

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10009 OF 2023

Sandeep Sunil Kumar Lohariya ...Petitioner
Versus
The State of Maharashtra Through Ministry of ...Respondents
Urban Development & Ors

Mr Himanshu Kode, i/b Ameya Lambhate, for the Petitioner.
Mr BB Sharma, with Ramya Vidyadharan, for Respondent Nos 2 to 6
(online).
Ms MP Thakur, AGP, for the Respondent-State.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 15th February 2024

PC:-

1. The Petition is not maintainable. The prayers in the Petition seek inter alia the cancellation of the Tripartite Agreement of 23rd July 2021. All parties to that Tripartite Agreement are not joined to this Writ Petition.

2. But that is not all. Prayer clause (g) seeks a direction to the Civil Judge Junior Division, Panvel before whom the Petitioner has instituted a Regular Civil Suit No 139 of 2010 apparently for specific performance of a prior agreement in respect of the same land. The

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Tripartite Agreement in question is of a later date. Obviously, in the Specific Performance Suit there will have to be a prayer and a finding that the later agreement is cancelled or otherwise invalidated. It is only on that relief being granted that the Petitioner as a plaintiff can possibly succeed in a suit for specific performance of an agreement of prior date. What this Writ Petition really seeks is to leapfrog the entire process by getting an order of cancellation of Tripartite Agreement from this Court without joining the other two parties to the Tripartite Agreement and thus paving the road to a decree in this specific performance suit.

3. Viewed from this perspective, the relief sought in this Petition is utterly fantastic. Without joining the two sides of parties to the Tripartite Agreement, the Petitioner would have us set aside that Tripartite Agreement — and this would result in the Petitioner effectively getting a clear run in his civil suit for specific performance.

4. There is not a slightest possibility of us entertaining a Petition that is framed like this and for such submissions, the Petition is rejected. There will be no order as to costs. The civil suit will proceed on merits.

(Kamal Khata, J)

(G. S. Patel, J)