

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 8692 OF 2025
IN
FIRST APPEAL NO. 178 OF 1994**

Harishchandra Sitaram Chavan thru. LRs.
Siddharth H. Chavan and Ors. ...Applicants
IN THE MATTER BETWEEN
Jankibai Sitaram Chavan (since deceased)
Through Lrs. & Ors. ...Appellants.
Versus
Municipal Corporation of Greater Bombay & Ors. ...Respondents

Mr. Shailendra Kanetkar a/w Adv. Shivraj Patne i/b Mr. Mahesh Rawool for the Applicants.
Mr. Darius Khambata, Senior Advocate a/w. Mr. Karl Tamboly, Mr. Tushar Hathiramani, Adv. Reehan Ajmerwala, Adv. Rashida Savliwala, Adv. Megha Sanghavi i/b Dhruv Liladhar and Co. for Respondent No.3.
Ms. Pallavi Khale i/b. Adv. Komal Punjabi for Respondent No.1/BMC.

CORAM : M. M. SATHAYE, J.

DATED : 8th SEPTEMBER 2025

P.C.:

1. This is an Application by Appellants/Original Plaintiffs seeking injunction against the Respondent No. 3-Developer from alienating the suit property, creating third party rights therein, parting with possession, changing nature of the suit property or carrying any work therein in furtherance of IOD dated 28/02/2025, demolishing or pulling down any structure standing on the suit property. The Applicants further seek

injunction against Respondent-Municipal Corporation from granting any further development permission, NOC, approvals etc. to Respondent No. 3.

2. Plot of land admeasuring 742 sq. mtrs. situated at Sayani Road, Prabhadevi, Mumbai – 25 comprising of New Survey No. part 1739, Cadestral Survey No. 2/1194 of Lower Parel Division, together with building and chawl situated therein, with about 51 tenements in the building and 12 residential rooms in the chawl is the suit property. The Applicants were the owners of the suit property.

3. The case of the Applicants in short is that suit was filed by them seeking declaration that they continue to remain owners of the suit property and for declaration that the auction sale of the suit property by Respondent No. 1-Municipal Corporation dated 13.08.1979 in favour of original defendant Nos. 2 and 3 is null and void and that Defendant Nos. 2 & 3 have not acquired any right, title and interest in the suit property. Suit was also filed for injunction restraining the Respondent No. 1 Municipal corporation from taking steps for transferring the title in favour of Defendant Nos. 2 & 3. By the impugned judgement and decree dated 09.10.1990, the Trial Court held that the auction sale was malafide act on the part of officer concerned and was therefore, null and void. However, the Suit is dismissed only for want of statutory notice u/s. 527 of the Mumbai Municipal Corporation Act, 1988 ('the said Act' for short). The First Appeal is admitted and is pending for final adjudication. During pendency of the Appeal, Defendant Nos. 2 and 3 have created third party interest in favour of present Respondent No. 3. That the Applicants have been paying land revenue of the suit property and even today are paying the same.

4. It is contended that in September 2023, Applicants issued Advocate's notice to Respondent No. 1-Municipal Corporation informing it about pendency of this First Appeal and requested not to issue any NOC or development/redevelopment permission in respect of suit property. In or around 3rd week of May 2025, Appellants noticed corrugated metal sheets put up around the suit property and on inquiry with the tenants in the chawl and building on the suit property, Applicants were informed that Respondent No. 3 is proposing to redevelop the suit property. The Applicants issued Advocate's notice in May 2025 to Respondent- Municipal Corporation and other authorities informing them about pendency of present First Appeal and again requested not to issue any NOC or permission.

5. It is further contended that one officer of the Respondent-Municipal Corporation shared a copy of IOD dated 28/02/2025 on whatsapp and on taking search on the concerned website/portal of Respondent-Municipal Corporation, they were shocked to learn that Respondent No. 3-Developer through its architect has applied for development of suit property. On further search of documents uploaded, it was revealed that Respondent No. 3-Developer has purchased the suit property from Original Defendant No. 3-Bilkish-banoo by conveyance dated 6/7/2004. That the Respondent No. 3 has got its name entered in the property card of suit property behind the Applicants' back.

6. It is then contended that a document has been uploaded on the concerned website of the Respondent-Municipal Corporation recording objection on behalf of the Applicants, which is Applicants' notice of September 2023. That the Respondent No. 3 is a purchaser *pendente lite*

and the transfer in favour of Respondent No. 3 is subservient to the rights that may be determined by the Court. That if the Applicants succeed in the Appeal and the auction sale by Respondent-Municipal Corporation in favour of Defendant Nos. 2 and 3 is declared null and void, the conveyance in favour of Respondent No. 3 will also be rendered null and void. That if Respondent No. 3 is not prevented from developing and constructing on suit property and from creating third party interest, the Applicants will be put in irreversible situation. That Respondent No. 3 is aware of Applicants' claim, yet has continued its activity. That no intimation /notice was issued to the Applicants before the name of the Respondent No. 3-Developer was entered into the property card. That rights of the parties are yet to be adjudicated in the Appeal in the present substantive first appeal and in such situation if the nature of the property is changed, the Applicants' right will be seriously affected. That there is strong *prima facie* case and balance of convenience lies in favour of the Applicants and the Applicants will suffer irreparable loss incapable of monetary compensation. Hence injunction as prayed is necessary.

7. The Respondent No. 3 has filed affidavit-in-reply dated 11/07/2025. By order dated 22/07/2025 passed in IA/8690/2025 the Respondent No. 3 has been impleaded as party, keeping all its contentions on merits, open.

8. Mr. Kanetkar appearing for the Applicants submitted as under.

8.1 That interest of Respondent No. 3 is created under the conveyance, during pendency of the proceedings. That there is no mention of the suit or pending Appeal in the conveyance. That the Respondent No. 3 has acted without due diligence in as much as there

is nothing on record to indicate that any search of legal proceedings was taken or public notice was issued. That the Respondent No. 3 was aware about Applicants' objection, at least from September 2023 because it was filed with the Respondent- Municipal Corporations and it is impossible to believe that a developer like Respondent No. 3 will not come to know about such objection when it is lodged with the Respondent-Municipal Corporation. That when certain activity was seen on the suit property apparently indicating change in the nature of suit property, the present Application is immediately filed. That a purchaser *pendente lite* cannot claim any equity. That during pendency of the suit there was ad- interim injunction granted in favour of the Applicants. That from bare perusal of the issues in the impugned judgment, it is clear that the Trial Court has held that without even issuing assessment bills of the property, warrant of attachment of suit property was issued and there was no proclamation as required and no demand notice was served under section 202 of the said Act.

8.2 It is further submitted that Trial Court has come to specific conclusion that impugned auction sale was malafide act on the part of the concerned officer and therefore null and void and it is held that there was no genuine auction in favour of Defendant No. 3. That in the teeth of these factual findings, the suit has been dismissed only as not maintainable for want of statutory notice under section 527 of the said Act. That lack of statutory notice cannot be fatal in facts and circumstances of the present case.

8.3 He submitted that it was the duty of Respondent No. 3 to make appropriate inquiry about the title of its vendor and it cannot be said that Respondent No. 3 is a *bona-fide* purchaser. He further submitted that even in absence of registration of *lis pendens* notice, it cannot render the doctrine entirely inapplicable because it would lead to exploitation of procedural gaps by parties or collusive agreements with party to the litigation. He relied upon following judgments in support of his submissions:

(a) Ninad Sahakari Gruharachana Sanstha Maryadit, Pune Vs. Pune Municipal Corporation [(2011) SCC OnLine Bom 1406]

(b) Bajrang @ Hanumant Tatyaba Kakade and Another VS. Babubai w/o Baburao Pujari and Others [1997(2) Mh.L.J. 855]

(c) Usha Sinha versus Dina Ram And Others [(2008) 7 SCC 144]

(d) Mohd. Iqbal Ali Mohd. Wadia Versus Municipal Corporation of Greater Mumbai [(2024) SCC OnLine Bom 2443]

(e) Celir LLP Versus Sumati Prasad Bafna and Others [2024 SCC OnLine SC 3727]

(f) Rekha Pravin Nalavade Versus Municipal Commissioner of Greater Mumbai and Others [(2025) SCC OnLine Bom 860]

(g) Motillal Mahadev Sharma and others Versus Municipal Corporation of Greater Bombay [(2005) SCC OnLine Bom 401]

(h) Smt. Sabira Aslam Sikwani Vs. Mohammed Yusuf Hussain & Ors [2003(3) ALL MR 536]

9. *Per contra*, Mr. Khambata, learned senior Advocate for Respondent No. 3 submitted as under.

9.1 That there is no averment in the plaint making out case of

urgency or malafides and therefore, in absence of any case of urgency, lack of statutory notice becomes fatal. That there is nothing on the record to indicate that Respondent No. 1-Municipal Corporation has waived the statutory notice. That Respondent No. 3-developer has purchased the property by registered conveyance of the year 2004 and a registered document is deemed notice to the whole world and therefore, the Applicants cannot claim ignorance and therefore, the Application filed in the year 2025 is hopelessly belated and no injunction can be granted on such application.

9.2 He submitted that the Applicants live in vicinity of the suit property and they have seen all the developments on the suit property and are well aware of situation. However, they have simply waited and pounced at the appropriate time, where suit property is ripe for actual development and no indulgence should be shown to such opportunist attempt. That this is not a fit case for grant of injunction. That no injunction was sought during pendency of the Appeal that even the injunction claimed to be existing in the suit is on the basis of a mere xerox copy of incomplete order. There is nothing on the record to indicate about the condition of default in the alleged injunction order being fulfilled or not. That on the Applicants' own showing, they had raised objection with the Respondent- Municipal Corporation in September 2023 and there is no explanation why thereafter they waited till 2025. That the Applicants have slept over their rights for all these years and therefore, no indulgence be shown.

9.3 On merits of the impugned judgment, it is submitted that since

no case of urgency was made out, the issuance of statutory notice is a must. That even in case of malafides, the requirement of statutory notice cannot be done away with. It is submitted that Respondent-Municipal Corporation has expressly raised the objection about lack of statutory notice. That the requirement of statutory notice may be dispensed with in two exceptional circumstances, either when plaintiff makes out case of extreme urgency or the act complained of, is complete illegal or without jurisdiction. He submitted that none of these conditions exist in the fact of this case.

9.4 It is submitted that the challenge to the validity of Sections 203 and 206 of the said Act raised by the Applicants has been expressly rejected in the impugned judgment and no contentions are raised in the Appeal in that regard. That no case of urgency has been pleaded much less made out. That even in case of allegations of malafides against the State, no distinction can be made between acts done illegally or in bad faith and acts done bonafide, so far as statutory notice is concerned. That findings about malafides could not have been given by the Trial Court in the suit, which is not maintainable for want of compliance with statutory notice. That allegations of malafides must be specific and there exists presumption that a public authority acts *bonafide* and this presumption is not rebutted in the present case, as the burden is very heavy to prove such allegations. That the Application suffers from laches and delay. That Respondent No. 3 has spent substantial amounts towards development of the property and has obtained all requisite permissions from all statutory authorities.

9.5 It is then submitted that Respondent No. 3 is currently in final phase of redevelopment. That all the statutory approvals are in place. That all the tenants/occupants of the existing building and chawl have vacated and the existing structures have been demolished and at such stage, injunction cannot be granted on the basis of hopelessly belated application filed after 21 years since acquisition of suit property by the Respondent No. 3 in 2004. That since the Applicants have failed to obtain any interim relief during pendency of the suit and appeal, no interim relief can be granted at this stage. It is lastly submitted that Applicants' conduct demonstrates calculated attempt to harass the Respondent No. 3 with ulterior motive of compelling the Respondent No. 3 to give in to unlawful demands. He relied upon following judgments in support of his submissions:

- (a) Dilboo (Smt) (Dead) By Lrs. And Others Versus Dhanraji (Smt) (Dead) And Others [(2000) 7 SCC 702]
- (b) Vasant Ambadas Pandit vs. Bombay Municipal Corporation and Others [(1981) SCC OnLine Bom 75]
- (c) State Of Maharashtra And Another Versus Chander Kant (Shri) [(1977) 1 SCC 257]
- (d) Mutha Associates And Others Versus State Of Maharashtra And Others [(2013) 14 SCC 304]

- 10. I have carefully considered the submissions and perused the records.
- 11. Let us test the facts of this case on the touchstone of established parameters of *prima facie* case, balance of convenience and irreparable loss.
- 12. It is true that during pendency of the suit, the existence of interim

injunction as claimed by the Applicants cannot be considered, as it is rightly pointed out by learned counsel for Respondent No.3 that a mere xerox copy of some order dated 18.10.1979 is produced, which is not a complete copy and just page no.5, which shows that ad-interim injunction was granted subject to Plaintiffs depositing Rs.15,000/- before particular date and in case of default, the injunction was to stand vacated. The order also indicates that it was continued only till 12.11.1979. It is not clear whether this amount was deposited or whether there was default or whether ad-interim injunction was continued beyond that particular date and therefore I am not inclined to rely upon the alleged order of injunction during pendency of the suit. It is admitted position that during pendency of the appeal there was no injunction restraining the Respondents/Defendants from creating third party interest or selling the suit property. No notice of *lis pendens* is registered. Be that as it may.

13. By the impugned judgment, though the suit is dismissed, it is dismissed mainly for want of statutory notice under Section 527 of the said Act. It is the case of the Applicants, as can be seen from the impugned judgment, that the procedure adopted for auction of suit property is illegal. Trial Court has clearly held vide issue nos. 2 to 5 and 11 and 12 that Respondent No.1 Municipal Corporation did not issue assessment bills of the suit property after the death of the Applicants' predecessor, nor did it serve any assessment bills on the Applicants, nor warrant of attachment and other warrant of attachment in respect of repairs were proclaimed on the site as prescribed under law, nor any demand notice under Section 202 of the said Act was served upon the Applicants. The Trial Court has found on appreciation of evidence that auction sale impugned in the suit was *mala*

fide act on the part of the concerned officer of Respondent No.1 Corporation and therefore it is null and void and the auction of suit property has not been a genuine auction. In the teeth of these findings, the Applicants surely have a strong *prima facie* case, so far as challenge to the impugned auction of the suit property is concerned.

14. Admittedly, original Defendant Nos.2 & 3 are auction purchasers, who in turn have assigned/conveyed the suit property to the present Respondent No.3 developer. The original Defendant Nos.2 & 3 have not challenged the findings of the Trial Court in favour of the Applicants, by filing any cross objections.

15. The registered conveyance deed dated 06.07.2004 under which Respondent No.3 claims development rights and possession of the suit property, indicates that there is no recital even remotely mentioning the existence of the suit in question or pending appeal in this Court. In fact, on page no.4 of the said conveyance deed, it is stated that 'the Vendors have not done, omitted or knowingly and willingly suffered or been party or privy to any act, deed, matter or thing whereby the same or any party thereof are, is, can or may be charged, encumbered or prejudicially affected in estate, title or otherwise howsoever'. It is therefore clear that original Defendant No.3 Bilkish-banoo (through whom Respondent No.3 claims), has in fact made a false statement in the registered document completely suppressing the existence of present pending first appeal. It is one thing to say that there is no injunction restraining a party from executing conveyance deed but it is another thing to completely suppress existence of the litigation. Unfortunately, Respondent No.3 has purchased the property through a

vendor who has chosen to suppress litigation pending in this Court. The effect of this suppression and sale of suit property during pendency of the litigation, can be dealt with by Respondent No.3 by filing appropriate proceedings or taking appropriate action against the Vendor in accordance with law. However the Applicants have no role to play in the said suppression of the fact by Vendor of Respondent No.3 and therefore, the Applicants cannot be held responsible or made to suffer any prejudice.

16. Whether Respondent No.3 is *bona fide* purchaser for value without notice, is a matter that will be decided at the final hearing of the appeal, as Respondent No.3 has been made party in the appeal. However, fact cannot be denied that the suit property has been purchased by Respondent No.3 during pendency of the present first appeal and they are transferee *pendente lite* and the suit property is bound by final outcome of the appeal under section 52 of the Transfer of Property Act, 1882.

17. The Applicants had issued notice to Respondent No.1 Municipal Corporation on 04.09.2023 informing the municipal Authorities about pendency of the appeal in this Court and a request was made not to issue NOC/permission or sanction. This fact is reflected from a document uploaded on the Auto-DCR portal/website of Respondent No.1 Municipal Corporation. It is the contention of Respondent No.3 developer that this notice was not issued to it and this document is not uploaded by the developer. However, fact remains that the objection of the Applicants about development in the suit property is on record since September 2023. In the teeth of these objections also, the permission/s granted by authorities after September 2023 will have to be seen as subject to the Applicants' objection,

whose substantive first appeal is pending in this Court.

18. From the documents on record, nothing was shown to this Court as to what action or precaution has been taken by Respondent No.3 as due diligence, before purchasing the suit property. No public notice is shown to have been issued by Respondent No.3 before entering into transaction with Defendant No.3. No such notice has been placed on record. In such situation, the doctrine of 'buyer beware' is squarely applicable and therefore the actions on the basis of conveyance executed without due diligence, will have to be treated as actions undertaken by Respondent No.3 at its own risk.

19. The only answer of Respondent No.3 about purchase of suit property pending litigation, is that the doctrine of *lis pendens* will not apply because its title flows from a different source (being municipal auction) and not from original owner who was party to the litigation. This stand is reflected from paragraph No.13 of the affidavit-in-reply filed by Respondent No.3. This stand, at least at this interim stage, needs to be rejected because the title of Respondent No.3 is not flowing from municipal auction, but from Defendant No.3 in a private document. Defendant No. 3 has purchased the suit property in municipal auction, not Respondent No. 3. So far as transaction between Respondent No.3 and Defendant No.3 is concerned, it is pure and simple transaction between two private parties and there is no element of auction involved. The basis of title of Defendant No.3 (municipal auction) is under serious challenge in the substantive first appeal. In that view of the matter, the transaction of conveyance of the year 2004 between Respondent No.3 and Defendant No. 3 is squarely hit by the principle of *lis pendens*.

20. Now coming to the aspect of the conduct of the Applicants and total

inaction on their part to secure injunction. From the facts on record, it is clear that at least since 04.09.2023 when the Applicants issued notice to Respondent Municipal Corporation, the Applicants were aware of some activity in the suit property. There is no explanation why the Applicants thereafter waited till 14.05.2025 to issue another notice to the Respondent Municipal Corporation. The Applicants could have moved this Court after admission of appeal on 28.02.1994, seeking injunction against Respondents from selling or creating third party interest in the suit property which has not been done. At least after September 2023, the Applicants could have applied to this Court seeking interim injunction and the Respondents could have been called upon to disclose fact situation of the suit property. However, the Applicants have not done so. Therefore considering the long inaction on the part of the Applicants, at this stage after period of 21 years from the date of conveyance in favour of Respondent No.3, no injunction can be granted against Respondent No.3.

21. The Court cannot lose sight of the fact that Respondent No.3 appears to have taken steps for development and spent money therefor, as is pointed out from the affidavit-in-reply by learned senior Advocate for Respondent No.3. It appears that from September 2004 till date, notice has been issued notifying the tenants in the suit property, necessary permissions have been obtained from Municipal Corporation, permanent alternate accommodation agreements (PAAA) have been executed with tenants, commencement certificate is obtained, NOC has been obtained from Urban Development Department, Fire office, Traffic Department. Fresh consent of tenants have been acquired. Tenants have vacated the existing structures. No dues certificate has been obtained from Respondent Municipal Corporation. The

Court also has to bear in mind that tenants have vacated the structures by entering into PAAA agreements, who will be left high and dry, if injunction is granted at this stage. All these activities undertaken by Respondent No.3 and involvement of tenants, tilts the balance of convenience in favour of Respondent No.3. Therefore at this interim stage, in my view, Respondent No.3 cannot be completely restrained from continuing with development of the suit property. However the developer will have to do it, accepting that the development and sale of constructed units if any, will be subject to final out come of the appeal and no equity can be claimed.

22. However, equally, this Court has to keep in mind that this is not a case whether only a room or unit or flat in the property is involved. This is the case where the entire auction sale of the suit property (which is a piece of land and structures thereon) at prime locality of Mumbai is concerned and there is finding of the Trial Court that without following proper procedure the auction was conducted and *mala fides* have been found on the part of the concerned officer. If the Applicants succeed in the appeal, then their right in the entire suit property, comprising of land and structures, will be available to them and the sale in favour of Defendant No.3 would come in jeopardy, in turn rendering the conveyance in favour of present developer Respondent No.3 illegal. If the nature of suit property is permitted to be changed with sale of constructed units without conditions, then the Applicants will be put in irreversible condition. This tilts the aspect of irreparable loss in favour of the Applicants. Therefore a balance has to be struck.

23. It is not necessary to deal with the rival contentions about lack of

statutory notice being fatal to the suit or otherwise, since that will be considered at the time of final hearing of the appeal. For that reason there is no need to deal with various case laws relied upon by the parties in support of their rival cases about effect of lack of statutory notice.

24. So far as the caselaw relied upon about doctrine of *lis pendens* is concerned, suffice it to observe that in a recent judgment of Celir LLP Vs. Sumati Prasad Bafna and Ors. 2024 SCC OnLiine SC 3727, Hon'ble Supreme Court, has considered the doctrine of *lis pendens* in detail and has held as under:

“170. It was submitted on behalf of the Subsequent Transferee that in view of the aforesaid state amendment to Section 52 of the TPA, in order to invoke *lis pendens* under the said provision it is mandatory as per sub-section (1) that a notice of pendency of a suit or proceeding is registered in respect of the property which is the subject-matter of such proceeding in the manner laid down in sub-section (2) and in the event no such notice of pendency is registered then *lis pendens* will not be applicable. It was further submitted that since in the present case admittedly there was no registration of notice of pendency by the petitioner in respect of the Secured Asset, the Assignment Agreement dated 28.08.2023 and the transfer of the said property in pursuance thereto is not hit by *lis pendens*.

171. We have carefully gone through the aforesaid state amendment made to Section 52 of the TPA. The amended Section 52 sub-section (1) of the TPA casts upon a party who is claiming any right to a property which is a subject-matter of any pending suit or proceeding an additional duty to register a notice of pendency in respect of such property so as to caution and put to notice any third-party who might otherwise be unaware of such proceeding or litigation despite the best of due diligence either due to inadvertence or deliberate misleading by one of the parties to the *lis* and as result might be genuinely considering to purchase or acquire any right in the subject-matter proceeding. The requirement of registration of notice of pendency is to prevent any undue or unwarranted hardship to such third-parties who even after a reasonable due diligence have bona-fidely purchased the property believing it to be free from the encumbrances of any pending

proceeding only to later face the adverse consequence of losing their rights by a mechanical application of *lis pendens*.

172. This additional requirement of registration of notice of pendency is for the benefit of the party claiming any right in such subject-matter property and also for the benefit of any third-party interested in such subject-matter property by enabling the former to claim the benefit of *lis pendens* as an absolute right after having duly taken steps towards ensuring that the public is well-aware of the impending litigation in respect of such property by registering a notice of pendency and to enable the latter to ascertain the veracity of title of such property by exercise of its due diligence. Although, the said provision is for the benefit of the third-party, yet such subsequent purchasers cannot as a matter of absolute right claim any title to such property solely on the ground of want of any notice of pendency being registered. To hold otherwise would undermine the object and purpose of the doctrine of *lis pendens* which is based on the principle of equity, good conscience, and public policy and discourage any thwarting or frustration of rights of the parties so litigating by unscrupulous and unanticipated transactions.

173. The vital essence of this additional duty imposed upon the party claiming a right to a property which is a subject matter of a pending proceeding, is only to aid a third-party to exercise its due diligence and obviate the possibility of any dishonesty, misrepresentation or fraud by a party in order to gain an undue advantage or benefit despite the pendency of proceedings. However, if the absence of notice registration were to render the doctrine entirely inapplicable, it would lead to exploitation of procedural gaps by parties who deliberately delay or avoid registering such notices to defeat substantive rights of the parties and undermine the very sanctity of judicial proceedings. Such an interpretation would lead to a very chilling effect whereby, third-parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or that despite being fully aware of the pendency of such proceedings would be able to deviously claim absolute rights to such property or worse, mischievously execute back-dated agreements in collusion with a party to a *lis* prior to registration of such notice of pendency to circumventing the very proceedings and render them infructuous.

174. In Sanjay Verma (supra) this Court cautioned that the doctrine of *lis pendens* is a principle of public policy without which it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail thereby undermining the sanctity of

Judicial proceedings and rights of parties so involved therein. Thus, we are of the considered view that even in the absence of a registered notice of pendency in terms of the amended Section 52 of TPA the said provision will not be rendered ipso-facto inapplicable, at best it would preclude the party seeking benefit of this doctrine to claim it as a matter of right, but by no stretch would it mean that the third-party conversely would be able to as matter of absolute right claim inapplicability of this doctrine. It would be the discretion of the courts to see keeping in mind the peculiar facts of the case to ascertain whether such doctrine ought to be applied or not. Where the courts are satisfied that the third-party had genuinely purchased the subject-matter property after an exercise of a reasonable degree of care and caution and that it was otherwise unaware of the pendency of proceedings, the courts would be circumspect to displace the rights of such bona-fide third-party by a mechanical application of the doctrine of *lis pendens*. Even otherwise, in view of the peculiar facts of this case, more particularly the fact that the petitioner could not have registered the same being only an auction purchaser and that it was the duty of the Bank to register the notice of pendency which we are inclined to believe was not reasonably possible in view of the haste that was shown by the Borrower and the Subsequent Transferee in redeeming the mortgage and thereafter immediately transferring the Secured Asset, we are of the opinion that the non-registration of notice of pendency is not fatal to the application of the doctrine of *lis pendens* in the present case."

[emphasis supplied]

25. It is material to note that in the said judgment also, the Hon'ble Supreme Court was considering the dispute from Maharashtra and therefore amendment to Section 52 of the Transfer of Property Act, was also considered. In view of the above observations of the Hon'ble Supreme Court, in my view, if injunction is simplicitor refused without any conditions upon Respondent No.3, it would undermine the object and purpose of doctrine of *lis pendens* which is based on principle of equity, good conscience and public policy. In that view of the matter, in my view, it is necessary to take undertaking from Respondent No.3.

26. Therefore in the aforesaid peculiar facts and circumstances, the

application is disposed of by passing following order :

The prayers for interim injunction are rejected. However, the Respondent No. 3 Developer can proceed with development/construction on the suit property and sale of constructed units, only on a condition that Respondent No. 3 files an undertaking in this Court within a period of 2 weeks from today, stating -

- (A) that development and construction on the suit property and sale of constructed units will be subject to final outcome of the appeal;
- (B) that Respondent No. 3 will not claim any equity in respect of cost of development and profits from sale of constructed units;
- (C) that Respondent No. 3 will disclose the pendency of the present first appeal litigation and this order to the prospective purchasers in case of sale of constructed units.

27. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE J)