

VAISHALI
ANIL
TIKAM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1044 OF 2025

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Date: 2025.01.30
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Rameez Saeed Mulla and Anr.

...Petitioners

VS.

Gulshan Cooperative Housing
Society Ltd. and Anr.

...Respondents

Mr.Ashutosh Gole a/w. Girish Paryani a/w Shavez Mukri i/b. A & G
Legal Associates LLP for the Petitioners.

Mr. Amit Chavan a/w. Mr. Jaulli Chavan for Respondent No.1.

Mr. Drupad Patil a/w. Mr. Suyash Sule for Respondent No.2.

CORAM : N. J. JAMADAR, J.

DATE : 27 JANUARY, 2025

P.C:

1. Heard the learned counsel for the petitioners.
2. The challenge in this petition is to an order dated 14th August, 2024 passed by the Learned Civil Judge, Senior Division whereby the application preferred by the petitioners / plaintiffs for amendment in the plaint came to be partly allowed, permitting the plaintiffs to carry out the amendment to the extent of the proposed alternate prayer clause (e-1) and the proposed amendment in para No.1 of the schedule of amendment (page 104) seeking to incorporate the prayers of demolition of the structure, which has been erected by the defendants during the pendency of the suit, came to be rejected.

3. The petitioners instituted the suit seeking a declaration that the petitioners were the owners of the property described in para No. 1 of the plaint and development agreement executed on 13th August, 2021 was illegal, the action of the defendants of demolishing the property, which was in the possession of the petitioners, was illegal and the consequential reliefs.

4. In the suit, the petitioners had filed an application for temporary injunction seeking to restrain the development on the suit property. By an order dated 30th April, 2022, the trial Court allowed the application and restrained the defendant Nos. 1 and 2 from carrying out redevelopment -construction in any form over the suit property bearing final plot no. 278/4 till the final disposal of the suit. Appeals preferred thereon against, being Appeals from Order No. 509 of 2022 and 510 of 2022, were dismissed by this Court by judgment and order dated 14th October, 2022. The defendants carried the matter in Special Leave Petitions before the Supreme Court.

5. By an order dated 22nd August, 2023, the appeals were disposed by the Supreme Court recording, inter alia, the statements made on behalf of the parties. Since the controversy which arose for determination in the application for amendment,

turns upon the order passed by the Supreme Court, it is necessary to extract observations in para Nos. 4 to 8 of the said order, which read as under:

"4. From the first date of hearing, learned counsel for the parties had stated before this Court that they be permitted to explore the possibility of arriving at a settlement. The said process has been going on since 13th December, 2022. Today, after some negotiations, both the parties agree that the interim order passed by the trial Court and affirmed by the High Court may be vacated subject to the appellants herein securing a carpet area measuring 526.84 square feet plus 350 square feet plus 217.36 square feet totalling to 1094.20 square feet as detailed by the respondents No.2 and 3 in para 1 of the plaint.

5. Mr. Shekhar Naphade, learned Senior counsel appearing for the appellant in Civil Appeal No. 5346 of 2023 and Mr. Sudheer Nandrajog, learned Senior counsel appearing for the appellants in Civil Appeal No. 5347 of 2023 jointly state that in the event if the entire area referred to hereinabove cannot be made available on one floor, the same would be kept available on the upper floor, in terms of the sanctioned building plans. Mr. Shekhar

Naphade, Senior Advocate hastens to clarify that though the respondent No.2 and 3 have laid a claim to a mezzanine floor having a carpet area of 350 square feet, that may not be possible to segregate as this aspect is dependent on the sanctioned building plan.

6. Mr. Narender Hooda, learned Senior Counsel appearing for the respondents No.2 and 3 states on instructions that the respondents No. 2 and 3 are agreeable to the suggestion made above.

7. We may clarify here that the appellants herein will not treat the respondents no.2 and 3 any differently from the other occupants of the building. In other words, insofar as the modality of allotment is concerned, the appellants in both the appeals shall treat the respondents No.2 and 3 at par with the other occupants with whom Development Agreements have been signed.

8. In the penultimate para of the impugned judgment, the High Court had directed the trial court to make an endeavour to decide the suit instituted by the respondents No.2 and 3 on or before June, 2023. We are informed by learned counsel for the parties that the said suit is at an advanced stage of recording of evidence which is likely to conclude within six months. The trial Court shall make an effort to dispose of the suit by the end of March, 2024."

(emphasis supplied)

6. Pursuant to the aforesaid order passed by the Supreme Court, construction has been erected at the suit premises. The petitioners preferred application seeking amendment in the plaint so as to incorporate the prayers of demolition of the structure, which has been so erected, in the intervening period, and in the alternative for compensation.

7. By the impugned order, the learned Civil Judge was persuaded to reject the application for amendment to the extent the plaintiffs sought to incorporate the prayer for demolition of the structure which has been erected.

8. Mr. Gole, the learned counsel for the petitioners, submitted that the fact that the petitioners had given consent for erection of the structure over the suit property doesn't imply that the foundational challenge of the petitioners to the development agreement was given up. The principal prayer of the petitioners is that the development agreement is illegal and required to be so declared and cancelled. Since the construction has been erected during the pendency of the suit pursuant to the order of the Supreme Court, it is necessary to incorporate the prayer for demolition of the said structure. The proposed amendment is essentially consequential, urged Mr. Gole.

9. I have perused the application for amendment and schedule of amendment. Before the Supreme Court, it appears, the plaintiffs had not raised the ground that, if they ultimately succeed in the suit, they reserve their right to seek demolition of the construction, which would be erected as per the order of the Supreme Court. Mr. Gole may be justified in canvassing a submission that, that doesn't disentitle the plaintiffs from seeking the amendment in the plaint. However, upon careful perusal of the plaint, especially the prayers therein, it become abundantly clear that all the rights, sought to be asserted by the Plaintiffs, emanate from the proprietary title claimed by the Plaintiffs over the portion of the property which was in their possession. Therefore, at this stage, when the suit has reached an advanced stage inasmuch as final arguments are being advanced, the learned Civil Judge has correctly exercised the discretion to permit the plaintiffs to incorporate the alternate prayer for compensation in the event the plaintiffs succeed in the suit.

8. No interference is thus warranted in the impugned order in exercise of the supervisory jurisdiction.

9. The petition stands disposed.

(N. J. JAMADAR, J.)