IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.14619 OF 2023
IN
WRIT PETITION NO.13600 OF 2022

Anil Ganesh Bhagat … Applicant

In the matter between :

Shri Amit Ramakant Patkar & Anr. … Petitioners
Versus
Shri Sukarya Kalya Shelar & Ors. … Respondents

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Mr. Atul Damle, Senior Advocate a/w Mr. Sagar Patil for the Applicant.
Smt. P.J. Gavhane, A.G.P. for Respondent-State.
Ms. Chaitrali Deshmukh for Respondent No.14-T.M.C.

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CORAM: M.S. KARNIK &
SANDESH D. PATIL, JJ.

DATED : 6th OCTOBER 2026

P.C.

1. Heard Mr. Atul Damle, the learned Senior Counsel appearing for the Applicant. The Applicant is the original Respondent No.13 in the Writ Petition. None for the Petitioner, despite service. We have heard Ms. Chaitrali Deshmukh, appearing for the Respondent No.14-Thane Municipal Corporation.

2. We have perused the Order dated 12th April 2023, passed by this Court, which is at Exhibit 16, of which the modification is sought by this Application. In Para-2 of the Order, a reference is made to the proceedings under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948, initiated by the tenants. This Court also took into consideration the Order dated 18th December, 2020, passed by the learned Civil Judge Senior Division at Thane, in Special Civil Suit No.98 of 2015, in a suit which was filed by the same tenants, in which, an injunction was granted by the learned Trial Judge, restraining the developers from proceeding with construction.

3. It is in such light of the matter that the interim order was passed directing the Respondent No.13 not to undertake any further constructions and the Corporation was directed not to issue occupancy certificate to Respondent No.13-developer. Respondent No.13-was not heard when the Order dated 12th April 2023 was passed.

4. There are some subsequent developments, which have been brought on record by the Applicant. After the Order 12th April, 2023

was passed by this Court, learned Single Judge of this Court, by Order dated 4th May 2023 in Appeal From Order No.854 of 2022 and other connected matter, has disposed of the Appeal From Order in terms of the following Order.

"ORDER

(i) The plaintiffs and the defendant nos. 2 to 4 are permitted to complete the construction of the building Ground plus 16 floors on property bearing Gat No. 65, situated within the limits of village Mathardi, Diva, District Thane.

(ii) The defendant nos. 2 to 4 are permitted to create third party rights in the flats upto 9th floor of the said building.

(iii) Defendant nos. 2 to 4 shall not create any third party right constructed above the 9th floor during the pendency of the suit.

(iv) The plaintiffs and defendant nos. 2 to 4 shall file an affidavit within a period of four weeks disclosing the interest created by them, in respect of ten flats situated in the said building constructed on survey no. 65 together with relevant documents.

(v) Defendants shall be at liberty to file appropriate proceedings in the trial Court for violation of the order of the interim injunction passed by the trial Court below exhibit-49 by constructing additional floors (10th to 14th floors) out of the 16 floors of the said building on survey no, 65.

(vi) The appellants shall not claim any equities for anything done under this order.

(vii) Except the building in survey no.65, the impugned order passed by the trial Court will operate as regards rest of the suit properties during the pendency of the suit unless otherwise modified by the trial Court.

(viii) The prospective flat purchasers shall be informed about the pending suit as well as the injunction orders and shall incorporate such a clause in the agreement entered into between them that such third party interest is created subject to the orders in the suit."

5. Accordingly, the Applicant has been permitted to complete the construction of the building, ground plus 16 floors on the property bearing Gat No.65, situated within the limits of Village Mathardi, Diva, District. Thane.

6. It is pertinent to refer to the Order dated 1st April, 2026 passed by this Court in Writ Petition No.9063 of 2023, filed by Anil Ganesh Bhagat (the Applicant in this Interim Application), challenging the Order passed by MRT. In para-4, this Court recorded as under :-

"4. In the present proceedings filed under Article 227 of the Constitution of India, this Court cannot consider the submissions raised for the first time by the Petitioner. By

> *the order of 26th August, 2024, this Court had directed the AGP to take instructions as to whether the Petitioner herein was represented before the MRT by the Advocate to which there are no instructions received and no submissions canvassed. Upon perusal of the impugned order dated 15th December, 2021, it is evident that the submissions canvassed on behalf of Respondents were in the context of tenancy proceedings and the submissions which are now being canvassed by the Petitioner are not recorded. It appears that the Petitioner herein was not issued any notice and was not heard before the MRT. There is a specific ground taken in the present Petition that no notice has been sent and that the Petitioner was not heard, which is not disputed by filing any Affidavit-in-reply or by placing on record any material to indicate that the Petitioner was duly served. The impugned order is therefore, required to be quashed and set aside and the matter is required to be remanded back to MRT to be considered afresh after considering the Petitioner herein as well as other parties. Accordingly, impugned order dated 15.12.2021 is hereby quashed and set aside."*

7. Thus, by the aforesaid Order, the impugned Order of the MRT has been set aside. In view of the subsequent events, the Order dated 12th April, 2023, passed by this Court needs to be modified as the entire complexion changes as a result of the aforesaid Orders passed. The interim order of this Court as the interim order in this Petition will have to be in tune with the aforesaid orders especially that in the Appeal From Order.

8. The Applicant is allowed to proceed with the constructions in

terms of the Order dated 4th May, 2023 passed in Appeal From Order No.854 of 2022 with Appeal from Order No.2 of 2021.

9. Interim Application No.14619 of 2023 is allowed in the aforesaid terms and is disposed of.

(SANDESH D. PATIL, J.) **(M.S. KARNIK, J.)**

RAJESH VASANT CHITTEWAN
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Date: 2026.10.09 17:51:54 +0530