

MHTH240001412017

**ORDER BELOW EXH.5 IN SPL.C.S.NO.37/2017**

This is an application filed by the plaintiff for temporary injunction restraining the defendant No.5 from interfering the possession of the plaintiff in the suit property No.C (more particularly described in paragraph No.1 of the plaint). The plaintiff has abandoned the prayers of temporary injunction in respect of the suit property Nos.A and B vide pursis at Exh.141.

2] As the plaintiff has not pressed the prayers regarding the suit property Nos.A and B, I am only discussing the facts, shorn of unnecessary details, relevant to the suit property No.C.

It is the case of the plaintiff that it is a registered apex body of the housing societies consisting membership of the 46 societies out of the 55 societies. The defendant Nos.2 to 4 are the owners of the land of the said Vasant Nagari Complex, where these all buildings of the societies have been constructed. The defendant No.5 is the concerned Municipal Corporation which is also the Planning Development Authority. It is alleged that the defendant Nos.2 to 4 have executed a deed of conveyance dated 15.03.2014 in favour of the defendant No.5 and thereby conveyed the suit property No.C in favour of the defendant No.5 Municipal Corporation. The defendant Nos.1 to 4 have used FSI which was granted to them against the reservation of the playground and

therefore, they have no right to transfer it to the defendant No.5. The plaintiff has full right to maintain and protect the said playground.

3] The plaintiff further submits that it has issued letter to the defendant Nos.1 and 5 protesting the said transfer. As per the agreement executed in favour of the plot owners, it is unequivocally mentioned that the common area like roads, gardens, playgrounds will be transferred in favour of the apex body firm i.e. the plaintiff. However, the defendant Nos.2 to 4 have transferred the said land i.e. suit property No.C which was reserved for playground and FSI for which defendants have already utilized. Defendants had no right to transfer the said property without consent and permission of the plaintiff. As such, the agreement dated 15.03.2014 is liable to be cancelled and declared as illegal and *void ab initio* and not binding upon the plaintiff. The said playground was already under reservation as per development plan of Vasai Virar Region with reservation No.452. However, the reservation No.441 is transferred on the same reservation No.452 by amended layout plan dated 09.01.2014. The said reservation cannot be relocated on the plot which is already reserved for playground. The defendant No.5 under RTI has informed the plaintiff that the said relocation of reserved plot is not sanctioned by the General Body Meeting of the defendant No.5 which is mandatory. It is submitted that the defendant Nos.2 to 4 have executed the agreement with intention to grab TDR and if at all TDR is taken and utilized in that case the defendant shall be compelled to pay compensation for such illegal

use of TDR. Thus, the plaintiff is constrained to file the suit with present application for temporary injunction.

4] The defendant No.1 has filed its say at Exh.97 and thereby strongly objected this application. The defendant No.1 has categorically denied each and every contentions of the plaintiff. It is submitted that the plaintiff has not come with clean hands and suppressed material facts from the Court. The present suit is not maintainable and this Civil Court has no jurisdiction to try and entertain the suit. Hence, it is prayed that the temporary injunction application may be rejected with costs.

5] The defendant No.2 has filed his say-cum-written statement at Exh.48 and thereby strongly objected this application. It is submitted that the deed of conveyance dated 14.03.2014 was duly executed in favour of the defendant No.5 Municipal Corporation in respect of the suit property No.C which is legal and valid. The defendant No.5 had absolute authority to get executed such document in respect of reserve area for the benefit of the public in general as per the development control rules sanctioned by the concerned corporation. The plaintiff has no authority to challenge the authenticity of the said document. Therefore, the plaintiff cannot challenge the such relocation. Thus, it is prayed that application may be rejected with costs.

6] The defendant No.5 Municipal Corporation has filed its reply at Exh.98 and additional say at Exh.117. It has denied each and every adverse allegations against it by the plaintiff. The

defendant No.5 has taken similar defence as taken by the defendant No.2 and prayed for rejection of this application with costs.

7] I have heard learned advocates for the plaintiff and defendants and perused written notes of arguments submitted by the plaintiff at Exhs.127 and 129 and written notes of arguments submitted by defendant No.1 at Exhs.140 and 142 as well as gone through the relevant documents filed on record by all parties. The following points arise for my determination and I record my findings as follows :-

SR. No.	<u>POINTS</u>	<u>FINDINGS</u>
(1)	Whether the plaintiff has made out <i>prima-facie</i> case in its favour ?	... No.
(2)	Whether balance of convenience lies in ... favour of the plaintiff ?	No.
(3)	Whether the plaintiff will suffer irreparable injury, if the injunction is not granted ?	... No.
(4)	What Order ?	... As per final order.

REASONS

AS TO POINT NOS.1 TO 4 :-

8] It is the case of the plaintiff that the defendant Nos.2 to 4

have executed legal and void conveyance deed in favour of the defendant No.5 Municipal Corporation in respect of the suit property No.C which is reserved for playground. The plaintiff is seeking temporary injunction restraining defendants from disturbing its possession over the suit property No.C. However, in application Exh.5, there is no whisper regarding its possession over the suit property No.C. Perusal of record, it is seen that the plaintiff made amendment of plaint application at Exh.58 and the same came to be allowed. The plaintiff thereby inserted certain facts regarding its possession over the suit property No.C. It is stated that the plaintiff is in possession of the suit property and has also organized cultural events, weddings events etc., from 15.12.2016 to 01.01.2017. However, officials of the defendant No.5 came and threatened to the plaintiff and thereby disturb its possession over the suit property. The defendant No.5 in its additional say-cum-written statement have categorically denied the alleged allegations. It is submitted that the defendant No.5 is in possession of the suit property No.C.

9] The learned advocate for the plaintiff has mainly put his emphasis on the ratio laid down by the division bench of the Hon'ble Bombay High Court in the case of **The State of Maharashtra vs. Bhimashankar Sidramappa Chippa (2009 CJ (Bom) 1694)**. Wherein, it has been observed in para 10 that;

“It is true that the Town Planning Act of Rules framed thereunder or any Act governing municipalities or municipal corporations generally confer a power on the planning authority/municipalities to sanction a

lay out subject to such conditions as it thinks fit. However, the power to impose conditions while sanctioning a layout is to be utilized for the furtherance of the respective Act. It may be permissible for a planning authority/municipality while sanctioning a layout to impose a condition that a provision must be made for the roads and open spaces which act as lungs for the area. The open spaces may be required to be kept for the beneficial use for the plot holders who purchase/hold plots in the layout or for the general public if so authorised by the Rules. But in the absence of any specific power in the Act so to do, a condition cannot be imposed that an open space in the layout shall be transferred by the owner to the planning authority/ municipality free of cost. No Act or Rule was cited before us which authorises transfer ownership in such open space by the owner to the municipality. In the absence of any such power or authority in law an order requiring the owner to transfer the ownership of any land or open space to the planning authority/municipality would be void and hit by Article 300-A of the Constitution of India.

We reiterate what we have held in Vrajlal Patel vs. State of Maharashtra (supra) that an open space under a layout does not get vested in the municipality free of cost merely because of a condition imposed in the order sanctioning the layout to transfer

the open space in the layout to the municipality.”

It has been further observed in para 13 that;

“Thus though the owner of the land who gets the layout sanctioned continues to be the owner of the land, he would have to hold the land in trust for the plot holders to whom he has sold the plots in the layout. If the land is compulsorily acquired he would be entitled to the market value as compensation but he would hold it in trust for all the plot holders in the layout for whose the benefit the open space was held. However, that is not the issue in the present case. Any plot holder has not come forward to claim a share in the compensation nor has any plot holder made an application under section 30 of the Land Acquisition Act for apportionment of the compensation. The plot holders may exercise the right and avail the remedy, if any, available to them against the respondent claimant for a share in the compensation in accordance with law. Subject to decision of such claim, if any, made by plot holders in accordance with law, the claimant would be entitled to receive the compensation equivalent to the market value at the first instance.”

10] Having considered the ratio laid down in the supra rulings, it is crystal clear that an open space shown in the layout

shall not be transferred by the owner to the planning authority/municipality free of cost in absence of any provision in the relevant act providing for vesting of any land reserved for an open space or park in the Municipal Corporation the land would not so vest. The above observations of the Hon'ble High Court make it further clear that the plot holders may exercise their rights and avail the remedy, if any, to claim compensation according to law and the plot holders would be entitled to receive compensation equivalent to the market value.

11] In the present case, admittedly the suit property No.C was reserved for playground in the initial layout. As per the defendant No.5, on 09.02.2007, the Government of Maharashtra sanctioned new/revised development plan for Vasai Virar Region. By the said plan, certain reservations changed and relocated to some other places. The defendant No.5 had to act strictly in accordance with the new/revised development plan sanctioned by the Government of Maharashtra. Therefore, the reservation can be shifted or relocated to some other places and benefit arising therefrom shall always to be given to the owners. Per contra, plaintiff has taken a plea that the said reservation cannot be relocated on the plot which is already reserved for playground. The defendant No.5 under RTI has informed to the plaintiff that the said relocation of reserved plot was not sanctioned by the General Body Meeting of the defendant No.5, which was mandatory.

12] Whether the relocation was permitted and duly

sanctioned or not, same facts can only be adjudicated after appreciation of evidence adduced during the trial in the present suit. At this juncture, even it is assumed that the relocation was duly permitted, still the benefits, if any, arising therefrom shall not be given to the owners. Therefore, it can be *prima facie* held that the defendant Nos.2 to 4 had no right to transfer the suit property No.C vide impugned conveyance deed in favour of the defendant No.5 Municipal Corporation.

13] The plaintiff has stated in the plaint that the possession of the suit property No.C is with it. However, as discussed supra, the plaintiff has not stated in this application(Exh.5) anything about the factum of possession and alleged obstruction at the hands of defendant No.5. Thus, the application seeking temporary injunction to protect its purported possession itself is defective. Moreover, apart from the pleadings in the plaint, the plaintiff has not filed any reliable documentary evidence to show that the possession of the property is still with it. Since the plaintiff has failed to prove *prima facie* possession over the suit property No.C, it cannot be said that the plaintiff has made out *prima facie* case in respect of suit property No.C.

14] An irreparable injury may be caused to the plaintiff if the injunction is refused and that there is no other remedy open to the plaintiff by which it could protect itself from the feared injury. The balance of convenience requires that the injunction should be granted when compensation in money would not serve an adequate relief. In the case of **The State of Maharashtra vs.**

Bhimashankar Sidramappa Chippa (supra), it has been observed that the plot holders are entitled to receive compensation equivalent to the market value of the land acquired by the Corporation. Therefore, the plaintiff can avail remedy, if available, against defendants for share in the compensation in accordance with law and compensation in money would serve an adequate relief. Consequently, it cannot be held that the plaintiff would suffer any irreparable loss if the relief of injunction is not granted in its favour. For the same reason, the balance of convenience would certainly lie in favour of defendants. I therefore, answer point Nos.1 to 3 in the negative. In the result, the application deserves to be rejected with costs. I therefore, pass the following order.

ORDER

- 1] The application at Exh.5 is rejected with costs.
- 2] Costs in main cause.

Vasai.
Date : 31.10.2022.

Sd/-
(R. H. Nathani)
Civil Judge, S.D., Vasai.