

VAISHALI
ANIL
TIKAM

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9164 OF 2024

Vilas Ramchandra Shirke ... Petitioner

Versus

Ramdas Gotiram Gharat and Ors. ... Respondents

.....

Mr. Sachin P. Shetye for Petitioner.

Mr. Yash Arora for Respondent Nos.1 and 2.

.....

CORAM : MILIND N. JADHAV, J.

DATED : 23rd SEPTEMBER, 2024

P.C. :-

1. Heard Mr. Shetye, learned Advocate for the Petitioner/Original Plaintiff.

2. He would submit that writ petition impugns twin Exhibit 5 orders passed by the Learned Trial Court and the Learned District Court, inter alia, rejecting injunction application filed by Plaintiff and thereafter the District Court upholding that order. He would submit that Plaintiff entered into an agreement with Defendant Nos. 1 and 2, inter alia, in respect to seeking benefit that would be received by Defendants under the 12.5% State Government Scheme, whereby, Defendants would be recipient of a plot of land as per their entitlement. He would submit that by virtue of this agreement executed on 26th March,

2013/3rd April 2013, Plaintiff agreed to pay consideration of Rs.88,00,000/- in lieu of Defendants' right in the allocated plot under the Scheme that would be received by them. One of the conditions in the agreement was that, after payment of the initial amount, balance amount would be paid after the plot was allocated. He has drawn my attention to the payment made by Plaintiff to the Defendants. He would submit that on execution of the agreement, an amount of Rs.10,00,000/- was paid on 3rd April, 2013. Next he would submit that an amount of Rs.3,50,000/- was thereafter paid on 17th April, 2013. Thereafter, it is Plaintiff's case that he paid an amount of Rs.37,50,000/- to one Mr. Anant Gharat, who was the middle-man/broker between the parties to the agreement. Though there are no details which are provided by the Plaintiff regarding payment of this amount of Rs.37,50,000/-, but reading of the District Court's order in CMA reveals that the said Anant Gharat filed affidavit along with documentary evidence before the District Court and admitted that he had in fact received the said money from Plaintiff, but he had returned back Rs.29,00,000/- back to the Plaintiff out of the said amount. This means that Plaintiff has paid an amount of Rs.22,00,000/- to the Defendants.

3. Mr. Shetye would inform the Court that on 20th September,

2022, State Government/ Competent Authority allotted the plot to Defendants under 12.5% Government Scheme. He would submit that Plaintiff was kept in the dark about the fact and date of allotment. However, the Plaintiff addressed his advocate's notice to Defendants seeking to comply with the balance payment under the agreement as agreed between the parties, but Defendants did not respond thereto. He would submit that Plaintiff therefore had no option but to invoke the remedy of approaching the Civil Court by filing the present suit for specific performance of the agreement between the parties.

4. Once the suit was filed, Defendants opposed Exhibit '5' Application before the Trial Court and before the District Court. While opposing Applications, Plaintiff learnt that Defendants had already created third party rights in favour of one M/s. Olive Constructions in the interregnum to the prejudice and detriment of the Plaintiff. He would submit that being aggrieved with rejection of Exhibit '5' order, there is every chance that Defendants will create and alienate the subject plot to the third party and therefore being aggrieved, he has filed the present Writ Petition against rejection of his plead by the twin Exhibit '5' orders. He would inform the Court that at all times pursuant to allotment of the 12.5% scheme plot to Defendants,

Plaintiff had shown his readiness and willingness to pay the balance amount under the agreement. He would submit that in the Advocate's notice, Plaintiff has stated so specifically and shown his readiness and willingness to pay the balance amount. He would submit that as per the agreement executed between the Plaintiff and the Defendants, parties agreed upon the payment of Rs.10,00,000/- at the time of execution of the agreement, Rs.12,00,000/- to be paid on the date of allotment of plot to Defendants and the balance amount on execution of the tripartite agreement as per terms and conditions of the agreement dated 26th March, 2013. Hence, he would submit that Plaintiff has more than sufficiently shown his bonafides to fulfill his obligation under the agreement, of which specific performance is sought.

5. In that view of the matter, he would submit that both impugned orders while rejecting injunction application of Plaintiff are detrimental to the Plaintiff's right.

6. After going through the twin impugned orders and above mentioned facts from the pleadings on record, it is seen that Plaintiff has, in fact, made out an arguable case. In that view of the matter, Defendants are directed not to create any third party rights in the

interagnum and therefore they are required to be heard.

7. Hence issue notice to Respondents, returnable on 14th October, 2024. Respondents shall place on record on affidavit all details of their nexus with M/s. Olive Construction in respect of the subject plot and also disclose the same. All contentions of Defendants are kept open and they will undoubtedly be heard.

8. In view of the above, there shall be injunction against Defendants not to deal any further with the subject plot in any manner whatsoever in near future.

9. Mr. Arora appears for Defendant Nos.1 and 2 . He has heard this order in Court. Defendants are directed to file affidavit-in-reply within a period of two weeks from today. Affidavit-in-rejoinder, if any, to be filed within one week thereafter.

10. Stand over to 14th October, 2024.

(MILIND N. JADHAV, J.)