

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 1028 OF 2022

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Navrang Cooperative Housing Society Ltd. ...Appellant

Versus

M/s. Tanna Housing, a partnership firm
and ors.

...Respondents

WITH

INTERIM APPLICATION NO. 19584 OF 2022

IN

APPEAL FROM ORDER NO. 1028 OF 2022

Mr. Shreepad Murthy, a.w Clarissa Miranda, i/b Abhishek
Patil, for the Appellant.

Mr. Vishal Kanade, i/b Mr. Harsh Lulia, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 5th APRIL, 2023

ORDER:-

1. This appeal is directed against a common order passed by the learned Judge, City Civil Court, in Notice of Motion No.996 of 2014 and Notice of Motion No.1504 of 2021 in LC Suit No.703 of 2014, whereby the Notices of Motion were partly allowed.

2. For the sake of clarity and convenience, the parties are hereinafter referred to in the capacity in which they are arrayed before the City Civil Court.

3. Background facts leading to this appeal can be stated as under:

(a) Plaintiff No.1 is a Co-operative Society. Defendant No.1 is a partnership firm. Defendant Nos.2 and 3 are the partners of defendant No.1. Defendant Nos.5 to 13 are the original owners of the larger property bearing City Survey No.93 admeasuring 3185.90 Sq. Mtrs.

(b) The plaintiffs claim the original owners had granted Ratilal Parekh and Sons ("Ratilal"), defendant No.5, a right to develop and sale a demarcated area admeasuring 1942.1 Sq. Mtrs. Ratilal developed a building consisting of 36 flats. The plaintiff – Co-operative Society comprising the owners of the said flats came to be formed. In the year 1980, the said CTS No.93 was divided into two parts. CTS No.93A admeasuring 1942.1 Sq. Mtrs. and CTS No.93B admeasuring 1243.8 Sq. Mtrs. CTS No.93A is the property of the plaintiff Society. Though Ratilal, as an owner and promoter, had sold 36 flats along with area admeasuring 1942.1 Sq. Mtrs., the Lease Agreement executed on 30th June, 1972 was in respect of the plinth area of the building i.e. 485.55 Sq. Mtrs. only.

(c) The plaintiff asserts on 29th August, 2009, defendant Nos.6 to 13 executed an assignment-cum-conveyance in favour of defendant No.1 in respect of CTS Nos.93A and 93B. Defendant No.5 Ratilal also executed a separate conveyance in

respect of CTS No.93B admeasuring 1,243.1 Sq. Mtrs. in favour of defendant No.1. It is the case of the plaintiff that Ratilal in collusion with defendant No.1 assigned development rights not only in respect of Plot No.93B but also the remainder development rights in respect of Plot No.93A. Eventually defendant No.1 started development of CTS No.93B and got sanction plan from defendant No.4 MCGM taking into account the area covered by both CTS Nos.93A and 93B, thereby depriving the plaintiff of the development potential in respect of its land admeasuring 1,942.1 Sq. Mtrs.

(d) The plaintiffs thus instituted a suit to restrain defendant No.1 from developing Plot No.93B. In the said suit Notice of Motion No.996 of 2014 was taken out to, *inter alia*, restrain defendant No.1 from erecting construction of plot No.93B. No effective interim relief could be obtained in the said Notice of Motion. In the meanwhile, defendant No.1 obtained permission for further construction upto 22 floors. Armed with the said approval, respondent No.1 is, according to the plaintiff, constructing a tower of stilt + 22 floors on CTS No.93B consuming all the development rights of the plaintiff pertaining to CTS No.93A as well. The plaintiff thus took out Notice of Motion No.1504 of 2021 seeking to temporarily restrain

defendant Nos.1 to 3 from proceeding with the construction of the building being erected on CTS No.93B and a direction to defendant No.4 - MCGM to issue spot work notice and also restrain the MCGM from granting further approvals and occupation certificate either in part or full to the building constructed on CTS No.93B.

(e) Initially ad-interim relief was refused by the learned Judge, City Civil Court. The said order was challenged in Appeal from Order No.265 of 2021. By an order dated 17th January, 2022 this Court directed the learned Judge, City Civil Court, to finally decide Notice of Motion No.996 of 2014 and Notice of Motion No.1504 of 2021 on or before 30th April, 2022.

4. By the impugned order, the learned Judge, City Civil Court, was persuaded to partly allow the Notices of Motion as under:

- “1. Notices of Motion No.996/2014 and 1504/2021 are partly allowed.
2. Defendant No.1, its agents, servants or any other person claiming through it, are temporarily restrained from demolishing the suit compound wall, till the decision of the suit.
3. Any transaction entered into or construction made hereinafter, by defendants Nos.1 to 3, in respect of the suit land i.e. 1942.1 sq.mtrs. and its potentials such as TDR or FSI etc., shall be subject to the outcome of the present suit.
4. Rest of the reliefs sought, stands rejected.
5. The suit is expedited.
6. Parties are directed to complete their pleadings on or before next date, without fail.

7. Parties to co-operate in the early disposal of the suit.”
5. Being aggrieved the plaintiff is in appeal.
6. I have heard Mr. Murthy, the learned Counsel for the appellant and Mr. Kanade, the learned Counsel for respondent Nos.1 to 3. The learned Counsel took the Court through the pleadings, material on record and the impugned order.
7. Mr. Murthy strenuously submitted that the impugned order does not adequately protect the interest of the plaintiff. Without controverting that the construction of the 22 storey building in CTS No.93B is almost complete, Mr. Murthy urged with tenacity that the advanced stage of construction, which weighed with the learned Judge, City Civil Court, cannot be the sole determinative factor. Adverting to the orders passed in Notice of Motion No.2844 of 1994 in LC Suit No.3414 of 1994, whereby the MCGM – defendant No.1 therein, was restrained from demolishing the barbed wire fencing between two plots, Mr. Murthy would urge that the entire area admeasuring 1942.1 Sq. Mtrs. has been in possession of the plaintiff since 1965. By taking undue advantage of the area mentioned in the Lease Agreement which only covers the plinth area, defendant Nos.5 to 13 have professed to convey the entire development rights in the open area in occupation of the plaintiff to defendant No.1. Mr.

Murthy advanced severe criticism with regard to the role of the planning authority as well.

8. In contrast to this, Mr. Kanade supported the impugned order. Laying emphasis on the fact that the construction of the building in CTS No.93B is complete and third party rights have been created, Mr. Kanade submitted that the trial court has adequately protected the interest of the parties, firstly, by providing that all the transactions in respect of the suit land shall be subject to the outcome of the suit, and, secondly, by expediting hearing of the suit.

9. I have given careful consideration to the submissions canvassed across the bar. The situation which now obtains cannot be lost sight of. The learned Judge, City Civil Court, was justified in taking into account the fact that the construction of the building is almost complete and third party rights have been created. The Court was also justified in observing that few of the reliefs sought by the plaintiff in the first Notice of Motion have become infructuous by the lapse of time and the developments which took place in the intervening period. At this stage, the Court has to take cognizance of the developments in the intervening period. As is evident, the first Notice of Motion was filed in the year 2014. After the institution of the

suit there were further revisions in the plan and defendant Nos.1 to 3 erected more floors. The inaction on the part of the plaintiff was at its own peril.

10. By the passage of time and the developments, even the relief in the second Notice of Motion to the extent the plaintiff seeks to restrain defendant Nos.1 to 3 from carrying out further construction seems to have been rendered infructuous. Unfazed referring to the prayer Clause (b) in the Notice of Motion No.1504 of 2021 Mr. Murthy submitted that defendant No.4 MCGM can be enjoined from granting the occupation certificate.

11. Mr. Kanade countered the submissions on behalf of the appellant. It was urged that the Planning Authority cannot be restrained by an order of the Court from discharging its statutory duties. Nor the Court can direct the Planning Authority in which way it should exercise its authority. This submission appears impeccable.

12. However, the crux of the dispute seems to revolve around the question as to whether defendant Nos.1 to 3 have allegedly utilized the development rights of the area which forms part of CTS No.93A. Undoubtedly, the Court cannot pass an order directing the Planning Authority to exercise its authority in a particular manner. However, the plaintiff deserves an

opportunity of hearing before the Planning Authority takes a decision on the aspect of granting of occupation certificate.

13. In the aforesaid view of the matter, at this juncture, the Court does not find any justifiable reason to interfere with the impugned order. Since the trial court has expedited the hearing of the suit as the expeditious adjudication of the suit seems to be the only way to resolve the dispute between the parties, stipulating a time frame for deciding the suit may be in order. I am, therefore, inclined to dispose of the appeal with a request to the trial court to expeditiously decide the suit and a direction to respondent No.4 MCGM to provide an opportunity of hearing to the plaintiff before taking a decision to grant occupation certificate.

14. Hence, the following order:

: O R D E R :

(I) Appeal stands disposed on the following terms:

(a) The impugned order stands affirmed.

(b) The learned Judge, City Civil Court, is requested to decide the suit as expeditiously as possible and preferably within a period of nine months from the date of communication of this order.

- (c) Respondent No.4 MCGM shall give an opportunity of hearing to the plaintiff before it takes a decision to grant occupation certificate in respect of the building constructed on CTS No.93B.
- (II) No order as to costs.
- (III) In view of disposal of the petition, the interim application does not survive and accordingly stands disposed.

[N. J. JAMADAR, J.]