

Santosh

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

WRIT PETITION NO. 3724 OF 2026

Rameshbhai Vallabhbhai Patel

...Petitioner

Versus

Sai Developers Thru Partners And Ors.

...Respondents

Mr. Anil Anturkar, Senior Advocate, a/w Atharva Date, i/b
Abhishek Patil, for the Petitioner.

Mr. Atul Damle, Senior Advocate, a/w Suresh Sabrad,
Jeetendra Sachhdev, Abubakar Patel, Pratik Sabrad,
Amey Sawant, Avinash Banga, /b JS Legal, for
Respondent No.1.

Mr. Priyansh Jain, a/w Akshay Naik and Aniket Gole, i/b Sagar
Shetty, for CIDCO.

CORAM: N. J. JAMADAR, J.

DATED: 8th APRIL, 2026

ORDER:-

1. This petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of a judgment and order dated 8th August, 2024 passed by the learned District Judge, Panvel, in MCA No.133 of 2019, whereby the appeal preferred by the petitioner against an order dated 7th November, 2024 passed by the learned Civil Judge staying the execution of the decree passed in Special Civil Suit No.17 of 2007 and restraining the appellant – defendant No.5 and City and Industrial Development Corporation (“CIDCO”) and its

officers from transferring the suit plot in favor of defendant No. 5 and further restraining defendant No.5 from creating third party interest in the said plot till the final disposal of the suit, came to be dismissed.

2. Nilkanth Patil, defendant No. 1, was entitled to get a developed plot in lieu of the acquisition of the land by CIDCO, under 12.5% scheme. Defendant No.1 executed a MoU with defendant No.5 on 14th December, 2006 to transfer the said plot, which was to be allotted to defendant No.1. As defendant No.1 reneged from his promise, defendant No. 5 instituted Special Civil Suit No.17 of 2007 seeking specific performance of the contract contained in the said MoU. On 20th February, 2007, pursuant to the settlement arrived at between defendant No.5 and defendant No.1, a compromise decree came to be passed in the said Special Civil Suit No.17 of 2007 in accordance with the consent terms.

3. Before entering into the MoU with defendant No.5, defendant No.1 had executed an unregistered agreement for the sale of the said plot with defendant No.2. On 24th August, 2007, a Tripartite Agreement was executed among CIDCO and the farmers, whose lands were acquired, including defendant No.1 and M/s. Atul Lavekar (defendant No.3). CIDCO granted lease

of the larger Plot No.186 admeasuring 4189.99 square meters, which comprised the plot to be allotted to defendant No.1, as a new licensee. Subsequently, on 12th February, 2008, another Tripartite Agreement was executed among the plaintiff, defendant No.3 and CIDCO and, thereby, the plaintiff became the new licensee.

4. In the meanwhile, in the execution petition, the plaintiff and defendant No.3 were impleaded as judgment debtors. Plaintiff took out an obstruction application under Order XXI Rule 97 of the Code of Civil Procedure, 1908 (“the Code”).

5. Later on, the plaintiff instituted the instant suit, Special Civil Suit No.443 of 2010, seeking a declaration that the decree dated 20th February 2007 in Special Civil Suit No.17 of 2007 was obtained by fraud and was, thus, null and void and did not bind the plaintiff.

6. In the said suit, the trial Court was persuaded to grant temporary injunction noting, *inter alia*, that the plaintiff was in possession of the suit plot and *prima facie* the decree appeared to have been obtained by suppressing material facts and, subsequently, the plaintiff and defendant No.3 were impleaded as a Judgment Debtors in the execution petition though they were not parties to the Special Civil Suit No.17 of 2007.

7. Being aggrieved, defendant No.5 preferred an appeal before the District Court. By the impugned order, the learned District Judge dismissed the appeal opining *inter alia* that during the pendency of the suit, the suit plot deserved to be preserved lest the Plaintiff would suffer an irreparable loss.

8. Being further aggrieved, defendant No.5 has preferred this petition.

9. Mr. Anil Anturkar, the learned Senior Advocate for the petitioner, would submit that the courts below have erred in granting the injunction when the very tenability of the separate suit to assail the legality and validity of the decree passed in Special Civil Suit No.17 of 2007 was in question on account of the express bar contained in Order XXI Rule 97 of the Code. Mr. Anturkar would urge, in the case at hand, the Plaintiff has already invoked the remedy under Order XXI Rule 97 and, yet, on the same grounds, a separate suit came to be filed. Secondly, even on merits of the matter, Mr. Anturkar would urge, the courts below have taken a completely perverse and unreasonable view as a decree passed by the competent Civil Court was directed to be kept in a state of suspended animation on the basis of the instruments which came into force subsequent to the passing of the decree.

10. Mr. Damle, the learned Senior Advocate for the respondent - plaintiff, countered the submissions of Mr. Anturkar. It was urged that, the transaction in favour of the plaintiff cannot be considered in isolation. Since defendant No.1 had initially executed an agreement for sale in favour of defendant No.2 on 3rd March, 2005, the claim of defendant No.5 that he had a prior right cannot be countenanced. It was submitted that if reckoned from the said agreement for sale dated 3rd March, 2005 in favour of defendant No.2, there is a complete chain of title in favour of Plaintiff. Mr. Damle would urge that, in any event, at this stage, when the injunction in operation for over 12 years, there is no propriety in entertaining the petition.

11. There can be no duality of opinion that even a third party is required to approach the Executing Court under Order XXI Rule 97 where it raises objection to the execution of the decree. The scheme under the Code as enshrined in Rules 97 to 105 of Order XXI, is to ensure that all the questions in relation to the execution of the decree, including resistance thereto by third parties, are decided by the Executing Court and not by way of a separate suit. Indeed, in the case at hand, the plaintiff had initially approached the Executing Court and filed an application under Order XXI Rule 97. However, the

circumstances in which the plaintiff approached the Executing Court bear upon the determination of an application for interim relief.

12. Incontrovertibly, the compromise decree in Special Civil Suit No.17 of 2007 was passed under a couple of months of the institution of the suit for specific performance of a contract contained in the MoU to transfer the plot, which was yet to be allotted. Though CIDCO was impleaded as a party to the said suit, yet, CIDCO was deleted from the array of the defendants when the consent decree came to be passed. Evidently, the plaintiff and defendant No.3 were not parties to the said suit. Yet the plaintiff and defendant No.3 were sought to be impleaded as Judgment Debtors in the execution proceedings. It is in that context, the plaintiff filed an application under Order XXI Rule 97 of the CPC.

13. Indisputably, the plaintiff has been recognized as a new licensee by CIDCO, pursuant to the Tripartite Agreements executed among the parties. The plaintiff has been in possession of the suit plot. *Prima faice* it appears that the original licensee (defendant No.1) had entered into transactions on the premise that he was to be allotted a plot under 12.5% scheme, with multiple persons. Defendant No.1 had *inter alia*

executed an unregistered agreement for sale in favour of defendant No.2 on 3rd March, 2005, before the MoU came to be executed in favour of defendant No.5.

14. In the backdrop of the aforesaid facts, the view taken by the courts below that *prima facie* the decree appears to have been obtained by *suggestio falsi and suppressio veri* cannot be said to be the one which could not have taken by any Court. In exercise of the writ jurisdiction, this Court is not expected to re-weigh, re-appreciate and review the material on the basis of which the courts below have exercised the discretion. The plaintiff having been recognized as a new licensee on the basis of two registered Tripartite Agreements and also having been put in possession of the suit plot, the element of balance of convenience tilts in favour of the plaintiff. The execution of the decree which the courts below have found *prima facie* surrounded by vitiating factors, would cause irreparable loss to the plaintiff.

15. In the aforesaid backdrop, the aspect of the tenability of the suit would be required to be adjudicated at the trial. Moreover, as the impugned order of injunction has been in operation for over 12 years, it may not be justifiable to alter the position that has obtained for all these years. The operation of

the interim relief for such a long time is a factor which definitely bears upon the exercise of writ jurisdiction at this length of time.

16. Resultantly, this Court is not inclined to entertain the petition.

17. The petition stands dismissed.

18. The trial Court seized with Special Civil Suit No.443 of 2010 is requested to hear and decide the said suit as expeditiously as possible and, preferably, within a period of one year from the date of communication of this order.

[N. J. JAMADAR, J.]