

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11510 OF 2019
WITH
INTERIM APPLICATION NO. 1289 OF 2023

Tarun Vadilal Shah	.. Petitioner
Versus	
Kanhaiyalal Muralidhar Lund and Ors.	.. Respondents

-
- Mr. Vishwajeet S. Kapse a/w. Mr. Kaustubh Kandpile, Advocate for Petitioner.
 - Mr. Rajendra Shah a/w. Ms. Sayali Puri, Advocates for Mansukhlal Hiralal & Co. for Respondent Nos.1 and 2.
 - Mr. Vivek V. Salunke, Advocate for Sai Miracle Society Limited.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 14, 2023.

P.C.:

1. I have heard the learned Advocates appearing for the respective parties for some time.

2. At the outset, Mr. Shah would submit that he has received instructions to appear on behalf of the Co-operative Housing Society which comprises of Respondent Nos.4 to 82 who are its members. Mr. Salunke would submit that he does not have the entire list of the members of the Society at present however he represents the Society. Mr. Kapse, learned Advocate for Petitioner would submit that Respondent Nos.4 to 82 are the resident of the Society, which occupies an area of 700 square meters.

3. The suit has been filed by Petitioner for seeking specific performance of the agreement dated 01.04.2006 and the principal contesting Respondents therein are Defendant Nos.1 and 2 who are Respondent Nos.1 and 2 herein.

4. Mr. Shah, learned Advocate for Respondent Nos.1 and 2 would submit that considering the outcome of the substantive suit being Special Civil Suit No.103 of 2014, it would either be the Petitioner or Defendant Nos.1 and 2 i.e. Respondent Nos.1 and 2 herein who would be ultimately entitled to the benefit of the 12.5% Government Scheme promulgated by the Government of Maharashtra in respect of plots acquired by CIDCO.

5. Mr. Kapase would fairly submit impleadment of Respondent Nos.4 to 82 was necessitated in view of the fact that when the suit was filed in 2014, the Co-operative Housing Society was not formed and incorporated. The Society was registered subsequently and in that view of the matter, it would really not be necessary to implead Respondent Nos.4 to 82 at all.

6. Mr. Shah as well as Mr. Salunke both join Mr. Kapase in this submissions and consent to the Society being substituted and impleaded in place of Respondent Nos.4 to 82 before the Trial Court. It is therefore directed that Petitioner who is the Plaintiff before the learned Trial Court shall implead the Co-operative Housing Society

namely Sai Miracle CHS Ltd. as a proper and necessary party before the learned Trial Court in Special Civil Suit No.103 of 2014 in place of Respondent Nos.4 to 82 herein and who are the Defendants therein.

7. Appropriate Application shall be made by Plaintiff before the learned Trial Court. If such Application is made, the same shall be allowed by the learned Trial Court with necessary directions to implead the Society and delete the names of the members from the array of parties in the suit proceedings.

8. Mr. Kapse would fairly submit that though the principal reliefs are directed only against Respondent Nos.1 and 2 before the learned Trial Court, considering that the Co-operative Housing Society is also in occupation of portion of an area which is the subject matter of the agreement dated 01.04.2006, Petitioner may seek relief against the Society which would only be in the nature of damages and nothing more. Undoubtedly the Society and/or its members cannot be now at this stage ousted from their occupation of the Society flats / buildings. However, if any such Application for amendment to seek relief against the Society is made, the Society will be heard and the Application shall be decided on its own merits strictly in accordance with law.

9. Be that as it may, interest of justice would be served in the present Writ Petition if the Special Civil Suit No.103 of 2014 is directed to be expedited and decided in accordance with law.

10. Hence, the following order:-

- (i) Special Civil Suit No.103 of 2014 shall be heard and decided by the learned Trial Court as expeditiously as possible and preferably within a period of 12 months from today;
- (ii) Learned Trial Court shall not be influenced by any observations and findings returned in the impugned order passed below Exhibit-5 dated 31.01.2009 which is impugned in the present Writ Petition while deciding the suit;
- (iii) All contentions of all parties are expressly kept open.

11. With the above directions, Writ Petition is disposed.

12. In view of disposal of Writ Petition, pending Interim Application No.1289 of 2023 does not survive and is accordingly disposed.

[MILIND N. JADHAV, J.]

AJAY
TRAMBAK
UGALMUGALE

Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2023.02.16
15:12:43 +0530