, 2023.**

[MILIND N. JADHAV, J.]