

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.167 OF 2022

Green Park Co-operative Housing Society
Limited .. Applicant
Versus
Surendra Damji Shah & Anr. .. Respondents

WITH
INTERIM APPLICATION NO.10151 OF 2024
IN
CIVIL REVISION APPLICATION NO.167 OF 2022

Green Park Co-operative Housing Society
Limited .. Applicant
IN THE MATTER BETWEEN:
Green Park Co-operative Housing Society
Limited .. Applicant
Versus
Surendra Damji Shah & Anr. .. Respondents

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- Mr. Chirag Mody a/w. Mr. Munaf Virjee and Mr. Rushabh Parekh i./by AMR Law, Advocates for Applicant.
 - Mrs. Pooja Kane i./by Mr. Yogesh Adhia, Advocates for Respondent Nos.1 and 2.
 - Ms. Anshita Sethi i./by DSK Legal, Advocate for Respondent No.3.
 - Respondent No.1 – Mr. Surendra Damji Shah.
 - Respondent No.2 – Mr. Kundanmal N. Jain.
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CORAM : MILIND N. JADHAV, J.
DATE : JULY 05, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Mody, learned Advocate for Applicant, Mrs. Kane, learned Advocate for Respondent Nos.1 and 2 and Ms. Sethi, learned

Advocate for Respondent No.3.

3. Perused the praecipe dated 05.07.2024 and the Interim Application.

4. Interim Application No.10151 of 2024 seeks impleadment of 'Transcon Bellaria LLP' as Respondent No.3 in the Civil Revision Application No.167 of 2022. For the reasons mentioned in the Application, Interim Application stands allowed by consent of the parties in terms of prayer clause (a). 'Transcon Bellaria LLP' is directed to be impleaded as appropriate and necessary party in the Civil Revision Application. Necessary amendment is permitted to be carried out forthwith and copy of amended cause title be served on Respondents. Re-verification stands dispensed with.

5. The parties have reconciled their disputes and filed Consent Terms dated 05.07.2024. The said Consent Terms are taken on record and marked 'X' for identification. They are executed by Chairman of the Applicant – Shri Ramankumar Dasarath; Advocate for Applicant – Mr. Rushabh Parekh instructed by AMR Law; Respondent No.1 – Shri Surendra Damji Shah; Respondent No.2 – Shri Kundanmal N. Jain; Advocate for Respondent Nos.1 and 2 – Shri Yogesh Adkia; Authorised signatory of Respondent No.3 – Shri Rishi A. Todi and Advocate for Respondent No.3. All signatories to the Consent Terms are present in the Court and they confirm execution of Consent Terms. Consent

Terms are totally running into 13 pages alongwith its Annexures. For the sake of reference and convenience the same are scanned and reproduced below except the Annexures thereto:-

M. Padhan
5/7/2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.167 OF 2022
IN
NOTICE OF MOTION NO. 2688 OF 2014
IN
S.C SUIT NO. 2343 OF 2014 AT DINDOSHI

GREEN PARK CHS LTD. ... Appellant / Applicant *pe*

VERSUS

1. SURENDRA DAMJI SHAH
2. KUNDANMAL N. JAIN
3. M/S TRANSCON BELLARIA LLP ... Respondents

CONSENT TERMS

1. That the Respondent Nos. 1 and 2 agree and admit that the Appellants is the owner of a plot of land bearing CTS Nos.325/A/2 admeasuring 1742.70 square meters and CTS No.325/A/4 admeasuring 1953.30 square meters totally admeasuring 3,696.5 sq. meters of Village Valnai ("said Land") along with building Nos. 1 to 3 standing thereon.

2. That the Appellants agree and admit that they appointed Mr. Anthony Joseph Pattathu as a Developer ("said Developer") under Agreement of Development dated 17th August, 1980 and Irrevocable Power of Attorney for construction of building on the said Land. In pursuance of the aforesaid Agreement of Development and Irrevocable Power of Attorney, the said Developer constructed three buildings thereon i.e. Building No. 1 with ground and three upper floors consisting of (08) eight flats, Building No. 2 with ground and four upper floors with (30) thirty flats and Building No. 3 with ground and four upper floors with (28) twenty eight flats in pursuance of building plans approved and sanctioned for said three buildings by Mumbai Municipal Corporation.

pe *Anthony Joseph Pattathu* *l* *pe*

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3. That the Appellants agree and admit that while passing the said Building Plans for aforementioned three buildings, it was believed by the Architect concerned that 15% RG of said Land is required to be kept open as the said Land is more than 3000 sq. meters in area but thereafter it was realized that the said Land is naturally sub-divided into two parts on account of DP road passing through the said Land and as such it was not necessary to keep 15% RG on the said Land.

4. That the Appellant and Respondent No.3 agree, confirm and declare that a Decree dated 9th September, 2002 was passed in L.C. Suit No. 668 of 1985 filed by the said Developer against Mumbai Municipal Corporation and the Appellants herein ("said Decree"), which confirmed that the said Developer is entitled to the benefit of balance FSI of 1,200 square meters under the aforesaid Agreement for Development. The said Decree is valid, subsisting and binding upon the Appellants.

5. That Respondent Nos. 1 and 2 claim that in aforesaid circumstances, the said Developer executed an Agreement dated 19th May, 2011 in favour of the Respondent Nos. 1 and 2 thereby transferring, conveying and assigning all the rights, title and interests of the said Developer in respect of said Land including those under the said Agreement of Development dated 17th August, 1980 and also under the said Decree dated 9th September 2002, including the benefit to utilize the balance FSI of 1200 square meters thereon. The said Agreement dated 19th May, 2011 is registered under No. BDR-5-4295 of 2011 with Sub-Registrar of Assurances, Bandra, Mumbai and that along with the said Agreement, Mr. Anthony Joseph Pattathu also executed Irrevocable Power of Attorney in favour of the Respondent Nos. 1 and 2. The said Agreement dated 19th May, 2011 and Power of Attorney are valid and subsisting as on this date.

6. That the Respondent Nos. 1 and 2 have filed a Suit No. 2343 of 2014 in the Bombay City Civil Court at Dindoshi ("said Suit") seeking reliefs in respect of the balance FSI of 1200 square meters plus additional FSI as per Regulation No. 32-Table-14(1)(B)(iii) of DCR, 1991 as well as compensatory fungible FSI under Regulation No. 35(4) on total land admeasuring 3695.5 sq. meters. The Hon'ble City Civil Court vide its order dated 4th February 2017 while dismissing the Notice of Motion No. 2688 of



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2014 filed by the Appellant herein held that City Civil Court has jurisdiction to entertain the said Suit. An Appeal from Order No.212 of 2017 was filed by the Appellant challenging the aforesaid order dated 4th February 2017 which was later converted to captioned Civil Revision Application no. 167 of 2022.

7. That the Appellants and Respondent No.3 agree and admit that the Appellants have appointed the Respondent No. 3 as a Developer for redevelopment of the said Land vide a general body resolution passed by its members in the Special General Body Meeting held on 21st April, 2024 and as per Order dated 15th May, 2024 passed by Deputy Registrar Co-operative Societies, P/Division, Mumbai. The Appellants and Respondent No.3 are in the process of executing the Development Agreement and Power of Attorney for grant of development rights in respect of the said Land after the present suit is disposed of in terms of these Consent Terms. The Appellants and Respondent No.3 shall between themselves execute and register the Development Agreement and the Power of Attorney after the present suit is disposed off in terms of these Consent Terms.

8. That the dispute between the Appellants on the one hand and the Respondent Nos. 1 and 2 on the other hand is settled in following terms :-

- i) That Respondent No.3 agrees and undertakes to this Honourable Court that Respondent No.3 shall provide (05) five flats, each with not less than RERA carpet area of 700 square feet in the middle habitable floors of the proposed composite building along with (05) five car parkings, i.e. one for each of said (05) five flats to the Respondent Nos. 1 and 2, free of cost, in addition to the payments as mentioned in these Consent Terms, and that such five flats and five car parking shall be identified by the Respondent No.3 and communicated in writing to the Respondent Nos. 1 and 2 within 14 days of IOD being issued to the Respondent No.3. Respondent No.3 shall execute Agreements for Sale in respect of the said (05) five flats along with (05) parkings in favour of prospective third party purchasers / allottees ("Nominee/s") identified by the Respondent Nos. 1 and 2 in writing



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addressed by the Respondent Nos. 1 and 2 to Respondent No.3 within one week of such written communication and after receipt of the RERA approval in respect of the composite building proposed to be constructed by Respondent No.3 on the said Land and subject to payment of stamp duty and registration charges by Nominee/s of the Respondent Nos. 1 and 2. Upon the Respondent No.3 executing the Agreements for Sale in respect of the said 5 flats along with the 5 car parking spaces in favour of the Nominee/s, such Nominee/s shall bear and pay the stamp duty, registration charges and applicable GST in respect thereof. The Respondent No.3 shall also recover from such Nominee/s the pass-through charges including maintenance charges and the society membership charges, which amounts shall be equivalent to what the Respondent No.3 shall collect from the other allottees and purchasers of flats in the composite building to be constructed by Respondent No.3 on the said Land. The Respondent Nos. 1 and 2 shall be solely entitled to receive and appropriate the entire sale consideration (excluding the stamp duty, registration charges, applicable GST and the pass through charges) to be paid by Nominee/s under the aforesaid Agreement for sale for said 5 flats along with the 5 car parking spaces. It is agreed that in the event the said (05) five flats along with (05) parkings continue to remain unsold at the time of receipt of the Occupation Certificate in respect of the composite building, then Respondent No.3 shall be obligated to execute and register the Agreement/s for Sale in respect of the said (05) five flats along with (05) parkings in favour of the Respondent Nos. 1 and 2. In such eventuality, Respondent No.3 shall be liable to bear and pay the stamp duty, registration charges and applicable GST on the Agreement/s for Sale in respect of the said (05) five flats along with (05) parkings. Respondent No.3 shall, however, be entitled to recover from the Respondent Nos. 1 and 2, the maintenance charges and the society membership charges, which amounts shall be equivalent to what the Respondent No.3 shall collect from the other allottees and purchasers of flats in the composite building to be constructed by Respondent No.3 on the said Land.



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- ii) That in addition to aforementioned clause No. 8(i), the Respondent No.3 agrees and undertakes to this Honourable Court that Respondent No.3 shall pay a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) to the Respondent Nos. 1 and 2. Such amount is paid by Respondent No.3 to the Respondent Nos. 1 and 2 on or before execution hereof, by a Pay Order No. 500631 dated 25th June 2024 for Rs. 25,00,000/- in favour of the ^{Respondent} Plaintiff No. 1 and Pay Order No. 500632 dated 25th June 2024 for Rs. 25,00,000/- in favour of the ^{Respondent} Plaintiff No. 2 being Pay orders issued by ICICI Bank, Andheri Branch (the payment and receipt whereof, the Respondent Nos. 1 and 2 do hereby admit and acknowledge).

9. That the Respondent Nos. 1 and 2 agree and undertake to this Honourable Court that in consideration of aforementioned (05) five flats along with (05) five car parking spaces to be provided by Respondent No.3 and the sum of 50,00,000/- (Rupees Fifty Lakhs Only) paid by the Respondent No.3 in the manner set out in these Consent Terms, the Respondent Nos. 1 and 2 hereby release and surrender all their right, title and interest in the said Land i.e. in the balance FSI of 1200 square meters and additional FSI as stated in Clause 6 above totally and fully in favour of the Respondent No.3. The Respondent No. 1 and 2 hereby admit and confirm that they shall not make any claim against the Appellants and/or Respondent No.3 in respect of the FSI of 1,200 square meters and additional FSI as stated in Clause 6 above arising from said Land including but not limited to rights arising under (i) the Agreement for Development dated 17th August, 1980 and Power of Attorney if any executed along with said Agreement in favour of the said Developer, (ii) the said Decree dated 9th September 2002 passed in LC Suit No.668 of 1985, and (iii) Agreement dated 19th May, 2011 and Power of Attorney dated 19th May, 2011, both executed in favour of the Respondent Nos. 1 and 2, except to the extent of 5 flats alongwith 5 car parking spaces and aforementioned monetary consideration to be provided by Respondent No.3 to the Respondent Nos. 1 and 2.

10. That the Respondent Nos. 1 and 2 agree, admit and undertake that neither they nor anyone of them have assigned or transferred or created third party rights in respect





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of (i) its claim for balance FSI of 1,200 square meters from the said Land as prayed for in the present suit, or (ii) any other right arising under (a) the Agreement for Development dated 17th August, 1980 and Power of Attorney if any executed along with said Agreement, both executed in favour of the said Developer, (b) the said Decree dated 9th September 2002 passed in LC Suit No.668 of 1985, and (c) Agreement dated 19th May, 2011 and Power of Attorney dated 19th May, 2011, both executed in favour of the Respondent Nos. 1 and 2.

11. That the Appellants and Respondent No.3 agree and undertake to this Honourable Court that they shall not create any third-party rights in said (05) five flats and (05) five car parking spaces to be provided to the Respondent Nos. 1 and 2 in pursuance of these Consent Terms, except by execution of Agreement for sale in respect of the said (05) five flats along with (05) parkings in favour of Nominee/s as mentioned above. In the event the Respondent No.3 assigns or transfers their development rights in the said Land to any third party, the obligation of providing said five flats along with the 5 car parking spaces to the Respondent Nos. 1 and 2 shall be disclosed by the Respondent No.3 to such third party developer and that the obligation of providing said five flats along with 5 car parking space to the Respondent Nos. 1 and 2 shall then be the obligation and responsibility of such third party developer.

12. It is agreed and confirmed by the Appellants and Respondent No.3 that the obligation to provide and hand over (05) five flats and (05) five car parking spaces to the Respondent Nos. 1 and 2 and all other obligations of Respondent No.3 hereunder are joint and several obligations of both the Appellants and Respondent No.3.

13. The Appellant and Respondent No.3 agree and undertake to this Hon'ble Court that if for any reason, Appellant does not execute any Development Agreement in favour of Respondent No.3 or the Development Agreement executed by Appellants in favour of Respondent No.3 is terminated by Appellants for any reason whatsoever before the construction is completed by Respondent No.3 and/or possession of the five (5) flats and five (5) parkings is handed over by Respondent No.3 to the Respondent Nos. 1 and 2, in such event, Appellant shall be bound and liable to provide and handover






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such (05) five flats and (05) five car parking spaces to the Respondent Nos. 1 and 2 in the building that may be caused to be constructed by Appellant on the said Land. Appellant agrees and undertakes to this Hon'ble Court that it shall point out this obligation to the developer that Appellant may appoint to redevelop the said Land and the buildings standing thereon.

14. That the Appellant and Respondent No.3 agree and undertake to this Honourable Court that they shall complete construction of the composite building in which the aforementioned (05) five flats along with (05) five car parkings spaces are to be provided and handed over the same to the Respondent Nos. 1 and 2, within 36 months from the date of First Commencement Certificate being issued, along with a grace period of 6 months. In case of default of the Respondent No.3, the Respondent No.3 agrees and undertakes to this Honourable Court to pay the Respondent Nos. 1 and 2 such interest and compensation as may be payable to any allottee under the provisions of RERA.

15. That the Appellant agrees and undertakes to this Honourable Court that it shall withdraw the following proceedings within 30 days from the date of filing of these Consent Terms with this Honourable Court:-

- (i) High Court Commercial Suit No.706 of 2017.
- (iii) First Appeal (St). No. 27099 of 2018.

16. That the Appellant and Respondent No.3 on one hand and the Respondent Nos. 1 and 2 on other hand agree and admit that there shall be an order and decree in terms of these Consent Terms. All earlier orders, Court directions and undertakings / statements in the said Suit shall stand vacated and set aside.

17. The said Suit No. 2343 of 2014 pending before the Bombay City Civil Court at Dindoshi be disposed of in terms of these Consent Terms and there shall be a decree in terms thereof.

18. No order as to costs.

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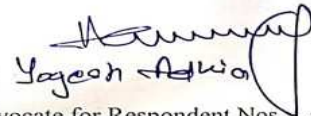
Dated this 5th day of July 2024.




1. Shri Surendra Damji Shah


Shri Ramankumar Dasarath
(Chairman of the Appellant)


2. Shri Kundanmal N. Jain
(Respondent Nos. 1 and 2)


Shri Yagesh Ashwari
(Advocate for Respondent Nos. 1 and 2)


AMR Law
Advocate Rushabh Parekh
(Advocates for Appellant)


2. Shri Rishi A. Todi
(Authorised Signatory of Respondent No.3)




(Advocate for Respondent No.3)

6. S.C.Suit No.2343 of 2014 alongwith pending applications, if any, before City Civil Court at Dindoshi stands decreed in terms of Consent Terms. Parties are bound by the rights and obligations and more specifically obligations to be fulfilled and stated in the Consent Terms. The obligations are taken as undertaking given to this Court and parties shall abide by them. In view of the above, S.C.Suit No.2343 of 2014 alongwith pending applications, if any, stands

disposed. An authenticated copy of this order shall be placed before the learned City Civil Court at Dindoshi by both the parties jointly and the learned City Civil Court at Dindoshi is directed to follow the directions given in this order and issue the appropriate decree.

7. Order in terms of Consent Terms.

8. With the above directions, Civil Revision Application No.167 of 2022 and Interim Application No.10151 of 2024 are disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
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by HARSHADA
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Date: 2024.07.05
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