

COMMERCIAL COURT AT ASANSOL

**(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA BARDHAMAN,
PASCHIM BARDHAMAN, PURULIA AND BANKURA)**

Present :- Shaikh Kamal Uddin.
Judge, Commercial Court at Asansol.
JO Code :- WB01311.

Commercial Suit No. : 02/2023
CNR No. : WBBD17-000006-2023

Plaintiff / Petitioner :- Ghar Housing LLP.

V/s.

Defendant / Opposite Party :- Sri Smriti Bikash Bhattacharjee.

Order No - 17
Dated – 26/07/2024

Today stands fixed for passing order in respect of the application for temporary injunction being I.A No.04 of 2023 dated 17/03/2023.

The matter was heard at length on various dates.

The record is taken up for passing order.

Both sides have filed hazira.

The plaintiff / petitioner filed the instant suit and prayed for a decree of specific performance of the development agreement dated 22nd October, 2019 read with the deed of declaration dated 19/03/2021 and also prayed for an alternate decree for damages and compensation for a sum of Rs.6,50,00,000/- with interest @ 18 % per annum as well as a decree of permanent injunction restraining the defendant / opposite party from alienating / encumbering the A schedule land during validity of the agreement dated 22/10/2019 and the declaration dated 19/03/2021.

The factual matrix of the suit in a nutshell that has led to the filing of the injunction application are narrated below in the following manner :-

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- 1) The plaintiff / petitioner is a leading business house carrying on business in developing real estate for over three decades.
 - 2) The defendant / opposite party is the sole and absolute owner of the Schedule – A land having mutated his name in the current LR record of rights.
 - 3) Despite having decided to construct a residential cum commercial complex on the said land, as the defendant / opposite party did not have the requisite expertise, man power and finance to undertake such large project, he approached the plaintiff / petitioner to take up the work of developing the Schedule – A land for construction of a residential cum commercial complex consisting of multistoried blocks, bungalows, cottages, commercial units and car parking spaces.
 - 4) A formal agreement for development and development power of attorney was drawn up and executed by the plaintiff / petitioner and the defendant / opposite party on 22/10/2019 and the same was registered as Deed No. 08077 for the year 2019 at the office of the ADSR, Purba Bardhaman.
 - 5) For rectifying certain minor errors in the said agreement a deed of declaration was drawn up and executed between the parties on 19/03/2021 and the same was also registered as Deed No. 3378 for the year 2021.
 - 6) Pursuant to said development agreement and deed of declaration the plaintiff/ petitioner commenced various preliminary works pertaining to the aforesaid development project such as surveying, laying out, demarcating the project land, ascertaining the boundaries, ascertaining the soil conditions, obtaining permissions for the project from the concerned authority as well as obtaining permissions from the West Bengal Fire and Emergency Services Department, preparing the architectural drawing, structural drawings and plans together with building plans, installation of boring for uninterrupted water supply etc at enormous cost of the plaintiff.

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- 7) As the project estimate required investment of atleast 50crores rupees, the plaintiff / petitioner also initiated negotiation with several banks and financial institutions for providing the project finance and on the request of the defendant / opposite party had also paid the defendant / opposite party Rs.5 lakh by cheque on 16/03/2020 as an advance.
 - 8) That despite such measures and activities by the plaintiff / petitioner the defendant / opposite party failed to deliver the original document of the title and other related documents to the plaintiff and on 25/05/2022 demanded that the plaintiff / petitioner should either construct and deliver physical possession of the defendant / opposite party allocation units in the development project or pay the monetary compensation to the defendant / opposite party failing which the defendant / opposite party threatened to cancel and / or revoke the development agreement.
 - 9) The defendant / opposite party committed a number of breach of the contract and even by letter dated 07/06/2022 communicated his unilateral decisions to the bank and other authorities to terminate the development agreement and also by letter dated 21/07/2022 addressed to the ADSR, Purba Bardhaman, AGM, of SBI, PNB, Indian Bank and Union Bank, Bardhaman as well as the DM & SP, Bardhaman, the Chairman & CEO; BDA and the Chairman Bardhaman Municipality communicated his unilateral decision to cancel the development agreement and also forwarded the documents styled as '**Deed of declaration of revocation of an agreement for development and development power of attorney**' alleged to have been executed by the defendant / opposite party on 24/06/2022 and registered on 25/06/2022 before the ARA 1, Kolkata being Deed No. 5897 of 2022 contrary to clause of the agreement.
 - 10) Although, by letter dated 16/08/2022 the defendant / opposite party requested the plaintiff / petitioner to ignore the previous letter dated 07/06/2022 canceling / revoking the development agreement and resume construction of the first phase of the project

and although the plaintiff / petitioner communicated its readiness and willingness to commence the project work in terms of the development agreement, the defendant / opposite party remained silent without any positive response to the plaintiff's / petitioner's request to issue fresh notice to all the banks and financial institutions as well as the other authorities calling upon them to ignore the previous letters written by him.

- 11) Withdrawal of consent to mortgage is wholly illegal and the same is in clear breach of the terms of the development agreement and that the defendant / opposite party has no right to continue the illegal acts in breach of the terms of the agreement and / or create any third party interest or encumbrances over any portion of the Schedule – A property.
- 12) The defendant opposite party has been threatening on or from 25/02/2023 to forcibly change the nature and character of the Schedule – A land and / or to alienate / encumber in order to frustrate the suit.
- 13) By an order dated 17/03/2023 the prayer for ad interim injunction was allowed and the defendant / opposite party was restrained from transferring and or alienating and or disposing of the suit property as described in the schedule A of the plaint and or transferring its interest in said schedule A property in favour of any third party / third parties till the next date of hearing.
The said ad interim order has been extended from time to time and is still continuing.
- 14) The defendant /opposite party has filed written statement as well as objection to the application for temporary injunction.
- 15) Ld. Advocate for the plaintiff / petitioner submitted that while the plaintiff/ petitioner commenced and completed most of the reciprocal promises and was negotiating with several banks and financial institutions for providing project finance, the defendant / opposite party failed to carry out his reciprocal promises as a consequence of which the project could not be started by the plaintiff / petitioner despite otherwise being ready. The Ld.

Advocate drawing the attention of the court to clause 2.19, clause 5.1 and clause 5.2 of the development agreement submitted that it was incumbent upon the defendant / opposite party to deliver the original documents of title in respect of the project land to the plaintiff / petitioner enabling the plaintiff / petitioner to obtain project finance from banks and financial institutions but the defendant / opposite party failed to deliver the original document to the plaintiff / petitioner and as a result of which despite completion of the preliminary works by the plaintiff / petitioner the project could not commence. The Ld. Advocate also submitted that the defendant / opposite party also committed breach of contract by issuing the letter dated 25/05/2022 where by the defendant / opposite called upon the plaintiff / petitioner to deliver physical possession of the defendant / opposite party's allocation of the units in the projects or pay the monetary compensation even prior to delivery of possession to prospective purchasers. The Ld. Advocate drawing the attention of the court to the letter dated 07/06/2022 also submitted that by the said letter the defendant / opposite party communicated his unilateral decision to terminate the development agreement and even wrote letter to various banks and local authorities and also forwarded a 'deed of declaration of revocation of agreement for development and development power of attorney' alleged to have been executed on 24/06/2022 and registered on 25/06/2022 which in fact was wholly fraudulent and manufactured. The Ld. Advocate also submitted that in terms of clause 11.1 of the development agreement the agreement could be cancelled only on mutual consent. The Ld. Advocate also submitted that although by letter dated 16/08/2022 the defendant / opposite party requested the plaintiff to ignore the letter dated 07/06/2022 and resume construction of the project and although the plaintiff / petitioner expressed his readiness and willingness to commence the work, the defendant / opposite party did not take any positive steps to issue fresh notice to the banks and financial institutions to ignore the previous letters written by him. The Ld.

Advocate also submitted that the defendant's / opposite party's plea that he did not agree to keep the project land under mortgage for obtaining project finance is contrary to the stipulations of clause No.2.19, 5.1 and 5.2 of the development. The Ld. Advocate also submitted that a *prima facie* case has been made out and the plaintiff / petitioner has produced sufficient evidence that the defendant / opposite party has acted in breach of stipulation of the development agreement and therefore the plaintiff / petitioner has made out a *prima facie* case to go for trial and accordingly the balance of convenience and inconvenience is in favour of the plaintiff / petitioner and it is the plaintiff / petitioner who will suffer irreparable injuries and damages unless the defendant / opposite party is restrained as prayed for. He therefore submitted that the ad interim injunction be made absolute till the disposal of the suit.

- 16) *Per contra*, it has been submitted by the Ld. Advocate for the defendant / opposite party that although as per the terms of the development agreement the defendant / opposite party was to complete the construction with 72 months from the date of the sanction of the building plan and although the defendant / opposite party got the plan sanctioned after incurring all expenses from his own bank account, the plaintiff / petitioner did not make any effort to commence the project. The Ld. Advocate also submitted that by letter dated 7th June, 2022 the defendant / opposite party had expressed his objection to grant of loan against the suit property as the plaintiff / petitioner was trying to avail loan from banks and financial institutions by mortgaging the suit property owned by the defendant / opposite party. He also submitted that the letter dated 17th June, 2022 written by the plaintiff / petitioner to the defendant / opposite party whereby the defendant / opposite party was asked to handover the original document to the plaintiff / petitioner was arbitrary, *mala fide* and without any jurisdiction. He also submitted that the plaintiff / petitioner has no right to mortgage the suit property in any manner whatsoever as the

plaintiff / petitioner is merely a developer and was entrusted to construct the multi storied building at the suit property in lieu of developers allocation. The Ld. Advocate also submitted that the alleged deed of revocation is a forged deed and the same was the result of fraud practiced with him by his Advocate and after realizing the same the defendant / opposite party had lodged a complaint against his Advocate at Hare Street Police Station on 29th July, 2022. The Ld. Advocate also submitted that despite being requested by the letter dated 16th August, 2022 to commence the construction work, the plaintiff / petitioner did not commence the work despite laps of more than three years since the execution of the development agreement. The Ld. Advocate also submitted that the plaintiff / petitioner has lost his credentials and is now trying to shift the burden upon the defendant / opposite party. He also submitted that defendant / opposite party has never made any attempt to appoint in a new developer. He also submitted that the defendant / opposite party has also filed a complaint before the National Consumer Dispute Redressal Commission at New Delhi as per provisions of Consumer Protection Act, 2019 being No.CC/75/2023 and since the same is still pending, any order passed in this suit may affect the complaint pending before the Hon'ble National Consumer Dispute Redressal Commission at New Delhi. He also submitted that the alleged cause of action is illusory in nature and hence there is no *prima face* case of the plaintiff / petitioner and therefore the plaintiff / petitioner is not entitled to any relief as prayed for and thus the application for injunction should be rejected with exemplary cost.

- 17) I have heard the Ld. Advocate for the parties and have considered their submissions.

Both the parties have alleged that the parties have failed to carry out its reciprocal promises in terms of the development agreement. The Ld. Advocate for the defendant / opposite party has argued that the plaintiff / petitioner and his partner has no authority to ask for original documents regarding the title of the suit property and

that the defendant / opposite party never intended to mortgage any part of his property to any bank or financial institution and that the attempt of the plaintiff / petitioner to exploit the property of the defendant / opposite party is totally illegal and uncalled for. Clause 2.19 of the development agreement is however otherwise. It says that the developer will be free and will be eligible and entitled and will have the rights and authorities to keep the allocation of the developer in respect of the first schedule property and its related deeds in all kind of mortgage and or hypothecation and or charge with or in favour of any private bank or Nationalized bank. This clause however says the developer shall alone be responsible for payment of the loan and discharging the liabilities under the mortgage and in the event of failure of the project to return the original title deeds of the owners. Clause 5.1 and 5.2 of the agreement says that the owner i.e., the defendant / opposite party shall hand over the original title deeds and other papers to the developer for inspection and record and that the owner shall keep the original title deeds deposited with the developer. Thus, the actions of the defendant / opposite party are clearly *mala fide* and are contrary to the provisions of the development agreement. Even before the National Consumer Dispute Redressal Commission at New Delhi, the defendant / opposite party has prayed for a direction upon the plaintiff / petitioner to commence and complete the construction of the 'owners allocation' in terms of the development agreement implying that the defendant / opposite party is not intending to cancel the development agreement.

- 18) The cardinal principal for grant of temporary injunction was considered by the Hon'ble Apex Court in the case of **Dalpat Kumar and another V/s. Prahlad Singh and others (1992) 1 SCC 719** wherein the Hon'ble Apex Court held that :-
"5.... The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the

parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in *status quo*, an injunction would be issued. Thus, the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

- 19) In the instant case the plaintiff / petitioner has filed the suit for specific performance of the development agreement dated 22/10/2019 read with deed of declaration dated 19/03/2021. There is no denial that in terms of the development agreement the plaintiff/ petitioner has invested substantial amount. The defendant / opposite party is also not intending to cancel the development agreement as is evident from the prayer made by the defendant / opposite party before the National Consumer Dispute Redressal Commission at New Delhi. Therefore, if at this stage the defendant / opposite party is allowed to create third party interest in the schedule property and transfer the same in favour of any third party, the same will led to multiplicity of proceedings and the inconvenience and hardships of the plaintiff / petitioner will be greater than the injuries which the defendant / opposite party may suffer.
- 20) Thus, considering the facts and circumstances of the case and also considering the entire materials placed on record I am of the considered view that the ad interim order passed on 17/03/2023 should continue. The application for temporary injunction being I.A No.04 of 2023 dated 17/03/2023 stands disposed of. The interim order of injunction restraining the defendant / opposite party from transferring and or alienating and or disposing of the suit property as described in schedule A of the plaint and or transferring its interest in said schedule A property in favour of any third party / third parties shall continue till the disposal of the suit.

Fix **22.08.2024** for filing statement of admission or denial of documents, framing of issues and first case management hearing.

D/C by me.

Judge, Commercial Court
Asansol

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Asansol