

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11515 OF 2024

Shafiahmed Hakim Janjali

...Petitioner

Versus

The State of Maharashtra And Ors

...Respondents

Mr. Anuj Desai a/w Adv. Rohit N. Dhotre i/b Dhruv B. Jain, for the
Petitioner.

Ms. Savina R. Crasto, AGP for Respondent no. 1 -State.

Mr. Yatin R. Shah a/w Mr. H.Y. Shah, for Respondent No. 3

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 01 APRIL 2025

P.C.:

1. This petition is filed under Article 226 of the Constitution of India,
seeking the following substantive relief :-

*“(a) This Hon’ble Court be pleased to issue a writ
of certiorari or appropriate order, direction in the
nature of writ of certiorari be issued and the
papers and proceedings in Complaint No.
CC006000000408327 of 2023 filed by the
Petitioner before the Respondent No. 2 be called
for and be verified;”*

2. The petitioner is the owner of the land bearing plot no. 1, survey
no. 23/1A, 23/1B, 23/2, admeasuring 3947.74 square meters situated at

Raigad ("**subject land**" for short) as set out in the petition. According to the petitioner, the subject land was conveyed to the respondent no. 3 by one Kashinath Laxman Vange in favour of respondent no. 3, despite having agreed to sell the subject land in favour of the petitioner. For such reason, the petitioner filed a civil suit, *inter alia*, against respondent no. 3 before Special Civil Judge Senior Division, Panvel seeking specific performance of the registered agreement for sale dated 11 July 1999.

3. Pursuant thereto, the learned Civil Judge Senior Division passed an order dated 5 August 2016 injunctioning respondent no. 3 from creating third party rights or interest in the subject land. However, the petitioner claims that respondent no.3 initiated construction on the said land and registered such project with Maharashtra Real Estate Regulatory Authority ("**MahaRERA**" for short).

4. Pursuant to such registration, respondent no. 3 obtained a commencement certificate on 3 November 2022 from the competent authority. Aggrieved by such action of respondent no. 3, the petitioner filed a complaint with MahaRERA i.e. respondent no. 2. The proceedings were listed in the month of January 2024 before MahaRERA, when the petitioner was directed to file a complaint in proper format which was undertaken on 3 January 2024.

5. The grievance of the petitioner is primarily that although the said complaint was filed on 3 January 2024 before the MahaRERA i.e.

respondent no. 2 thereafter, the petitioner had moved the matter by filing a praecipe dated 17 January 2024, despite which the proceedings before MahaRERA are pending adjudication.

6. It is on this above backdrop the present petition is filed.

7. We have heard learned counsel for the parties and with their assistance, perused the record.

8. Mr. Desai, learned counsel for the petitioner would submit that as the proceedings filed by the petitioner before MahaRERA are long pending, since filing of the complaint on 3 January 2024 without any progress. Therefore, such complaint ought to be decided expeditiously. Respondents represented by Shri. Yatin Shah for respondent no. 3 and learned AGP Ms. Savina Crasto for respondent no. 1 have opposed the petition. The respondent no. 3 has filed an affidavit in reply of Shri. Shailesh Narsinh Patel dated 2 August 2024. We have noted the contents of the said reply.

9. We may observe that it is true that the petitioner had filed a complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 before respondent no. 2 – MahaRERA on 3 January 2024 which is pending adjudication. As MahaRERA is clothed with the jurisdiction to decide and adjudicate upon such complaint under the provision of section 31 of the RERA Act, we are not inclined to interfere with the proceedings which are *sub judice* before MahaRERA.

However, considering that such proceedings pending for some time with MahaRERA, we are inclined to pass the following order which would meet the ends of justice.

ORDER

(i) The MahaRERA shall hear the petitioner along with other parties on the complaint of the petitioner dated 3 January 2024, within a period of four weeks from the date, this order is presented before the MahRERA by the petitioner and proceed to pass a reasoned order in accordance with law.

(ii) All rights and contentions of the parties are expressly kept open.

(iii) We make it clear that, we have not expressed any opinion on the rival contentions of the parties.

(iv) Writ petition is disposed of in the above terms. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]