

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

IA NO.GA-COM 2 OF 2024
IN
CS-COM 1 OF 2024
IN THE MATTER OF:
KONSORTIA PROJECT PRIVATE LIMITED
VS
MOHIT LAL SEAL AND OTHERS

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 24th January, 2024

Appearance:
Mr. Krishnaraj Thakker, Adv.
Mr. Chayan Gupta, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Dwip Raj Basu, Adv.
Mr. Soham Saha, Adv.
For plaintiff
Mr. Debnath Ghosh, Adv.
Mr. Sudarsan Roy, Adv.
Mr. Deep Narayan Mukherjee, Adv.
Mr. Debanjan Ghosh, Adv.
Mr. Romit Bose, Adv.
For defendant nos. 1 to 9
Mr. Rahul Karmakar, Adv.
Mr. Abir Lal Chakraborti, Adv.
Mr. Sk. Poddar, Adv.
For respondent nos. 10 & 11
Mr. Shounak Mukhopadhyay, Adv.
Mr. Kallol Saha, Adv.
Ms. Monika Ray, Adv.
Mr. Akash Ghosh, Adv.
Ms. Nabanita Chakraborty, Adv.
For defendant no. 12

The Court : In a suit for declaration and perpetual injunction, the plaintiff has taken out this application, inter alia, for restraining the defendant nos.1 to 9 from terminating the registered development agreements both dated 27th October, 2023 and the powers of attorney given in connection with the said

development agreements.

It appears that 2/3rd of the property being municipal premises no. 39, Bentinck Street, Kolkata – 700 069 measuring about 20 Cottahs, 07 Chittaks 25 Sq.Ft. is a debuttar property standing in the name of deities being defendant nos.2 to 9. The balance 1/3rd property is the personal property of the defendant no.1. The entire property measuring about 20 Cottahs, 07 Chittaks 25 Sq.Ft. is hereinafter referred to as the said property.

The plaintiff says that the said property was let out to defendant no.10 under an agreement dated 11th October, 2012 which is in subsistence till 2042. The defendant nos. 1 to 9, during pendency of the said agreement with the defendant no.10, had entered into the development agreements referred to hereinabove with the plaintiff, inter alia, with the right to evict the defendant no.10. It is also the case of the plaintiff that to breach the two development agreements coupled with the two powers of attorney, the defendant nos.1 to 9 had permitted the defendant no.10 to enter into an agreement with defendant no.12. The defendant no.12 with the aid and assistance of the other defendants in violation of the two development agreements are trying to change the nature and character of the said property.

The plaintiff had filed the above suit and has obtained an order on 4th January, 2024 restraining the defendants, their men, agents and servants from making any construction over the said premises till 7th February, 2024. This interim order, therefore, is continuing.

The plaintiff says that it apprehends that the defendant nos.1 to 9 may terminate the said two development agreements to render the suit infructuous and by-pass the order of injunction, which the plaintiff is already enjoying.

On behalf of the respondent nos.1 to 9, an adjournment is sought for by the learned advocate for taking necessary instructions. It, however, has been submitted by the said defendant nos.1 to 9 that the development agreements are terminable contract and, as such, can be terminated. The fact remains that as on date the agreements have not been terminated. The defendant nos.1 to 9 also say that they are willing to refund the advance made by the plaintiff with appropriate interest and can bring such money to Court as and when directed.

On behalf of the defendant nos. 10 & 11, it is submitted that the plaintiff has no locus to file and maintain the above suit. The said defendants are in the process of making an application for rejection of plaint.

On behalf of defendant no.12, it is submitted that the said defendant is in possession of the said property. The cinema hall in the first and the second floor popularly known as Paradise is not in operation since 2020 and, as such, there is no public footfall in the said property.

It is expected that the status of the two development agreements and the two powers of attorney, as recorded hereinabove, in the presence of all the parties shall not be altered till the matter is taken up as there is every possibility of the suit becoming infructuous or the nature and character of the suit may change, if the possession is altered without hearing this application.

The matter is adjourned till 29th January, 2024.

(ARINDAM MUKHERJEE, J.)