

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1646 OF 2024
IN
SUIT NO. 603 OF 2023

Shrinivasa (Mulund)Co-Op. Housing Society Ltd. ...Applicant/
Plaintiff

Versus

Shree Aryadurga Developers Private Limited & Ors. ...Defendants/
Respondents

Mr. Floyd Francis Mariano Gracias, a/w Jay Kadam, for the Applicant.

Ms. Vaishali Bhilare, i/b Pavitra Manesh, for Defendants/ Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : NOVEMBER 12, 2025

ORDER :

1. This Interim Application has been filed seeking intervention of this Court in the form of interim relief pending the hearing and final disposal of the proceedings, to develop independently and to negotiate with other developers of the Applicant's choice, to revive and pursue the development envisaged in the Development Agreement dated December 31, 2010 executed between the parties. It is the case of the Applicant that after the Development Agreement was executed, there has been no

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progress in the development envisaged thereby, despite vacant possession of the plot having been given to the Developer in 2011.

2. It is stated that even the transit rent and other financial emoluments payable under the Development Agreement have not been paid since 2016 and the development under the aforesaid agreement has remained stalled and abandoned by the developer. It is further stated that the Municipal Corporation of Greater Bombay demolished the building as a dilapidated building in 2021, which itself is ten years after the Development Agreement, there having been no progress with the development. The Applicant submits that there has been no progress whatsoever despite 32 families of lower middle and middle middle class having vacated their premises and having handed over possession of the premises to the Developer. Therefore, he submit, this is a fit case where the conscience of the Court must be pricked to enable pursuit of the development although it may appear to be in the nature of a final relief. The prayers pressed today are prayers contained in prayer clauses (a), (c) and (e) which read thus:-

a. This Hon'ble Court be pleased to allow and permit the Applicant to appoint another developer of their choice and to proceed with the redevelopment process or complete the development of the said property through self-development.

c. Pending the hearing and final disposal of the suit, Respondents be directed not to create any third-party rights or interests with respect to the said Applicant's Property and the Development Rights.

e. grant restoration of physical possession of the plot of land, which was given to the Respondents by virtue of the Development Agreement dated 31^a December, 2010, to the Applicant.

3. Learned Advocate for the Developer tenders an affidavit in reply to the Interim Application dated September 10, 2024, which is taken on record. The crux of the submission of the Developer is that the plot in question is land-locked and has no access road to enable making the development viable. The following extracts from the affidavit in reply would be instructive:-

I say that it is admitted and undeniable fact that without the grant of access by the adjoining Plot owner and approach road, the said development project is absolutely difficult, if not impossible. In fact the adjoining plot owner cannot independently redevelop his plot of land due to set back and other problems, which fact is acknowledged by him and known to the members of the Plaintiff Society. I say that the said adjoining Plot owner Mr. Nandkumar Vaity and the Co-owners have executed Development Agreement with me on 24.9.2015. I have paid the amount specified in the said agreement mentioned in the said Agreement and thereafter substantial amount pursuant to the said Agreement. I crave leave to refer to and rely upon the said Agreement as and when the same is produced.

I say that the owner of the said adjoining plot of land suddenly backed out from his promise and hence the issue with regard to

the said development struck stalemate. I say that hence the project became non workable. It is not possible for any developer to build up a project without the approach road. I say that even when these Defendants were being pushed for backing out from project, the members had approached other Developers but none agreed to undertake the project due to lack of approach road and access.

4. A plain reading of the foregoing would show that it is the Developer's own case that the development in question as envisaged in the Development Agreement is next to impossible. Seen in this light, the cessation of payment of transit rent since 2016 would *prima facie* indicate that the Developer has little interest in further development since he would candidly state on oath that there is little prospect of further development in view of the access to the land not being smooth.

5. In these circumstances, it is also contended that to resolve this issue the Developer had entered into an agreement with the owner of the neighbouring plot and had executed a Development Agreement on September 24, 2015, which is five years after the Development Agreement covered by the proceedings in question. It is contended that the owner of the adjoining plot backed out from the Development Agreement dated September 24, 2015, but the date on which he backed out is unavailable. There also appears to be no evidence of any proceedings having been taken to assert the rights against the owner of the adjoining plot for backing out of a binding Development Agreement

which would have made the joint development possible. Having taken note of the submission on oath that the project is unworkable without an access road, this is a fit case where any grievances of the Developer could still be pursued in the form of damages rather than in specific relief with the actual development admittedly being unworkable.

6. In these circumstances, to enable the Society to explore a way forward from the admitted stalemate that has occurred in the facts of this case, it would be appropriate to consider ad-interim relief. In granting such relief, I am persuaded by the view adopted by Learned Single Judge in Interim Application No.916 of 2024 in Suit No.94 of 2024 where in even a shorter period than the period covered by the matter in hand, such intervention was made permitting the Society to pursue development on its own. Considering that it is a decade and half since the Development Agreement was executed and there has indeed been no progress in the development in question and having regard to the fact that the Developer has admittedly stated that there is no foreseeable way forward for the development in particular regard to the peculiar circumstances of the case, namely, the absence of access to the Society, this is a case where it would be appropriate to grant interlocutory reliefs in the manner sought by the Applicant.

7. It is equally, noteworthy that the strong *prima facie* case made out by the Applicant is further underlined by the fact that the absence of an access road was a matter well known to the parties when they executed the Development Agreement. The learned Advocate for the Developer submits that the Developer has always been willing to cooperate with the Society and it is the peculiar location of the society without an access road that is the reason for no activity having been taken place over last fifteen years. Having executed the Development Agreement with their eyes open in 2010 and not having been able to make any progress, the reliance upon the absence of the access road does not turn the needle in favour of the Developer against grant of interlocutory relief.

8. The observations by the Supreme Court in ***Hammad Ahemad Vs. Abdul Majeed***¹ which has been extracted by the Learned Single Judge bears reproduction and the same are extracted below:-

“58. The *ad interim* mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. In *Deoraj v. State of Maharashtra* [(2004) 4 SCC 697], this Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in

1 (2019) 14 SCC 1

injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad interim injunction in mandatory form can be granted. The Court held as under : (SCC p. 703, para 12)

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.”

9. In my opinion, this too is a fit case where an intervention ought to be made to enable pursuit of development by the Society. Consequently, interlocutory relief in the nature of prayer clauses (a), (c) and (e) are granted. The Interim Application is ***disposed of*** in the aforesaid terms.

10. Where there is any progress with the steps taken culminating in a development agreement being reached with any developer, an affidavit shall be filed in this Court giving an update in the matter.

11. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]