

Ajay

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

WRIT PETITION NO. 11536 OF 2023

M/s. Pratik Enterprises,
Partnership Firm, Through Partners Vasant
Manaji Bhadra and Anr. .. Petitioner

Versus

M/s. Rushikesh Enterprises and Ors. .. Respondents

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- Mr. Drupad S. Patil a/w. Mr. Suyash Sale, Advocates for Petitioner.
 - Mr. Kishor Patil a/w. Mr. Pratik Rahade, Advocates i/by Mr. Ajay Patil for the Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2024.

P.C.:

1. Heard Mr. Drupad Patil, learned Advocate for Petitioner and Mr. Kishor Patil, learned Advocate for Respondents.

2. By virtue of the present Writ Petition, challenge is maintained to the order dated 14.08.2023 allowing impleadment of Respondent No.1 - Rushikesh Enterprises to the original Suit proceedings. Suit as filed originally by Plaintiff seeks specific performance of Agreement dated 11.09.2019 against Defendant Nos.1 to 5 who are the Respondent Nos.2 to 6 herein.

3. Petitioner would submit that by virtue of the Agreement dated 11.09.2019, Defendants have assigned their entire right, title

and interest in respect of 12.5% return that would be available to them from acquisition of the Suit land acquired by the Government for total consideration of Rs.39.48 Crores. He would submit that Rs.17.23 Crores are already paid over to the Defendants leaving balance of Rs.22.25 Crores and a statement to the effect that Plaintiff is ready and willing to pay the balance amount is also averred in the Suit plaint.

4. Petitioner would submit that Intervention Application is filed by Respondent No.1 seeking impleadment in the Suit proceedings on the basis of an Agreement / transaction between Respondent No.1 and one Mr. Nagraj Seth. He has fairly informed the Court that the premise of seeking such intervention in the Suit is on the basis of Rushikesh Enterprises (Respondent No.1) claiming that Nagraj Seth had a previous Agreement with Defendant Nos.1 to 5 who are Respondent Nos.2 to 6 before me. However, he would inform the Court that even if the aforesaid agreement would be in place, seeking intervention in the Suit proceeding filed by Plaintiff on the basis of the MOU of Mr. Nagraj Seth with Respondent Nos.2 to 6 would not be a ground available to Rushikesh Enterprises (Respondent No.1) to get itself impleaded in the present Suit proceedings for specific performance.

5. Mr. Kishor Patil, learned Advocate appears for the contesting Respondent No.1 – Rushikesh Enterprises. In his usual fairness, Mr.

Patil would concede to one thing namely that the present Suit is filed for specific performance between Plaintiff and Defendant No.1 to 5 who are Respondent Nos.2 to 6 before me. He would fairly inform the Court that there is no direct nexus of Respondent No.1 with the Plaintiff. He would submit that the MOU executed by Respondent No.1 and Mr. Nagraj Seth is dated 02.07.2021 which is admittedly subsequent to the Agreement dated 11.09.2019 and substantial consideration has also exchanged hands with Mr. Nagraj Seth on the footing that Mr. Nagraj Seth had acquired substantive rights in respect of the issue involved in the Suit proceedings filed by the Plaintiff. That right necessarily would be in respect of any return that would enure to the benefit of the original land owner under the 12.5% (now 22%) scheme of the State Government.

6. Considering the above facts, if the Respondent No.1 has any substantive right, it shall be open to him to approach the Civil Court having Original Civil Jurisdiction with a Civil Suit and if such Civil Suit is filed and if the subject matter of the said Civil Suit is the same as in Special Civil Suit No.147 of 2022, it shall be open to the Respondent No.1 to make an appropriate Application if permissible to the concerned Civil Court for hearing both Suits together. If such an permissible is made, the learned Civil Court shall determine the same in accordance with law strictly on its own merits after hearing the parties.

7. In view of the above directions, the impugned order dated 14.08.2022 is not sustainable and is therefore quashed and set aside.

8. Needless to state that all contentions of the intervenor i.e. Respondent No.1 before me to approach the Civil Court with respect to its substantive right in respect of the issue involved in Special Civil Suit No.147 of 2022 are expressly kept open.

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

[MILIND N. JADHAV, J.]

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