

OCD-12

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA-COM/1/2024
In CS-COM/568/2024

MAHESH THAKUR
VS
OM PRAKASH BHARTIA AND ORS

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : April 26, 2024.

Appearance:

Ms. Suparna Mukherjee, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Diptimoy Talukder, Adv.
Mr. Tushar Kanti, Adv.
...for the petitioner

Mr. Sakya Sen, Adv.
Mr. Rajshree Kajaria, Adv.
Mr. Uttam Sharma, Adv.
...for the respondent No. 3 and 4

Mr. Shyamal Chakraborty, Adv.
Mr. Uday Narayan Betal, Adv.
Mr. S. Gupta, Adv.
Mr. Mriganka Patra, Adv.
Mr. Debajyoti Mondal, Adv.
Ms. Anjana Das, Adv.
Mr. Jayanta Kumar Dhar, Adv.
...for the respondent No. 7

Mr. Suman Kumar Dutt, Adv.
Mr. Arindam Paul, Adv.
...for the respondent No. 8

The Court: The plaintiff has filed the present application praying for an ad-interim injunction restraining the respondents, its men, agents and servants from disturbing or interfering with the possession of the plaintiff over the Schedule B property.

The Memorandum of Understanding dated 7th April, 2021 entered between Bhartia Group represented by Om Prakash Bhartia, the defendant No. 1 and the plaintiff herein wherein it is mentioned that in the year 2014 the plaintiff had purchased the land 6 cottahs at Khanna site from the defendant No. 1 in exchange of consideration of amount of Rs.2,25,00,000/- by cash. It is also mentioned that due to the illness of Om Prakash Bhartia the construction work of Khanna site did not properly carried out and a joint meeting was held on 5th April, 2021 between the plaintiff, defendant No. 1, defendant No. 2, Mr. Kalu Babu and Mr. Anil Lath. In the meeting it is resolved that the plaintiff will take only 3 cottahs of land instead of 6 cottahs and the defendant Nos. 1 and 2 shall return Rs.25,00,000/- in cash to the plaintiff.

The plaintiff says that on 4th March, 2021 a Memorandum of Understanding entered between the Bhartia group through Om Prakash Bhartia and Nijunj Bhartia and Mittal Group through Sushil Kumar Agarwal and Suvendu Agarwal wherein under clause C it is mentioned that “Khanna Project” (Subject of clearance from Mahesh Thakur). In the said Memorandum of Understanding in general Clause (7) under caption Payment Schedule it is mentioned that Rs. 1 crore clearance from Mahesh Thakur. The plaintiff says that the plaintiff is in occupation of the Schedule B property and is also paying the electric consumption charges to the concerned authority. The plaintiff says that all of a sudden in the first week of February, 2024 some of the local miscreants came to the suit property and threatened the plaintiff that they will forcefully evict the plaintiff from the suit property and accordingly, the plaintiff has made a complaint to the

concerned police authorities but till date police has taken no action on the complaint made by the plaintiff.

Per Contra, learned Counsel for the defendant Nos. 3, 4 and 5 submits that as per the case made out by the plaintiff all transactions have been made by the plaintiff with defendant Nos. 1 and 2 though the defendant Nos. 1 and 2 are not the owners of the property.

He submits that the defendant No. 4 had never entered into any agreement with the plaintiff and the defendant No. 4 is not liable for executing any conveyance deed in favour of the plaintiff.

The defendant Nos. 3, 4 and 5 submits that the defendant Nos. 3, 6 and 7 have entered into an agreement on 10th September, 2020 with the respondent No. 8 for the development of the suit property and in the agreement it is mentioned that the tenants have agreed to vacate the suit property on the assurance of the developer and the tenant would get certain constructed area of ownership without charging any consideration whatsoever.

One Rahul plywood centre who is in occupation of 3500 sq.ft. undertakes to hand over the peaceful and vacant possession of the said property to the owner and developer.

The proprietor of Rahul plywood center has also received an amount of Rs.50 lakhs from the developer and vacated the premises.

Counsel for the defendant has drawn the attention of this Court to the possession letter dated 6th July, 2022 wherein it is reads as follows:

“Possession Letter

With reference to our conversation with all the co-owners and confirmation from the directors of Kanhaiya Realtors Private Ltd. i.e. Sushil Kumar Agarwal and Surender Agarwal it has established that Sri Mahesh Thakur son of late Mahipal Thakur residing at 2C Lakshmi Narayan Mukherjee Lane, Kolkata-700006 is the owner of 3 katha land at the premises Number 242A APC ROAD KOLKATA 700004. Only the registration part is left from Kanhaiya Realtors Private Ltd. It has also been confirmed that the company had received the full consideration amount for the 3 katha land. Hence I Suresh Pandey one of the partner of Rahul Plywood Center surrender and give the possession of 3 katha land to Sri. Mahesh Thakur as shown in the diagram of registered development agreement as on 10th September, 2020 from the possession of Rahul Plywood Center. Suresh Pandey partner Rahul Plywood Center”.

Counsel for the defendant submits that the possession letter which the plaintiff relied upon shows otherwise what the case made out by the plaintiff in the plaint. In the agreement dated 10th September, 2020 it is categorically mentioned that the tenant had agreed to vacate the said property on the assurance of the developer and they will not claim any right, title and interest over the property and Suresh Pandey had also received an amount of Rs.50,00,000/- and as such the possession letter which the plaintiff intends to rely, cannot be relied upon.

Counsel for the defendant No. 7 submits that he being the share holder of 38.50 per cent has handed over the property to the developer for the development of the property and at this stage if any order of injunction is passed, defendant No. 7 will suffer irreparable loss and injury.

Counsel for the defendant No. 8 further submits that the defendant No. 8 being the developer of the said property has already applied for grant of permission from the concerned authority for development of the said property and if injunction passed, the defendant No. 8 will suffer irreparable loss and injury.

Heard learned Counsel for the respective parties. Perused the application and document.

As per the case of the plaintiff, the plaintiff had purchased the land measuring an area of 6 cottahs from the defendant Nos. 1 and 2 for a total sum of Rs.2,25,00,000/- and the plaintiff has paid total amount in cash. But due to the ill health of the defendant No. 1, the defendant Nos. 1 and 2 could not execute the Conveyance Deed and accordingly, as per the joint meeting held between the parties it was decided that the plaintiff will purchase only 3 cottahs of land out of total 6 cottahs of land and the defendants will refund an amount of Rs.25,00,000/- and the plaintiff is also in occupation of the premises in question.

Neither the defendant No. 1 nor the defendant No. 2 are the owner of the property. The defendant Nos. 3, 6 and 7 are the owners of the property having their respective sharers and the defendant Nos. 3, 6 and 7 have entered into a development agreement with the defendant No. 8. In the development agreement, it is mentioned that the tenants undertakes to hand over peaceful and vacant possession of their respective possession to the owners or developers and after construction of multistoried building, certain constructed area on ownership basis without the charging any consideration shall be given to the tenants. The developer has also paid an amount of

Rs.50,00,000/- to one Suresh Pandey who is one of the tenant in occupation of the property.

As per the case of the defendants, Suresh Pandey after receipt of Rs.50,00,000/- has vacated the premises. The plaintiff has relied upon the possession certificate wherein it reveals that Suresh Pandey has handed over the premises to the plaintiff but the said case has not been made out by the plaintiff in the present suit.

This Court finds that there is no prima facie case and balance of convenience and inconvenience has not been made out by the plaintiff at this stage and thus, the prayer of ad interim injunction is refused.

The plaintiff is directed to serve the copy of the plaint, application and the documents to the defendants and defendants are directed to file their affidavit in opposition within three weeks from date. Affidavit in reply, if any, thereto be filed within two weeks thereafter.

List this matter on 14th June, 2024.

(KRISHNA RAO, J.)

Sbghosh