

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.10 OF 2024
IN
INTERIM APPLICATION (L) NO.22401 OF 2023
IN
SUIT (L) NO.22387 OF 2023**

Bakulesh T. Shah : Appellants/
and anr. (Orig.Defendant Nos.1 & 2)

Vs.

Vrindavan Co-operative
Housing Society & ors. : Respondents.

Mr. Dinyar Madon, Senior Advocate a/w Ms. Sachi Lodha, Mr. Mukul Taly, Ms. Sehryr Taly and Mr. Yash Kataria i/by S. Mahomedbhai & Co. for the Appellants.

Mr. Chetan Kapadia, Senior Advocate a/w Mr. Rohan Sathay, Adv. Rihal Kazi, Adv. Guru Shanmugam and Adv. Zainab Tinwalla i/by M & M Legal Ventures for Respondent No.1.

Ms. K. H. Mastakar i/by Mr. S. K. Sonawane for Respondent Nos. 10 and 11 – MCGM.

Ms. Jyoti Chavan, Addl. GP for Respondents-State.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 29th JANUARY, 2024**

P.C. :

1. The present Appeal impugns an ad-interim order dated 10th November 2023 passed in captioned Interim Application by which the Learned Judge has granted ad-interim reliefs in terms of prayer clauses (a)(iii) and (iv) which read thus:-

"(a) Pending the hearing and final disposal of the present suit, this Hon'ble Court be pass an order temporarily injuncting :

.....

(iii) the Respondent Nos.1 and 2 by themselves, their subordinates, assigns, agents, employees, servants and other person acting for and on their behalf from taking any steps and actions to carry out any form of development including re-development of Vrindavan Annexe or construction of any additional area in Vrindavan Annexe by using any available floor space index or in respect of the plot admeasuring 889.20 sq. mtrs. or any TDR that could be utilized for development/construction.

(iv) the Respondent Nos. 10 and 11 by themselves, their subordinates, agents, employees, servants and other persons acting for and on their behalf

from considering any application that may be made by the Respondent Nos.1 and/or 2 any of their respective successors, assignees, agents, employees, servants, etc. for any form of development including re-development of Vrindavan Annexe or Construction of any additional area in Vrindavan Annexe by using any available floor space index or in respect of the plot admeasuring 889.20 sq.mtrs. or any TDR that could be utilized for development/construction”

2. The Appellants are Defendant Nos.1 and 2 in the captioned Suit whereas Respondent No.1 is the Plaintiff.

3. Mr. Madon, learned Senior Counsel appearing on behalf of the Appellants, at the outset, submitted that the Respondent had filed the captioned Suit claiming right, title and interest in respect of a plot of land bearing Plot No.229, CTS No.B-742, Bandra (West), Taluka Andheri, Mumbai – 400 051 admeasuring 3350 sq. yards(“the larger land”). He submitted that out of the larger land the Appellants were the owners and otherwise entitled to a portion of land admeasuring 889.20 sq. mtrs. on which a structure known as Vrindavan Annexe comprising of basement + ground + 1 upper floor stood

("smaller plot"). He submitted that there was no subsisting lease qua the larger plot in favour of Respondent No. 1 whereas the Appellants' title in respect of the smaller plot was complete and thus the Appellants were the owners of the smaller plot, despite which the aforesaid ad-interim order had been granted. He submitted that while it was well settled that an injunction could never be granted against the owner, not only had the Learned Judge granted such injunction, but had done so without so much as considering the well settled requirements for grant of injunctive relief, i.e., prima facie case, balance of convenience and irreparable loss.

4. Mr. Madon then invited our attention to the Impugned Order and pointed out that the Learned Judge had infact specifically recorded that he was not giving reasons to support the reliefs granted since the same would, according to the Learned Judge, cause prejudice to the parties. He submitted that basis this finding alone, the Impugned Order was liable to be set aside.

5. *Per contra*, Mr. Kapadia, learned Senior Counsel appearing on behalf of Respondent No.1, vehemently opposed the captioned Appeal. He submitted that the Impugned Order was perfectly sustainable and valid. He then submitted that the Impugned Order was only an ad-interim order by which reliefs were granted only till the hearing of the captioned Interim Application and directions for the completion of pleadings were given. He pointed out that in these circumstances, it was prudent that the Interim Application itself was heard and decided. He then invited our attention to paragraph 31 of the Impugned Order and pointed out that the same infact permitted the Appellants to submit a plan for development to Respondent Nos.10 and 11 i.e. the MCGM, however, despite which fact, the Appellants had not submitted any plan to Respondent Nos. 10 and 11. Given this, he submitted that no prejudice would be caused to the Appellants if the Impugned Order continued to operate pending the hearing of the Interim Application.

6. After having heard both the learned Senior Counsel and going through the Impugned Order we find merit in the submission of Mr. Madon that the Impugned Order is lacking the adequate reasoning to sustain all the reliefs granted. Given that by the Impugned Order, the Appellants, who claim to be owners of the smaller plot have been completely injuncted from taking any steps to deal with the smaller plot in the capacity as owners, would in our view have necessitated some prima facie finding qua the title of Respondent No. 1 qua the larger plot. We do not find any such finding in the Impugned Order. Given this, we find that the Impugned Order is liable to be interfered with in Appeal. However, since the Interim Application is yet to be heard and decided on merits, we modify the Impugned Order to the extent stated below, which in our view would subserve the interest of both contesting parties, viz.

:ORDER:

- (i) The Appellants shall be at liberty to file an application/s before the MCGM *inter alia* for

development/redevelopment of the smaller plot indicated above within a period of ten days from the date of this order. The injunction thus granted in terms of prayer clause prayer clause a (iv) extracted above is thus set aside .

- (ii) In the event the Appellants make such Application to the MCGM, a copy of the same and all supporting documents shall be served by the Appellants and/or their Advocates upon the Advocates for Respondent No. 1. Respondent No. 1 shall be at liberty to oppose such Application. We make it clear that such Application shall be heard and decided on its own merits and shall be subject to the outcome of the orders passed in the captioned Interim Application.
- (iii) Insofar as the injunction granted in terms of prayer clause a (iii) is concerned, the same shall continue to subsist and we make it clear, that the Appellants shall not be permitted to carry out any construction

pursuant to this order.

- (iv) The parties are directed to complete their respective pleadings within the timelines granted in the Impugned Order which shall however apply, from the date that this order is uploaded. The Learned Judge to endeavour to dispose of the captioned Interim Application as expeditiously as possible subject to the exigencies of the board.
- (v) The captioned Appeal is disposed of in above terms.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)