

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11271/2013

(From the judgement and order dated 12/02/2013 in Appeal (L) No.795/2012 in NM No. 1120/2011 in SN No.779/2011 of The HIGH COURT OF BOMBAY)

HAZAL LOUIS GONSALVES & ORS.

Petitioner(s)

VERSUS

MUNICIPAL C. OF GREATER MUMBAI & ORS.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and prayer for interim relief)

Date: 01/04/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
Mr. S.S. Sinha, Adv.
Mr. Prashant Kumar, Adv.

For Respondent(s) Mr. Shekhar Naphade, Sr. Adv.
Dr. Meera Aggarwal, Adv.
Mr. Ramesh Chandra Mishra, Adv.
Mr. M.U. Pandey, Adv.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against order dated 12.2.2013 passed by the learned Single Judge of the Bombay High Court whereby intra Court appeal filed by the petitioners against refusal of the learned Single Judge to entertain the prayer for interim stay was dismissed.

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The petitioners filed suit in 2011 claiming share in the suit property bearing CTS No.349A admeasuring 4723.96 sq.mtrs. situated in Village Malvani, Taluka Borivli, Mumbai. They pleaded that respondent No.9 created forged documents including agreement dated 30.4.1993 and Power of Attorney dated 23.10.1994. Along with the suit, the petitioners filed Notice of Motion No.1120/2011 and prayed for appointment of a receiver. They also prayed for restraining respondent No.9 from creating third party rights.

By an order dated 21.4.2011, the learned Single Judge declined to entertain the petitioners' prayer for ad-interim relief on the ground that the suit had been filed after long delay and, in the meanwhile, the transferee had constructed building.

In response to the notice issued by the High Court, the contesting respondents filed detailed reply and controverted the averments contained in the plaint and the Notice of Motion.

After hearing the parties, the learned Single Judge refused to grant stay in terms of the prayer made in the Notice

of Motion. He, however, directed respondent No.9 to sell the flats constructed on the disputed property by disclosing to the buyers the factum of pendency of the litigation.

The appeal filed by the petitioners was dismissed by the Division Bench of the High Court mainly on the ground that even though the petitioners became aware of the disputed transactions in 2007, they filed the suit after 3= years. The Division Bench also opined that the issue relating to the alleged forgery and fabrication of the documents can be decided only at the trial and there was no justification for restraining the contesting defendants from dealing with the suit property.

We have heard Mr. Shyam Divan, learned senior counsel for the petitioners and carefully perused the record including orders dated 21.4.2011 and 18.10.2012 passed by the learned Single Judge and the impugned order passed by the Division Bench of the High Court.

In our considered view, the reasons assigned by the learned Single Judge and the Division Bench for refusing to entertain the petitioners' prayer for interim stay are legally correct and the order under challenge does not suffer from any error which may require interference by this Court. This view of ours is based on the judgments of this Court in Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727 and Skyline Education Institute (India) Private Limited v. S.L. Vaswani, (2010) 2 SCC 142.

The petitioners have not disputed that the transferee of the property has constructed two towers. According to Mr. Shekhar Naphade, learned senior counsel for the transferee, who has appeared on caveat, more than hundred flats in the two towers have already been allotted to various persons. Therefore, there cannot be any valid ground or justification for entertaining the petitioners' prayer for interim stay.

The special leave petition is accordingly dismissed.

[SUMAN WADHWA]
A.R.-CUM-P.S.

[PHOOLAN WATI ARORA]
COURT MASTER