

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Lodging) No. 1042 OF 2012.

Satyanarayan Malpani .. Petitioner.

VERSUS

Sai Mansarovar Co-operative Housing  
Society Ltd and others .. Respondents.

Mr Kevic Setalwad, senior counsel a/with Sheetal Shah, i/by M/s  
Mehta and Girdharlal, for the Petitioner.

Dr Milind Sathe, senior counsel a/with Mr Parag Shah i/by M/s  
Mahesh Shah & Co. for Respondent No. 1.

Mr Sharan Jagtiani a/with Mr A. Dasgupta i/by Jhangiani Narula &  
Asso for Respondent No.2.

Mr P.G. Lad, Assistant Govt. Pleader – for the State – Respondent  
Nos. 3 to 5.

**CORAM : S.J.VAZIFDAR & A.R. JOSHI, JJ.**

**Monday, 30th APRIL, 2012.**

**P.C. :-**

1. Rule.

2. There are certain aspects of the matter which require consideration, including whether the impugned order sufficiently provides the RG reservation between the first respondent and the society formed or to be formed in respect of the buildings constructed / to be constructed on the remaining larger portion of the land. Another question that requires consideration is, as to whether by the impugned order sub division of the plot could have been ordered at this stage.

3. We are inclined to grant limited ad-interim relief against the first respondent by restraining it from putting up any construction on the plot allocated to it by the impugned order. If the order is not granted and the first respondent puts up further construction on the plot and creates third party rights therein the petition would be rendered infructuous.

4. It is, however, equally important, to safeguard the rights of the first respondent, on account of such ad-interim relief being granted. Mr Setalwad submitted that the same cannot be done as

this is not the first respondent's petition. The submission is not well founded. The need to safeguard the first respondent's rights arises on account of the interim order in the petitioner's favour. If we were not do so and were to grant a blanket injunction, it would in effect put the first respondent in a worse position than it would have been in even if the impugned order was not passed in its favour. It would grant the petitioner and respondent No.2 an unfettered right to negate the first respondent's rights even if it were to succeed finally.

(5) The buildings of the first respondent-society are on a larger plot of land. Upon this larger plot of land, other construction was, we will assume in the petitioner's favour, contemplated at the outset. It will be necessary to ascertain the manner in which the plans were submitted, namely, whether they were submitted by the petitioner alone or whether they were submitted on the basis of or by holding out that the construction was to be put up by the petitioner and his erstwhile partner respondent No.2. The petitioner contends that originally respondent No.2 and he were partners of a firm M/s Gopal Constructions. The firm stood dissolved in the year

1988 and thereupon the partners bifurcated their respective shares in respect of the property. *Prima facie* respondent No.1 is not concerned with the internal arrangement between the petitioner and the respondent No.2, or between the petitioner and his partner on the one hand and the erstwhile owner on the other. There was litigation between them as well which ended in the consent decree.

(6) The most important aspect of the matter relates to the entitlement of the petitioner and / or respondent No.2 to further develop the property. On the one hand, respondent No.1 would contend that the conveyance ought to have been executed long ago and by not doing so the developers are taking advantage of and/or will take advantage of any increase in FSI or loading of TDR.

(7) The plans were sanctioned in the year 1989 in respect of a larger property, including portions going to respondent No.2 under the internal arrangement. Flat purchasers have entered into agreements in the year 1991-92. Possession of the flats were handed over in September, 1992. The first respondent-society was

registered in January, 1997. The occupation certificates were issued in the year 2002. The petitioner and respondent No.2 have failed to execute the conveyance for about 20 years. Had they discharged their obligation of executing a conveyance earlier, the first respondent would have been the owner of the plot and thereby entitled to exploit it further.

(8) There are several matters pending in this Court on similar issues. For instance, one of the important issues is, whether the developer can continue the construction till eternity and thereby refuse to execute a conveyance in favour of the flat purchasers and during the interregnum, claim the benefits including on account of increase in the FSI and loading of TDR. These are important issues which are pending in several matters in this Court.

(9) Having said so, there is no justification for freezing the construction up to what admittedly was permissible under the law as it existed even in the year 1992. The FSI then was 1. The plans were sanctioned on that basis. We, therefore, intend permitting the

petitioner to continue with the construction only to the extent of the sanctioned plans which admittedly exhaust the FSI of 1.

10. We intend restraining the respondent No.1 from putting up any further construction on the plot going to it and restraining the petitioner and respondent No.2 from putting up any construction in addition to what has been permitted under the original approved plans. In this manner the rights of the petitioner and respondent No.2 on the one hand and respondent No.1 on the other would be adequately protected.

11. Mr Sathe, the learned senior counsel, states that the conveyance has already been executed on 23.4.2012. The particulars thereof shall be furnished by respondent No.1 to all the other parties within two weeks from today.

12. In the circumstances, the following ad-interim order is passed.

**ORDER :-**

- (a) The petitioner and respondent No.2 shall be entitled to continue with the development only to the extent of the sanctioned plans. No construction in addition thereto shall be put up.
- (b) Respondent No.1 shall not put up any further construction on the plot of land which has been ordered to be conveyed in its favour by the impugned order.
- (c) Neither the petitioner nor respondent Nos. 1 and 2 shall make any application for the sub division in respect of the entire plot.
- (d) Rule on interim relief, returnable on 7<sup>th</sup> June, 2012.
- (e) No steps, that are proposed to be taken by respondent No.1 pursuant to the impugned order shall be finalized until after the expiry of a period of four weeks from the service of a notice upon the advocates of the petitioner and respondent no.2 stating the same. In that event liberty to apply.

**(A.R.JOSHI,J)**

**(S.J.VAZIFDAR,J)**