

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13278 OF 2024

Anil Ambumal Budhrani and Ors.

...Petitioners

Versus

Dhaya Sitaram Keni
(Since deceased through Legal Heirs)
Ganga Kailas Keni and Ors.

...Respondents

Mr.Nitin V. Gangal a/w Ms.Prerna Shukla and Ms.Prapti Karkera:-	Advocates for Petitioners.
Mr.N.V.Bandiwadekar (Senior Advocate) a/w Ms.Bhakti Wast i/b. Mr.Abhishek Deshmukh:-	Advocates for Respondent Nos.1 (1) to 1(6), 2 to 6 and 7(3).

CORAM : S. M. MODAK, J.

DATE : 14th DECEMBER 2024

P. C. :-

1. Heard learned Advocate Shri.Gangal for the Petitioners / Decree Holders and learned Senior Advocate Shri.Bandiwadekar for the respective Respondents / Judgment Debtors.
2. The only issue arisen in this Petition is, whether the Executing Court was justified in directing the Decree-Holder to maintain the

status-quo with regard to the construction on suit plot till decision of the Applications below Exhibit-61 and Exhibit-73. This order was passed by the Court of Civil Judge, Senior Division – Panvel on 5th September 2024. (Page Nos.254-260). Being aggrieved, the Decree-Holder has filed this Writ Petition. This Court (Coram : Milind N. Jadhav, J.) as per the order dated 18th September 2024 was pleased to stay the impugned order.

3. This Writ Petition came for hearing on 16th October 2024. Both the learned Advocates have made respective submissions. On the basis of instructions, learned Advocate Shri.Gangal for the Petitioners has submitted that his client can file an Affidavit so as to ensure, how he is going to comply with the arrangement made in the Tripartite Agreement. The Tripartite Agreement is executed on 20th October 2015. (Page No.143).

4. This Tripartite Agreement was executed through the Appointment of Court Commissioner. This was executed because according to the Petitioners-Decree Holders, the present Respondents-Judgment Debtors have not cooperated for execution of Tripartite Agreement. This was to be executed in pursuance to the Decree which was put to execution. The Decree was passed on the basis of consent

given by both the sides in the suit. The Decree is on Page No.64.

5. Learned Senior Advocate Shri.Bandiwadekar has invited my attention to two of the clauses of that Consent Decree. They are as follows:-

- (a) **Clause No.1** records, both the parties are acceptable to the terms and conditions of the Agreement dated 12th October 2007. (The suit was filed for specific performance of the said agreement by the Decree-Holder/ Developer. Whereas, the Respondents are the owners of the land which was acquired by the CIDCO).
- (b) **Clause No.4** which records the arrangement to be made once, the plot measuring 1200 sq.mtrs., is allotted by the CIDCO to the Judgment-Debtor. The arrangement is 52% to the Decree-Holder and 48% to the Judgment-Debtor from the construction to be carried out on the said plot.

6. **According to Mr.Bandiwadekar**, the Tripartite Agreement in question, does not contain the wordings of Clause No.4 and that is why, his clients have filed two Applications at Exhibit-61 & Exhibit-73.

7. As observed in the order dated 16th October 2024, the Petitioner (who has filed Petition through one Anil Ambumal Budrani), has filed an **Affidavit cum Undertaking** affirmed on 23rd October 2024. It is on Page No.654. Learned Advocate Shri.Gangal read over the contents of

the Affidavit and submitted that the interests of the Judgment-Debtors are sufficiently protected. That is why, he is praying for setting aside the status-quo order.

8. **According to Mr.Bandiwadekar**, the Executing Court while passing the impugned order, has given reasoning in Para No.11. (Page No.259). The Executing Court observed about the contents of the Tripartite Agreement executed through the Court Commissioner. There is no mention about 48% share for the Judgment-Debtors and 52% shares of the Decree-Holders. The Executing Court further observed, “*the new licensee shall be substituted for the original licensee...*”. According to Mr.Bandiwadekar:-

- (a) In view of the above, the Tripartite Agreement cannot be said to be executed in terms of the “*Consent Terms*” and
- (b) even, the Respondents are having a grievance that proper procedure was not allowed prior to executing the Agreement through the Court Commissioner.

Even, he submitted, that the Decree-Holder has earlier also given an undertaking but they were not fulfilled.

9. **According to learned Advocate Shri.Gangal:-**

- (a) When the Tripartite Agreement was executed through the Court Commissioner, in fact, the Judgment-Debtors have

appeared and consented for execution of the Tripartite Agreement through the Court Commissioner.

- (b) After 2005, it is not challenged.
- (c) The Judgment-Debtors have made similar types of grievances but they have failed and that is how, the Executing Court was not justified in passing the status-quo order during pendency of Exhibit-61 and Exhibit-73.

10. It is true, yet Executing Court has not decided Exhibit-61 and Exhibit-73. The Executing Court will decide it in due course after hearing the parties and going through the documents. In view of this, this may not be proper for this Court to make any comment about the grievance made therein and the submissions made by learned Senior Advocate Shri.Bandiwadekar.

11. The only issue remains, on this background is, “*whether the Executing Court was justified in passing the status-quo order.*” **There are two aspects.**

- (a) One is, about the execution of Tripartite Agreement strictly in pursuance to the “*Consent Terms*” and
- (b) second is, about the right of a Decree-Holder to go on with the construction.

As on today, the Judgment-Debtors have not made a grievance about the right of the Petitioners to carry out the construction. The dispute is

about the contents of the Tripartite Agreement executed through the Court Commissioner and the status of the parties described therein.

Contents of Affidavit

12. The Petitioner claims in the Affidavit that, he has obtained the necessary permissions from the Local Authority and he has also referred about obtaining certain Completion Certificate. I have gone through the contents of the Affidavit. Even, the Judgment-Debtors have gone through it. I am not reproducing minute details of this Affidavit but on bare perusal, one can say that he has confirmed, **how much permissible development** and how much **is the apportionment in between both of them**. Even, he has confirmed in Para No.4(iii) about his commitment to share, if there is an additional construction.

13. Certainly, this Affidavit was not there before the Executing Court when the impugned order came to be passed. So, this Court feels that the interest of the Judgment-Debtors is sufficiently protected. For rest of the grievances, the Executing Court is the proper forum to agitate them. This Court feels that there is no need to direct the Decree-Holder to maintain the status-quo in respect of the construction. If, the Petitioner -Decree-Holder go on with the construction and will enter into the Agreements, certainly it will be subject to the outcome of both

these Applications.

14. With these observations, following order is passed:-

ORDER

- (i) The order dated 5th September 2024 passed by the Court of Civil Judge, Senior Division, Panvel in Special Darkhast No.1 of 2011 directing the Decree-Holder to maintain the status-quo with regard to the construction, is set aside.
 - (ii) The parties are at liberty to agitate their grievances raised in the Application at Exhibit-61 and Exhibit-73.
 - (iii) The Executing Court is at liberty to decide them on its merits and this Court has not expressed any opinion about the grievances made therein.
15. In view of that, the **Writ Petition stands disposed of.**

[S. M. MODAK, J.]