

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 479 OF 2025

Sunil Narayan Patil and Ors.

.. Appellants

Versus

Pundalik Balaji Gharat and Ors.

.. Respondents

-
- Mr. Drupad Patil a/w Ms.Srushti Chalke, Advocates for Appellants.
 - Mr. Anil Anturkar, Senior Advocate a/w. Mr. Abhishek Patil and Mr. Sahil Wagh, Advocates for Respondent Nos.10 and 11.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 03, 2026.

JUDGEMENT:

1. Heard Mr. Patil, learned Advocate for Appellants and Mr. Anturkar, learned Senior Advocate for Respondent Nos.10 and 11.

2. Appeal from Order is filed by Original Plaintiff assailing rejection of Exhibit '5' Order dated 13.06.2025 in Special Civil Suit No. 93 of 2024. Parties shall be referred to as Plaintiffs and Defendants for convenience. Appeal from Order is admitted on 22.07.2025. Suit is filed for specific performance of Agreements dated 10.02.2010 and 26.02.2013. Impugned order rejects Exhibit '5' Application holding that Plaintiffs have *prima facie* failed to prove that rights were created in their favour in respect of Suit plot vide Agreement / MOU dated 26.02.2013. Appeal From Order was admitted on 22.07.2025. Trial Court has granted order of *status quo* which is continued by this Court.

Pleadings are completed in the Appeal from Order. It is heard finally today.

3. To decide the Appeal from Order, the following relevant facts are necessary for consideration:-

3.1. On 18.10.2002, partnership firm in the name of Anita Developers comprising the Plaintiffs as partners was established. On 18.12.2007 CIDCO issued letter in favor of Defendant Nos.1 to 16 (original land owners) showing willingness to allot Plot No.57 situated at Sector 9, village Ulwe, Panvel, District Raigad under the 12.5% State Government scheme. On 19.12.2007 CIDCO issued LOI in favor of Defendant Nos.1 to 16. On 10.02.2010, Defendant Nos.1 to 16 executed agreement in favour of Defendant Nos.17 and 18 to transfer the said land in their favour conferring upon them further right to transfer the said land for consideration of Rs.2.25 crores. On 26.02.2013 Defendant Nos.17 and 18 executed a Memorandum Of Understanding (for short “**MOU**”) in favour of Plaintiff's firm comprising of Plaintiff Nos.1 and 2 as partners and received consideration of Rs. 1.62 crores. On 04.12.2014 CIDCO issued corrigendum for correction of the allotted Plot No.57 substituting it with Plot No.37. Between 2013 to August 2020 Plaintiffs paid a sum of Rs.3,12,02,667/- intermittently at regular intervals to Defendant Nos.1 to 16. During this period 3 of the original Defendants expired, hence

monies were paid by Plaintiffs to their legal heirs.

3.2. On 22.11.2022 CIDCO executed lease agreement in favour of Defendant Nos.1 to 16 (3 of the Defendants being represented by their legal heirs) being the original land owners entitled to suit Plot No.37 (hereinafter referred to as the “**said land**”).

3.3. In the backdrop of the aforesaid events, on 13.04.2023, Defendant Nos.1 - 16 executed a tripartite agreement with CIDCO as the confirming party in favour of Defendant Nos.19 and 20. Defendant Nos.19 and 20 are arrayed as Respondent No.10 and 11 in the Appeal From Order before me. They are the only contesting parties before me today. Plaintiffs being aggrieved filed Special Civil Suit No.93 of 2024 seeking specific performance of the Agreements / MOU dated 10.02.2010 and 26.02.2013 and sought mandatory injunction in respect of the said land. Defendant No.2 to 4, 6, 10, 11 and 22 appeared before Trial Court and resisted the Suit by filing Written Statement. Defendant Nos.19 and 20 filed Application under Order VII Rule 11 of Civil Procedure Code, 1908 on 24.10.2024 in response to which Plaintiffs filed Application below Exhibit 97 for Amendment of Suit Plaintiff and deletion of the partnership firm. Though Trial Court rejected the Application below Exhibit 97, this Court in Writ Petition No. 2374 of 2025 by order dated 03.04.2025 allowed the same and permitted the proposed amendment.

4. Defendant Nos.19 and 20 in the meanwhile commenced construction / development on the said land. Plaintiffs filed Application below Exhibit '5' seeking temporary injunction against Defendant Nos.19 and 20 restraining them from carrying out construction or creating third party interest in the said land. By virtue of the impugned Order dated 13.06.2005, Exhibit '5' Application is rejected. Hence Appeal from Order is filed to challenge the same. Impugned order is appended at page No. 54 of the Appeal from Order proceeding.

5. On behalf of Plaintiffs / Appellants, Mr. Patil would submit that under the Agreement dated 10.02.2010, Defendant Nos.17 and 18 agreed to pay amount of Rs.2.25 crores to Defendant Nos.1 to 16 towards consideration of the said land which was proposed to be allotted to Defendant Nos.1 to 16 as per order dated 18.12.2007 and LOI dated 19.12.2007. He would draw my attention to the relevant documents appended in the compilation of documents placed on record by Plaintiffs and contend that Defendant Nos.17 and 18 were entitled to transfer of the said land to themselves or nominees from Defendant Nos.1 to 16 thereunder. He would submit that out of the aforesaid amount of Rs.2.25 crores Plaintiffs paid amount of Rs.1.62 crores to Defendant Nos.1 to 18. He would submit that in 2013 under the MOU dated 26.02.2013 Plaintiff paid amount of Rs.72 lakhs to Defendant Nos.1 to 18. He would fairly submit that the MOU dated

26.02.2013 was executed by Defendant Nos.17 and 18 only and not by Defendant Nos.1 to 16. He would submit that Plaintiffs have paid a total sum of Rs.3.12 crores which was over and above the agreed sum of Rs.2.34 crores as per MOU dated 26.02.2013 to Defendant Nos.1 to 18 in all. In support of this submission he would place on record bank statements *prima facie* proving receipt of various payments by Defendant Nos.1 to 18 by Plaintiffs to the said Defendants. He has taken me through the said record running into several pages over a period of about 7 years between 2013 to 2020.

5.1. He would submit that in the Written Statement filed by Defendant Nos.1 to 16 a complete *volte face* has been done by the said Defendants denying receipt of any payment from the Plaintiffs. He would submit that the bank statements referred to and relied upon by Plaintiffs are not denied and they categorically *prima facie* prove receipt of substantial amounts by Defendant Nos.1 to 18 by cheque payments over a period of time and hence their denial of receipt of amounts is a complete falsity on the face of record. He would submit that Defendant Nos.17 and 18 in their Written Statement have however accepted Plaintiffs' case of having received the amounts as also acknowledged the MOU dated 26.02.2013.

5.2. On the basis of the above submissions he would vehemently submit that in such circumstances when Plaintiffs have paid over and

above the agreed consideration to Defendant Nos.1 to 18 under the twin agreements MOU dated 10.02.2010 and 26.02.2013 in respect of the said land, transfer of the said land after its allotment in favour of Defendant Nos.19 and 20 a third party by Defendant Nos.1 to 16 is illegal, dishonest and Plaintiffs are therefore entitled to specific performance of the twin agreements and in the interim consequential injunction from dealing with the said land. He would submit that despite such strong facts, injunction has been refused by the Trial Court on the ground that Plaintiffs have failed to make out *prima facie* case and it is held that MOU dated 26.02.2013 executed by Plaintiffs with Defendant Nos.17 and 18 cannot be treated as a valid document in the eyes of law as Defendant Nos.17 and 18 were only consenting parties thereto and it is not executed by Defendant Nos.1 to 16. Trial Court has however further held that Defendant Nos.19 and 20 have executed a valid Tripartite Agreement dated 13.04.2023 with Defendant Nos.1 to 16 and CIDCO. Hence he would submit that the impugned order deserves to be interfered with in view of the aforesaid strong facts and circumstances in the interregnum.

6. **PER CONTRA** Mr Anturkar, learned Senior Advocate, appearing for Defendant Nos.19 and 20 would at the outset draw my attention to the agreement dated 10.02.2010 executed between Defendant Nos.1 to 16 and 17 and 18 to contend that the said agreement was a conditional agreement which was purely speculative

in nature . He would submit that such a speculative agreement cannot be treated as an agreement in the eyes of law as the subject property (said land) of the agreement was not allotted at the then time and was not in existence. He would draw my attention to the recitals in the agreement depicting description of the said land to argue that the complete description therein also does not correspond to the said land which is finally allotted to Defendant Nos.1 to 16 which is the subject matter of the Tripartite Agreement executed by Defendant Nos.19 and 20 with Defendant Nos.1 to 16 and CIDCO. He would draw my attention to clause 3 of the Agreement dated 10.02.2010 and contend that the said document does not give any right to Plaintiffs to create rights in respect of the said land since it was made in anticipation of a future allotment to Defendant Nos.1 to 16 and that allotment fructified only after the Letter of Allotment dated 22.11.2022 was issued by CIDCO. He would submit that right to deal with the allotted land accrued to Defendant Nos.1 to 16 only thereafter which they exercised by executing the Tripartite Agreement with Defendant Nos.19 and 20 and CIDCO. He would vehemently argue that MOU dated 26.02.2013 which is the basis of Plaintiffs' case seeking specific performance has been executed by Defendant Nos.17 and 18 and not by the original owners namely Defendant Nos.1 to 16. He would submit that Section 54 of the Transfer of Property Act, 1882 therefore does not entitle Plaintiffs to seek specific performance of agreements dated 10.02.2010

and 26.02.2013 in view of the aforesaid facts which are admitted and it does not create any right in Plaintiffs for seeking specific performance. He would submit that right to Plaintiff cannot accrue merely on the basis of Agreement for Sale as it did not create any right in Plaintiffs in the said land unless allotment or possession of the same is given to Plaintiffs or it is transferred to Plaintiffs or it was in existence on the date of the said agreement. He would submit that none of the above three conditions are satisfied in the present case to enable Plaintiffs to maintain their Suit for specific performance.

6.1. Next he would submit that prior to allotment of the said land, original owners could not have transferred the same to third persons speculatively since its identity was unknown. He would draw my attention to the MOU dated 26.02.2013 which itself records that documents for transfer will be made only after allotment is made in favour of the original owners. He would submit that such speculative agreement / MOU executed in anticipation of allotment is highly questionable in law and creates no rights in the parties. He would vehemently argue that submissions made by Mr. Patil relating to details of payment made to Defendant Nos.1 to 18 over a period of 7 years by Plaintiffs are not fully stated in the Suit Plaint and submissions to that effect are made across the bar for the first time on the basis of bank entries. He would submit that the Suit Plaint is completely bereft of the details of payment received by Defendant

Nos.1 to 16. He would submit that all actions of Defendant Nos.19 and 20 whom he represents are *bona fide* in nature as they have followed the due process of law, that their actions are affirmative actions creating legal right after allotment of the said land on 18.10.2022 and execution of the Lease Deed dated 18.10.2022 and the Tripartite Agreement dated 23.04.2023.

6.2. He would submit that in the MOU dated 26.02.2013 the said land which is the subject matter of the Suit proceeding is not identified and therefore there is a *prima facie* breach of Clause Nos.6 and 8 thereof. He would submit that the impugned judgment rejecting Exhibit '5' Application has been passed after returning reasoned findings in Paragraph Nos.17 to 20 by applying the parameters of *prima facie* case, balance of convenience and irreparable damage in its correct perspective. Hence he would submit that no interference is called for by this court and the Appeal from Order be rejected.

7. None of the other Defendants are represented before Court. Mr. Patil in his rebuttal / rejoinder would draw my attention to page No.119 of the compilation of documents placed on record by Defendant Nos.19 and 20 and argue that if the same is read with paragraph No.8 in the Suit Complaint, then it is clear that the said land was already identified and in existence as far back as on 19.12.2007 and the Suit Complaint clearly clarifies the same. He would submit that instead

of the original Plot No.57, CIDCO substituted the same and Plot No.37 was finally allotted in lieu thereof. He would therefore argue that the thrust of the rival submissions that the Agreements / MOU were speculative should not be accepted by Court and due regard should be had to the substantial amounts paid by Plaintiffs to Defendant Nos.1 to 18 which cannot be denied by them.

8. After hearing the rival contentions and perusing the record of the case it is seen that in so far as the original owners are concerned, out of them Defendant Nos.2 to 4 , 6 and 10 to 12 had filed their say below Exhibit No.136 denying having any nexus with Plaintiffs, *inter alia*, contending that Plaintiffs were not party to the Agreement dated 10.02.2010 executed by them with Defendant Nos.17 and 18 and further that the MOU dated 26.02.2013 was not executed by Plaintiffs, thereby there was no privity of contract at all. The said Defendants (original land owners) have contented that MOU dated 26.02.2013 is false and bogus and they also deny having given any right to Defendant Nos.17 and 18 to transfer the said land to third party. It is seen that 7 owners out of 16 filed their say before the Trial Court. It is seen that Defendant Nos.17 to 18 filed their reply below Exhibit 146 admitting execution of agreement dated 10.02.2010 for a total consideration of Rs.100/- per square meter for 18400 square meters agreeing to total consideration of Rs.2.25 crores. Interestingly it is seen that Defendant Nos.17 and 18 had paid only Rs.8 lakhs as

earnest amount to Defendant Nos.1 to 16 under Agreement dated 10.02.2010. When the said Agreement is perused, it is *prima facie* seen that Defendant Nos.17 and 18 are given the right to transfer the said land in favour of third party and that third party is none other than Plaintiffs with whom MOU dated 26.02.2013 is further executed. What is most intriguing and equally shocking is the fact that as per the aforesaid two agreements dated 10.02.2010 and 26.02.2013, Plaintiffs have paid an amount of Rs 3.12 crores to Defendant Nos.1 to 18 and there is not a whisper about these payments received by Defendant Nos.1 to 16 over a period of 7 years from 2013 to 2020. There is a categorical averment made in the Suit Plaint about payment of amounts to Defendant Nos.1 to 16. The same is *prima facie* proven and shown to Court as received by these very Defendants in through Bank account of Plaintiffs. Hence denial of receipt by Defendant Nos.1 to 16 cannot be accepted. They have not even appeared before this Court. Though I must credit Mr. Anturkar for making a fair submission that Plaintiffs would at the highest be entitled to return / refund of their amount of Rs.3.12 crores paid by them subject to they succeeding in the Suit proceeding as per the alternative relief prayed for by Plaintiffs, however his contention is that no legal right in further anticipation could have been created in law in favour of Plaintiffs by Defendant Nos.1 to 16. In so far as the Suit Plaint is concerned, in paragraph Nos.10 and 11 Plaintiffs have clearly stated the total amount paid to

Defendant Nos.1 to 18 between 2013 to 2020 intermittently and at regular interests. The details of these payments are placed before me by Mr. Patil in a compilation of bank statements which *prima facie* show payments made regularly and intermittently to Defendant Nos.1 to 18 by cheque as per the names of these Defendants appearing therein. The summary of all these payments to Defendant Nos.1 to 16 in totality amounts to approximately Rs.3.12 crores. This is not denied by Defendant Nos.1 to 16, however their denial is to the transaction on the basis that they were not a party to the MOU dated 26.02.2013. This case of Defendant Nos.1 to 16 cannot be *prima facie* accepted because under the Agreement dated 10.02.2010 Defendant Nos.1 to 16 received an amount of Rs.8 lakhs only as earnest deposit from Defendant Nos.17 to 18 with the principal condition therein been that they were permitted to create right in favour of third party. This right was created by the MOU dated 26.02.2013 pursuant to which the amounts were received by Defendant Nos.1 to 16. Once the Plaintiffs have been able to *prima facie* show that Defendant Nos.1 to 16, 17 and 18 received the amounts as stated in the Suit Plaint and Defendant Nos.1 to 16 not having denied receipt of the same whereas Defendant Nos. 17 and 18 having agreed to receiving the same, Plaintiffs have made out a *prima facie* case in their favour for grant of temporary injunction. All objections raised by Defendant Nos.19 and 20 on the ground of the Tripartite Agreement cannot be countenanced in the

aforesaid facts. This is so because purport of both the agreements dated 10.02.2010 and 26.02.2013 is the same namely creating right in respect of the allotted land as per the letter dated 18.12.2007 and the LOI dated 19.12.2007 both issued by CIDCO well in advance in favour of Defendant Nos.1 to 16.

9. Mr. Anturkar, learned Senior Advocate has referred to a recent decision of the Supreme Court in the case of ***Ramesh Chand (D)Thru Legal Heirs V/s Suresh Chand and Another*** delivered on 01.09.2025 and drawn my attention to paragraph Nos. 10 and 28 thereof to contend that mere receipt of consideration cannot be a valid instrument to confer valid title under Section 54 of the Transfer of Property Act, 1882 and it can only be done through a Deed of Conveyance. The said ratio of the decision of the Supreme Court cannot *ipso facto* apply to the facts of the present case and it is clearly distinguishable. In the case before the Supreme Court, trial was undertaken fully and no independent witnesses were examined relating to the issue of receipt of payment / consideration *qua* the Affidavit dated 16.05.1996 in question therein which was held against the Plaintiffs and subsequently upheld. Such is not the case herein where we are at present at the Exhibit '5' stage i.e. Application of *prima facie* consideration to the case at hand on the basis of material placed on record. It is *prima facie* seen that Defendant Nos.1 to 18 have received substantial amounts from Plaintiffs. What is intriguing

is that 3 of the original land owners expired in the interregnum and their legal heirs comprised as Defendant Nos.1 to 16 have also continued receiving the amounts from Plaintiffs. Once the amounts under the Agreement dated 10.02.2010 and 26.02.2013 are *prima facie* seen to have been received as per the bank statements and by cheques and if there is no valid explanation coming forth for the same from Defendant Nos.1 to 16 and Defendant Nos.17 and 18 having accepted the receipt of the amounts, Defendant Nos.19 and 20 cannot defend the said situation. Hence *prima facie* case is clearly made out by Plaintiffs and therefore the decision of the Supreme Court referred to by Mr. Anturkar does not accrue to the benefit of Defendant Nos.19 and 20.

10. In fact I am of the opinion that what is argued by Defendant Nos.19 and 20 before me to resist Plaintiffs' Appeal from Order ought to have been argued by Defendant Nos.1 to 16. Defendant Nos.1 to 18 have not even presented themselves before me, only 7 out of 16 original land owners filed their say opposing the Exhibit '5' Application before the Trial Court, they are absent before me despite having been served, Defendant Nos.17 and 18 filed their 'say' in the Trial Court and supported Plaintiffs' case in the Trial Court. In this situation the only argument that could be available for Defendant Nos.19 and 20 is that they are a *bonafide* purchasers for value and nothing more. Defendant Nos.19 and 20 entered into the Tripartite Agreement confirmed by

CIDCO and executed by Defendant Nos.1 to 16. Allotment by CIDCO of the said land under the government benefit derived by Defendant Nos.1 to 16 is by virtue of a lease deed. It is seen that after a period of 5 and half months Defendant Nos.19 and 20 entered into the Tripartite Agreement on 13.04.2023 after the lease was executed with CIDCO but there is not a word of due diligence carried out by Defendant Nos.19 and 20 in respect of entering into the Tripartite Agreement for the said land. Had that been done, Defendant Nos.17 and 18 and Plaintiffs would have voiced their objections. The reasoning concluded by the learned Trial Court in paragraph Nos.17 to 20 does not deal with any of the aforesaid factual aspects / situations, it rather solely concentrates on the MOU dated 26.02.2013 and on the singular ground that it does not bear signature of Defendant Nos.1 to 16 and rejects the agreement in the eyes of law.

11. Approach of the learned Trial Court is rather parochial in the facts of the present case. There is a categorical statement in the Suit Plaint about the humongous amounts received by Defendant Nos.17 and 18 to which there is no consideration applied by Trial Court whatsoever. In that view of the matter and the above observations and findings which clearly emanate from the record the impugned order passed below Exhibit '5' is unsustainable in the eyes of law and deserves to be quashed and set aside on the parameters of *prima facie* case made out by Plaintiffs, balance of convenience entirely in favour

of Plaintiffs and irreparable loss that will be caused to Plaintiffs despite Plaintiffs having paid Rs.3.12 crores and there being no denial by Defendant Nos.1 to 16 and acceptance by Defendant Nos.17 and 18 and most importantly the conduct of Defendant Nos.1 to 16.

12. The findings returned by the learned Trial Court while determining Application under Exhibit '5' in the facts and circumstances of the present case are clearly not sustainable on all parameters. Plaintiffs have *prima facie* averred that Defendants Nos.1 to 16 and Defendant Nos.17 and 18 have received a sum of Rs.3.12 crores pursuant to twin Agreements dated 10.02.2010 and 26.02.2013. In fact Defendant Nos.1 to 16 have received an amount of Rs.8,00,000/- only from Defendant Nos.17 and 18 and by virtue of twin Agreements, Defendant Nos.1 to 16 permitted Defendant Nos.17 and 18 to create third party right in the said land which was to be allotted to them by CIDCO. It needs to be noted that allotment of the said land was already done by CIDCO but physical allotment of the said land could only be materialised in the year 2022 and not prior thereto. This position cannot be held against Plaintiffs and in favour of Defendant Nos.19 and 20. Therefore on *prima facie* consideration of the facts and circumstances of the present case, *prima facie* case is clearly made out by Plaintiffs for grant of injunction in the Suit proceeding. The balance of inconvenience is also in favour of Plaintiffs primarily because Plaintiffs have paid substantial humongous amounts

as stated in the Suit plaint to Defendant Nos.1 to 18 which is not refuted by said Defendants. In fact Defendant Nos.17 and 18 have accepted the case of Plaintiffs. That apart, some of the original Defendants / owners have not contested the claim made by Plaintiffs. No right can be derived to Defendant Nos.19 and 20 by virtue of their registered Tripartite Agreement in the year 2023 as *bonafide* purchasers for value on *prima facie* considerations. Defendant Nos.19 and 20 miserably failed to carry out due diligence and had Defendant Nos.19 and 20 carried out due diligence they would not have entered into the Tripartite Agreement.

13. Be that as it may, merely on the basis of Tripartite Agreement, Defendant Nos.19 and 20 cannot resist the case of Plaintiffs. Trial Court has utterly failed to consider this position in law as well as in equity. Therefore the finding returned by learned Trial Court on balance of convenience is fallacious and erroneous on the face of record and cannot be countenanced. In so far irreparable loss is concerned, once again Plaintiffs have waited for an extraordinary long period of time. It is no fault of Plaintiffs or for that matter of Defendants that allotment rather physical allotment of the said land (Plot No.37) was actually and infact done in October 2022. Needless to state that allotment of said land to Defendant Nos.1 to 16 (original land owners) was already conceived by the Planning Authority namely CIDCO as far back as in the year 2007 itself and only on the basis such

allotment which was conceived at that time, Defendant Nos.1 to 16 and Defendant Nos.17 to 18 on one hand and Plaintiffs on the other hand executed the twin Agreements dated 10.02.2010 and 26.02.2013. Those Agreements are the subject matter of specific performance of the Suit proceeding. In that view of the matter, case of Defendant Nos.19 and 20 cannot be accepted at the *prima facie* stage as grave and irreparable harm and loss will be caused to Plaintiffs, if it is so done.

14. That apart, conduct of Defendant Nos.1 to 16 is highly questionable after having received substantial amounts from the Plaintiffs in their respective bank accounts which has been *prima facie* shown to the Court. The conduct of Defendant Nos.19 and 20 who are resisting the present Appeal from Order is also highly questionable. They have failed to carry out proper due diligence. Thus on the aspect of conduct of Defendant Nos.1 to 16 and Defendant Nos.19 and 20 the Defendants cannot resist the claim of Plaintiffs at the *prima facie* stage. Therefore on all four parameters for grant of injunction Plaintiffs have made out a clear case for interim relief.

15. Impugned order dated 13.06.2025 passed below Exhibit '5' by Trial Court is quashed and set aside. Application below Exhibit '5' filed by Plaintiffs is allowed. The *status quo* order continued by this Court while admitting the Appeal From Order is directed to be

continued until disposal of the Suit proceeding. Defendant Nos.19 and 20 are restrained from dealing with the said land in any manner until the Suit is determined in accordance with law.

16. Appeal from Order is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2026.02.03
12:35:02 +0530