

Spl.C.S.No. 506/2017
M/s Shiv Sai Enterprises Vs.
Sulochana Dhumal & Ors.

ORDER BELOW EXH. 5

1. Plaintiff filed present application U/O 39 R 1 and 2 of CPC.
2. Defendant no. 1 to 3 though caused appearance but failed to file their say or written statement. Hence, matter proceeded further without say and W.S. against them, vide, order below **Exh- 1** dated 22/02/2021. Whereas, defendant no. 4 resisted the application by adopting its own written statement filed at **Exh. 24** as say to this application by filing pursis at **Exh. 28**.
3. Heard, learned advocate Shri. Anil Jadhav for plaintiff and learned advocate Shri. R.S. Mahadik for defendant no. 4.
4. Upon the rival contentions of the parties the following points arise for determination, to which, suitable findings alongwith reasonings are given thereto:

<u>Sr.</u> <u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiffs have a prima facie case ?	Negative.
2	In whose favour the balance of convenience tilts?	Defendant no.4
3	To whom, there will be an irreparable loss?	Defendant no.4
4	What order?	Application is rejected.

REASONS

AS TO POINT NO. 1 :

5. It is not disputed that, defendant no. 1 is the original owner of a piece of land, which was acquired by government. In lieu of this, she got a plot admeasuring to 1000 sq.mtr. from CIDCO under the scheme of 12.5% of the City Development. Whereas, defendant no. 2 and 3 are children of defendant no.1.

6. This being so, in November 2011, defendant nos 1 to 3 approached plaintiff for development and construction in the ratio of 50-50% of the said plot, which defendant no.1 was going to receive from CIDCO. Accordingly, on 13/12/2011, a notarized agreement for development was executed between plaintiff and defendant 1 to 3. Consideration amount was fixed to Rs. 30,00,000/- in cash and 50% of the constructed premises of the construction in kind. The entire expenditure for the construction of the building over the plot has to be borne by plaintiff and was to be completed within 36 months after getting commencement certificate from CIDCO. The defendant no.1 will have to execute a power of attorney in favour of plaintiff. The entire cash consideration is paid to defendant no. 1 to 3.

7. The defendant no. 1 got a letter of allotment from CIDCO on 29/01/2015. This fact was suppressed from plaintiff by defendants. The plaintiff came to know about the same in first week of February 2015. Later on, in first week of March 2015, plaintiff

came to know that, defendant no. 4 had met defendant nos. 1 to 3 and showed interest for purchasing the suit plot. So, the plaintiff paid a visit to the Office of Defendant no. 4 and made aware of the transaction took place between plaintiff and defendant no. 1 to 3. Upon this, defendant no. 4 got annoyed and gave a threat to plaintiff. Besides it, defendant no. 4 purchased the suit plot from defendant no. 1 in the month of October-November 2015 by way of tripartite agreement dated 09/03/2015. Hence, the plaintiff is constrained to the present suit for specific performance, declaration and injunction alongwith the present application for restraintment from creating third party interest in the suit plot against the defendants.

8. The defendant no. 4 denied the contentions of the plaintiff as mentioned in the application. It contended that, after the execution of development agreement dated 13/12/2011, plaintiff never showed their readiness and willingness for getting the performance of their part done and to get executed a tripartite agreement in its favour. On the contrary, defendant no.1 got executed a tripartite agreement from CIDCO in favour of defendant no. 4 on dated 09/03/2015. Furthermore, during the pendency of the present matter, CIDCO also issued occupancy certificate on 31/07/2017 in favour of defendant no.4. Lastly, prayed for rejection of the application.

9. The suit plot is owned by CIDCO. Only leasehold rights have been granted to defendant no. 1. The tripartite

agreement has been executed by CIDCO in favour of defendant no.4 on the say of defendant no.1.

10. The development agreement is of dated 13/12/201 and is a notarised document. Moreover, it was pertaining to a plot to be received by defendant no.1 from CIDCO against the acquisition of her land by the Government. There are no details and description of the plot in the development agreement dated 13/12/2011 agreed to be transferred to plaintiff. Similarly, the possession of the plot was neither with defendant no.1 at the time of the execution of the agreement nor it was handed over to plaintiff. On the background of these facts, plaintiff can't avail the protection of the said agreement U/S 53-A of the Transfer of Property Act, 1881 in the present suit. No rights, title and interest was ever agreed to transfer in the name of plaintiff by the development agreement dated 13/12/2011. What was agreed was to execute a further agreement after receipt of the plot from CIDCO.

11. Furthermore, the defendant no. 1 got a letter of allotment from CIDCO on 29/01/2015. The plaintiff being involved in the business of land development, real estate and construction activity, it can't be said that it was not aware of the developments which took place in the Office of CIDCO regarding the suit plot. The said justification given by the plaintiff that defendant no.1 suppressed this fact from it can't be believed and accepted by any prudent person, especially , when it claims to have paid the entire cash consideration to defendant no.1 in respect of suit plot.

12. Moreso, from the plain reading of the contents mentioned in the plaint clearly portrays that, the letter of allotment was issued in the year 2015 to defendant no. 1. Despite that, plaintiff did not took any effective steps even after having knowledge that defendant no.4 is going to purchase the suit plot from defendant no.1. Plaintiff did'nt filed the present suit at the earliest and has filed the suit, when, a tripartite agreement from CIDCO in favour of defendant no. 4 on dated 09/03/2015 has been executed. The conduct of the plaintiff speaks otherwise. In addition to it, during the pendency of the suit, CIDCO also issued occupancy certificate on 31/07/2017 in favour of defendant no.4.

13. Therefore, at this juncture, for the aforesaid reasons, it would not be proper to restrain defendant no.4 from proceeding further with suit plot. The plaintiff is not able to show a prima facie case. Hence, the answer to point no. 1 is given in negative.

AS TO POINTS NO. 2 AND 3 :

14. The balance of convenience is not in favour of plaintiff and defendant no. 4 will suffer irreparable loss and injury, if, injunction is granted in his favour. Hence, the answer to point no. 2 and 3 are given in favour of defendants.

AS TO POINT NO. 4 :

15. The cumulative effect of the findings given to aforesaid points the present application deserves to be rejected.

Hence, the following order is passed.

ORDER

The application at **Exh-5** stands rejected.

Panvel.
Dt. 03-04-2021

(M. M. Rao)
Civil Judge, Sr. Dn., Panvel.