

defendant nos. 1 and 2, whose agricultural land was acquired for the development of the New Town, agreed to execute a tripartite agreement to convey the plot which was to be allotted to the defendant nos. 1 and 2 under 12.5% scheme, as and by way of compensation for acquisition of their land. The said plot to be allotted was agreed to be transferred in the name of the plaintiff for a consideration of Rs. 88,00,000/-. A sum of Rs.10,00,000/- was paid by way of part consideration thereunder. The plaintiff claimed to have also paid further sum of Rs. 27,50,000/- in cash to the defendant nos. 1 and 2, through a middleman, Anant Gharat. Alleging that, the defendant nos. 1 and 2 committed default in performance of their part of the contract, the suit came to be instituted.

3. In the said suit, the petitioner filed an application for temporary injunction to restrain the defendant nos. 1 and 2 from creating third party interest in the said plot and the defendant nos. 3 to 6; the CIDCO and its officers, from handing over the possession of the plot or entering into any tripartite agreement with respect to the said plot in favour of a third party.

4. The learned Civil Judge was persuaded to reject the application observing, *inter alia*, that the defendant nos. 1 and 2 had already entered into an agreement with M/s. Olive Builders and Developers on 7th December 2023; the plaintiff failed to establish that, he was ready and willing to perform his part of the contract, and since the suit property was already transferred in favour of M/s.Olive Builders and Developers the prayer for temporary injunction had

become infructuous.

5. The learned District Judge found no error in the exercise of discretion by the Trial Court. The learned District Judge was of the view that the plaintiff had not approached the Court with clean hands and there was no material to show that the plaintiff had paid a substantial amount to the defendants through Anant Gharat.

6. Mr. Shetye, the learned counsel for the petitioner, made an endeavour to urge that the Court's below have not exercised the discretion properly. Placing emphasis on the agreement for sale executed between the parties, especially the receipt of consideration thereunder, by way of cheques, Mr. Shetye would urge that the Courts below must have granted injunction to protect the interest of the plaintiff.

7. Since the Court's below have recorded concurrent findings that the plaintiff failed to make out a *prima facie* case and did not approach the Court with clean hands, this Court does not find any justifiable reason to entertain the petition in exercise of supervisory jurisdiction.

8. The claim of the plaintiff that he had parted with a huge sum of Rs. 27,50,000/- in cash, when the initial payments were made by way of cheques, was justifiably held by the Courts below, to be a matter for trial.

9. Moreover, the material on record indicates that on the date

the purported agreement to transfer the plot was executed by defendant nos. 1 and 2, the plot in question was not yet allotted by CIDCO. At best, the defendant nos. 1 and 2 were entitled to the allotment of the said plot as and by way of compensation for acquisition of their land. It appears to be debatable, whether the defendant nos. 1 and 2 could have then agreed to sale the plot, the identity of which was yet to be ascertained. Whether such an agreement can be specifically enforced also warrants adjudication.

10. It is also imperative to note that the plaintiff was put to notice at the time of the hearing of the application for temporary injunction itself, that the defendant nos. 1 and 2 had already executed an instrument with respect to the plot which was allotted to them, in favour of the M/s. Olive Builders and Developers. Yet, it does not appear that steps were then taken to join the said transferee to the suit. The learned Civil Judge was, thus, justified in holding that, in such a situation, the application for temporary injunction was rendered infructuous.

11. In the totality of the circumstances, this Court does not find any infirmity in the impugned order.

12. The petition, therefore, stands dismissed.

(N.J. JAMADAR, J)