

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

**APPEAL FROM ORDER NO. 713 OF 2024
WITH
INTERIM APPLICATION NO. 13827 OF 2024**

M/s. Pyramid Land Developers)
A partnership firm, registered under)
The Indian Partnership Act, 1932,)
Through its Partner Mr. Abdul Hamid)
Mapkhan Shah, aged 59 years, Occ.)
Business, having address at 102, B-3,)
Mapkhan Nagar, Marol, Andheri (E),)
Mumbai – 400059) ...Appellant/Applicant

VERSUS

1. Mr. Shivnarayan Acchaibar Singh.)
Age: 63 years, Retired Indian Inhabitant)
r/a: Building No. 43, Room No. 630,)
Transits Camp, Cuffe Parade, Colaba,)
Mumbai - 400005)

2. Mr. Brijnarayan Acchaibar Singh)
Age: 60 years, Occ: Agriculturist,)
Indian Inhabitant, through his C.A.)
Mr. Shivnarayan Acchaibar Singh,)
Age: 63 years, Retired Indian Inhabitant,)
r/a. Building No. 43, Room No. 630,)
Transit Camp, Cuffe Parade, Colaba,)
Mumbai – 400005) ...Respondents

**WITH
INTERIM APPLICATION NO. 15378 OF 2024
IN
APPEAL FROM ORDER NO. 713 OF 2024**

M/s. Asha Developers)
Through Authorized Representation)
Mr. Gobind Surinder Mittal, Age 29)

Krishna Regency, Plot No. 40)
 Sector 30, Near Sanpada Rly. Stn)
 Vashi, Navi Mumbai – 400705)...Applicant/Intervener

IN THE MATTER BETWEEN

M/s. Pyramid Land Developers)
 A partnership firm, registered under)
 The Indian Partnership Act, 1932,)
 Through its Partner Mr. Abdul Hamid)
 Mapkhan Shah, aged 59 years, Occ.)
 Business, having address at 102, B-3,)
 Mapkhan Nagar, Marol, Andheri (E),)
 Mumbai – 400059) ...Appellant/Applicant

VERSUS

1. Mr. Shivnarayan Acchaibar Singh.)
 Age: 63 years, Retired Indian Inhabitant)
 r/a: Building No. 43, Room No. 630,)
 Transits Camp, Cuffe Parade, Colaba,)
 Mumbai - 400005)
2. Mr. Brijnarayan Acchaibar Singh)
 Age: 60 years, Occ: Agriculturist,)
 Indian Inhabitant, through his C.A.)
 Mr. Shivnarayan Acchaibar Singh,)
 Age: 63 years, Retired Indian Inhabitant,)
 r/a: Building No. 43, Room No. 630,)
 Transit Camp, Cuffe Parade, Colaba,)
 Mumbai – 400005) ...Respondents

Mr. Aliabbas Delhiwala a/w Mr. Pratik Shah, Adv. Trishala Sailish i/b L R &
 Associates for the Appellant.
 Mr. A. N. Narula (through VC) a/w Adv. Sushil Chaurasia, Adv. U. M. Shukla
 i/b SKC Legal for Respondents.
 Mr. Mohit H. Sant for the Intervenor in IA/15378/2024.

CORAM : M. M. SATHAYE, J.

DATED : 18th DECEMBER 2024

JUDGMENT:

1. Learned Counsel for the parties were heard finally on 04/12/2024 and the matter is placed today for passing order.

2. The Appeal from Order is filed challenging the order dated 22/07/2024 passed by City Civil Court, Borivali Division, Dindoshi in Notice of Motion No. 1623 of 2024 in S.C. Suit No. 2606 of 2023. By the said impugned order, the Motion taken out by the Respondents/Plaintiffs is allowed, thereby restraining the present Appellant or anybody claiming through it from using the Conveyance Deed dated 26/05/2023 as title document and the Appellant is further restrained from alienating the suit property.

BACKGROUND

3. Few facts necessary for disposal of this Appeal from Order are as under.

4. The Respondents/Plaintiffs are owners of the suit property. The suit property was declared as slum in April 2007. The Respondents entered into Registered Development Agreement (DA) and Power of Attorney (POA) dated 12/07/2007 with the Appellant for monetary consideration and flats totally admeasuring 1000 sq.ft. carpet area in the proposed building to be constructed. The amount of Rs.20.00 Lakhs was paid. Around the same time, the Appellant came to be appointed as developer by Laxmi Krupa (SRA) Co-operative Housing Society, which was the slum society on the subject matter property. Since the Appellant did not implement the slum scheme and which

resulted into loss of trust, faith and confidence in the Appellant, the said slum society filed an application before the Competent Authority u/s. 13 (2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short “the Slum Act”) for termination/removal of the Appellant as developer. On 04/04/2015, the Respondents/Owners terminated the Development agreement and Power of Attorney (POA), which was executed in favour of the Appellant for the same reason of not taking serious steps towards development of the property.

5. On 20/04/2015, the Appellant acknowledged the receipt of the said letter of cancellation/termination/revocation of the agreement as well as POA of the year 2007. Admittedly, this cancellation/termination by the owners is not challenged by the Appellant till date. On 29/10/2015, pursuant to the Application by slum society, the Chief Executive Officer (CEO), Slum Rehabilitation Authority (‘SRA’ for short), terminated the appointment of Appellant as developer and granted liberty to the slum society to appoint new developer. It was directed that the costs incurred by the Appellant shall be reimbursed by the new developer appointed by slum society.

6. The slum society thereafter appointed M/s. Asha Developers (Intervener in IA/15378/2024) as new developer for the implementation of the SRA scheme. The new developer thereafter issued letter to the Appellant and requested to supply details of the legal expenses incurred by the Appellant, however, the Appellant did not respond. In June 2016, the Appellant filed Appeal No. 148/2016 before the Apex Grievance Redressal Committee (AGRC) against termination order dated 29/10/2015 passed by the CEO, SRA after a long delay and without filing any delay condonation

Application. During the pendency of this Appeal, the Slum Authority issued Letter of Intent (LOI), Intimation of Approval (IOA) and revised LOI in favour of the new developer. This took place from July 2018 to January 2021. In April, 2021 amended plans came to be issued in favour of the new developer. At this stage, after a period of 6 years, the Appellant again moved to AGRC for the stay on the SRA scheme. The AGRC rejected the prayer of stay, observing that the Appeal as well as stay is being pressed at belated stage and when the new developer is already appointed and significant further development has already taken place with the new developer.

7. On 27/06/2022, the Respondents issued a letter to the Appellant which was without prejudice communication invoking arbitration and calling upon the Appellant to nominate arbitrator, clearly indicating that the Respondents will be raising a claim of damages for loss of promised residential flats, which the Respondent lost due to non-performance on the part of the Appellant. In response to this letter, the Appellant issued a letter dated 19/12/2022 expressing hope that the Respondents will still approve and execute the Conveyance Deed. On 26/05/2023, the Appellant got executed a Conveyance Deed in its own favour using the POA of 12/07/2007.

8. In these circumstances, the Respondents have filed the present suit challenging the said conveyance dated 26/05/2023.

9. The Respondents have already transferred and sold suit property in favour of the new developer through registered conveyance and have further executed registered POA in favour of the new developer on 17/01/2024. In the meantime, all slum dwellers have shifted to the transit accommodation for which new developer have been paying transit rent. Since the Appellant

was creating obstruction and hindrance in the development work, claiming to be owner under the impugned conveyance dated 26/05/2023, the present notice of motion was filed and pressed.

10. On 04/07/2024, the Trial Court allowed the deletion of prayer clauses (a) and (b) of the Plaint at the instance of the Respondents for abandoning part of the claim. The impugned order is passed on 22/07/2024 and thereafter when the Appeal before the AGRC was listed in October 2024, the Appellant simply sought adjournment. As on today, the Slum Authority has granted conveyance certificate in favour of the new developer and they have already commenced construction activities on the suit property in accordance with law and the process of implementation of the slum scheme, is in progress.

SUBMISSIONS

11. Learned Counsel for the Appellant, Mr. Delhiwala submitted that the impugned order amounts to granting final relief at the stage of motion in as much as the Appellant is restrained from using the impugned Conveyance Deed as title document. He submitted that as late as in December, 2022 the parties were negotiating for completion of the transaction and draft of conveyance deed was exchanged. He submitted that registered POA of 2007 in favour of the Appellant cannot be cancelled by issuance of notice or letter and unless the registered document is executed for cancellation/revocation, the POA of 2007 is valid and it stands and therefore, conveyance executed in favour of the Appellant using such legal and valid POA of 2007 cannot be considered as illegal and injunction cannot be granted restraining use of such Conveyance Deed as title document. He submitted that the impugned order is perverse and is passed in ignorance of legal and valid power of

attorney in its favour. He submitted that since the Appellant is having interest in the suit property, the alleged termination / revocation / cancellation at the hands of the Respondents/Owners is illegal in view of Section 202 of the Indian Contract Act, 1872.

12. He relied upon the following judgments in support of his claim.

- (a) State of H. P. and Others vs. Anant Ram Negi and Others¹
- (b) S. R. Tewari vs Union of India & Anr²
- (c) H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. vs. M/s. Gopi Nath & Sons and Others³
- (d) Seth Loon Karan Sethiya vs. Ivan E. John & Ors.⁴
- (e) Shanti Budhiya Vesta Patel & Ors. vs. Nirmala Jayprakash Tiwari & Ors.⁵
- (f) P. Venkata Ravi Kishore & Anr. vs. JMR Developers Pvt. Ltd.⁶
- (g) Chandrama Singh and Ors. vs. Mirza Anis Ahmad⁷
- (h) Supreme Court Bar Association & Ors. vs. B. D. Kaushik⁸
- (i) Raja Khan vs. Uttar Pradesh Sunni Central Waqf Board & Anr.⁹

13. On the other hand, learned Counsel for the Respondents, Mr. Narula submitted that final relief is not granted under the impugned order, in as much as final relief prayed in the suit is for setting aside the impugned Conveyance Deed dated 26/05/2023. He submitted that the impugned Conveyance Deed is challenged on the ground that POA of 2007 used in executing that conveyance of 2023 is already cancelled/terminated. He submitted that the termination of POA of 2007 under letter/notice dated 04/05/2015 is not challenged by the Appellant and therefore, on the date of

1 2018 SCC OnLine HP 1237

2 (2013) 6 SCC 602

3 1992 Supp (2) SCC 312

4 1968 SCC OnLine SC 252

5 (2010) 5 SCC 104

6 2022 SCC OnLine TS 3387

7 2011 SCC OnLine All 528

8 (2011) 13 SCC 774

9 (2011) 2 SCC 741

impugned convenance deed, the POA of 2007 could not have been used. He submitted that necessary proceedings u/s 13(2) of the Slum Act has been already adopted and the authority of the Appellant as old developer has been terminated by following due process of law and thereafter with the permission of the concerned authority, the new developer / intervener has been appointed, who has taken work forward including issuance of LOI, IOA, revised LOI and even amended plans are issued in favour of the new developer. He submitted that if the clauses of the POA of 2007 are considered, there is no interest created in favour of the Appellant and as such, the termination is legal and valid. He submitted that there are as many as 31 slum dwellers who are occupying transit accommodation and it is necessary that the rehabilitation work and SRA scheme is not stalled.

14. Learned Counsel for the Respondents further submitted that the old developer has not developed the property and when the slum dwellers as well as owners have lost faith and confidence in him, and when the new developer is appointed by terminating the authority of the old developer by following due process of law, the old developer cannot be allowed to foist itself either on the owners or slum dwellers.

15. Learned Counsel for the intervener/new developer submitted that order of removal of the Appellant (old developer) was challenged by the Appellant belatedly. He submitted that the intervenor has been appointed as new developer with the permission of the Statutory Authority, who has invested considerable amount in taking the scheme forward. He submitted that new developer is paying transit rent to all the slum dwellers, who are shifted in the transit accommodations and as such, it is necessary to continue the restraint upon the Appellant, who is creating hindrance and

obstacles in the development work, claiming to be the owner on the basis of impugned Conveyance Deed.

16. He submitted that the balance of convenience and irreparable loss is not at all in favour of the Appellant. He pointed out that commencement certificate in favour of the intervener (new developer) has already been granted on 12/11/2024 and the development work should not be stalled.

17. Learned Counsel for the Respondents and Intervener, both have relied upon the judgment of **Wander Ltd. And Another vs. Antox India P. Ltd.**¹⁰ and **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi**¹¹ and submitted that the discretion which is exercised by the Trial Court while passing the impugned order, should not be substituted by the discretion of this Court.

18. Learned counsel for the Respondents / Owners have also relied upon judgments in **Swashray Co-Op. Housing Society Ltd Vs. Shanti Enterprises**¹² and **Prithvi Infra Projects Vs. Apex Grievance Redressal Committee and Hrub Construction LLP Vs. Apex Grievance Redressal Committee**¹³ in support of his case that a developer can not foist itself upon the owner / slum dwellers after prolonged inaction and termination of its authority.

REASONS AND CONCLUSIONS

19. At the outset, it is important to keep in mind that this Court is exercising the Appellate jurisdiction under Order 43 of the Civil Procedure Code, 1908 at the interim stage of the suit.

20. In **Wander Ltd. And Another vs. Antox India P Ltd (supra)**, the Hon'ble

¹⁰ 1990 (Supp) SCC 737

¹¹ 2024 SCC OnLine SC 3538

¹² Neutral Citation - 2023 : BHC-OS:3075

¹³ 2024(5) Bom.C.R. 860

Supreme Court has laid down the law in respect of substitution of discretion by the Appellate Court in place of discretion already exercised by the Trial Court. Paragraph no. 14 of the said judgment reads thus:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseinton & Co. v. Jhanaton* [1942 AC 130] ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

(Emphasis Supplied)

21. This position has been followed thereafter consistently by this Court, which is reiterated recently by the Hon’ble Supreme Court in **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi (supra)**.

22. It is therefore clear that this Court will be required to consider

whether the discretion exercised by the Trial Court is arbitrary or capricious or perverse and whether the Trial Court has ignored settled principle of law regulating grant or refusal of interlocutory injunction.

23. The chronology of events in this case is really important. In the year 2007 the owners had executed the DA and POA with the present Appellant. It is material to note that the consideration under the said DA has not been fully received by the Respondents-Owners. Since the Appellant did not take timely steps to develop the property, the Respondents-Owners did not get flats totally admeasuring 1000 sq.ft carpet area, as promised. This position continues even today and therefore admittedly the DA executed in favour of the Appellant is not performed completely even today. The relevant clause in the development agreement dated 12/07/2007 reads thus:

“6. The parties of the Second Part agreed that upon the execution of these presents, the parties of the Second Part shall deliver and handover unto the party of the First Part, quit vacant and peaceful possession of the aforesaid property. It is thereby agreed between the parties hereto that upon payment of the entire consideration as stated hereinabove the Party of the First Part to the Party of the Second Part, the Party of the Second Part, shall not have any right, title and interest in the aforesaid properties and that the Party of the Second Part shall confer the Power of Attorney as also a possession letter in favour of the Party of the First Part herein so as to enable the party of the First Part take all steps for construction and/or development work in the aforesaid property.”

(Emphasis Supplied)

24. It is therefore clear that upon receipt of the entire consideration, the right, title and interest of the owners was supposed to come to an end and the owners were to execute POA as well as possession letter in favour of the Appellant. From this clause, it is *prima facie* clear that the Respondents/Owners have not parted with the title or even possession, in

favour of the Appellant as owner. Perusal of the POA dated 12/07/2007 in favour of the Appellant shows that its first clause reads thus-

“1. To sale or develop said property as may be permissible under the Law”

[Emphasis supplied]

Other clauses indicate the necessary powers for the purpose of development and sell of developed flats etc.

25. There is no dispute that till March 2013, the Appellant did not take any concrete steps and therefore the slum society applied to the Competent Authority under the Slum Act for termination and removal of the Appellant as a developer. It is apparent from the record that by order dated 29/10/2015, the CEO (SRA) (competent authority under the Slum Act) has terminated the appointment of Appellant as a developer. This order was challenged by the Appellant belatedly, but it admittedly stands even today. The order dated 29/10/2015 is neither set aside nor stayed. Record shows that the Appellant's efforts in challenging the said order, has failed so far.

26. *Prima facie* in the teeth of the order dated 29/10/2015, clause (1) of the POA dated 12/07/2007 would not apply and the power given to the Appellant to sell the suit property is obviously not available because the power was given to sell 'as permissible under law'. Appellant's appointment to develop the suit property is terminated by following due process of law.

27. It is not disputed and is also clear from the recitals of the DA and POA dated 12/07/2007 that underlying purpose and intention of the parties was to develop the property and the Respondents/Owners were to receive

certain monetary and other consideration in the form of flats. The role of the developer in such cases, apart from paying consideration to owners, is to rehabilitate occupants (slum dwellers in the present case) and then earn profit out of free-sale component. In such circumstances, *prima facie*, the documents of DA and POA dated 12/07/2007 cannot be treated as mere power to sell the suit property in favour of any person or in favour of the developer himself, *sans* development.

28. In the present case, the Appellant – Developer through its partner Mr. Abdul Hamid Mapkhan Shah has executed the impugned Conveyance Deed dated 26/05/2023 in favour of himself and from Index II produced on record, it is apparent that the executing parties on both the sides, are one and the same. The said person has also given a declaration before the registering authority that the POA dated 12/07/2007 is not canceled. This declaration is without challenging the termination of 2015.

29. In light of the facts and circumstances narrated above, and in light of the clauses of DA and POA discussed above, *prima facie* the Appellant was not legally entitled to execute Conveyance Deed in its own favour. Therefore, there is strong *prima facie* case in favour of the Respondents – Owners in the subject matter suit, which is filed challenging the impugned Conveyance Deed dated 26/05/2023 and seeking to set aside the same.

30. So far as the argument of the Appellant that this amounts to grant of final relief during the pendency of the suit, I find it devoid of merits. I say so because the only effect of the impugned order is that the Appellant will not be able to use the impugned Conveyance Deed as title document and will not be able to alienate or sell the suit property during the pendency of the suit. It is not yet set aside.

31. The Appellant has not challenged the termination dated 04/04/2015 by the Respondents/Owners. The argument about the said termination being illegal or invalid would arise obviously when the termination is challenged, which is not the case here. The Appellant is presently only defending the subject matter suit.

32. Therefore, the judgments relied upon by the Appellants in case of **Seth Loon Karan Sethiya vs. Ivan E. John & Ors, Shanti Budhiya Vesta Patel & Ors. vs. Nirmala Jayprakash Tiwari & Ors., Venkata Ravi Kishore & Anr. vs. JMR Developers Pvt. Ltd. (supra)** need not be considered at this stage, since they are related to argument about termination being valid or invalid in light of the Section 202 of the Indian Contract Act.

33. So far as the judgment of **Supreme Court Bar Association & Ors. vs. B. D. Kaushik and Raja Khan vs. Uttar Pradesh Sunni Central Waqf Board & Anr (supra)** are concerned, it is relied upon by the Appellant in support of the case that final relief should not be granted at interim stage. I have already held in the peculiar facts of this case, that the Respondents/Owners have a strong *prima facie* case. I have already indicated above that final relief of setting aside the Conveyance Deed is not granted. Hence, the said judgments also do not advance the case of the Appellant, considering the peculiar facts of this case.

34. When the impugned order is perused, it is seen that the Trial Court has considered the nature of the impugned Conveyance Deed in which both the transferor and transferee are the same. It is further considered by the Trial Court that the competent authority has terminated the Appellant as developer of the suit property. The view taken by the Trial Court that in such circumstances that the Appellant cannot act upon the Conveyance Deed in

its own favour, is correct. The view taken by the Trial Court that the Appellant was not authorized to execute the Conveyance Deed and claim ownership of the suit property, is also correct. Trial Court has considered the material on record.

35. Considering the undisputed position that from 2007 till 2013, when the slum society applied for termination of the Appellant as developer and then till April 2015 when the Respondents-Owners terminated the POA, the Appellant had not taken any steps to develop the property and further considering that the Appellant's appointment as a developer has been canceled by the competent authority under the Slum Act and further considering that newly appointed developer/intervener has been working on the project since 2016, when necessary LOI and IOA have been granted and amended plans are issued in favour of the new developer, in my view, the aspects of balance of conveyance as well as irreparable loss, tilt in favour of the Respondents/Owners and the new developer.

36. Therefore the remaining judgments relied upon by the Appellant i.e **State of H. P. and Others vs. Anant Ram Negi and Others, S. R. Tewari vs Union of India & Anr and H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. vs. M/s. Gopi Nath & Sons and Others (supra)** for the purpose of argument that the impugned order is perverse also do not advance the case of the Appellant. The impugned Order is not perverse.

37. So far as the argument of the Appellant that as late as in December, 2022, the parties were negotiating and talk of executing Conveyance Deed was going on, I have perused both the letters issued by Respondents/Owners dated 22/06/2022 and the letter dated 19/12/2022 issued in response

thereto. Letter dated 19/12/2022 is a dry and late assertion in year 2022 that the Appellant was ready and willing to perform its obligation under development agreement of July 2007. In the concluding paragraph, only a hope is expressed about Conveyance Deed. The said letter by no stretch of imagination, indicates that the parties were negotiating the matter meaningfully for continuing the Appellant as a developer. In fact under letter dated 22/06/2022, the Respondents/Owners had asserted that the Appellant/developer has not taken any steps for implementation of the slum rehabilitation scheme. It is further asserted that the authority of the Appellant is terminated by the slum society and necessary agreements are executed in favour of the new developer. Ultimately, the arbitration clause was invoked calling upon the Appellant to nominate the arbitrator.

38. In the aforesaid facts and circumstances, the impugned order is neither perverse nor there is any error apparent on the face of the record. The reasons given and the conclusion drawn by the Trial Court is based on the material available before it. Therefore, no interference is called for. This is not a fit case to substitute the discretion exercised by the Trial Court.

39. The Appeal from Order and the Interim Application No. 13827 of 2024 is dismissed. No costs.

40. The Interim Application of the new developer Interim Application No. 15378 of 2024 is also disposed of in above terms.

41. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)