



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.6996 of 2013

Dr. Arjun Sitaram Nitinwar )  
Age 54 years, Occ. Agriculturist & Medical )  
Professional, residing at 19/150, MHADA )  
Colony Vartak Nagar, Thane (W) )..Petitioner

versus

1 Mr. Rama Sakharam Parad )  
An adult, Occ. Business, residing at )  
Sahakar Nagar, Pokharan Road No.1, )  
Thane (W) )

2 Mr. Pralhad Sakharam Parad )  
An Adult, Occ. Service )

3 Mrs. Parvati Shankar Parad )  
An Adult, Occ. Housewife )

4 Mr. Ganesh Shankar Parad )  
An Adult, Occ. Service )

5 Mrs. Pushpa Vasant Parad )  
An Adult, Occ. Housewife )

6 Mr. Rajesh Vasant Parad )  
An Adult, Occ. Service )

7 Mr. Prakash Vasant Parad )  
An Adult, Occ. Service )  
Nos.2 to 7, all residing at Parad Chawl, )  
Pokharan Road, No.1, Thane (W) )

8 Mrs. Vadana Bharat Hindole )  
An Adult Occ. Housewife )  
Residing at Patil Pada, Village Yevoor, )  
Thane (W) )

- 9 Mrs. Reshma Sharad Vangad )  
An Adult, Occ. Housewife )  
residing at Plot No.30, MHADA )  
Colony Vartak Nagar, Thane (W) )
- 10 Mrs. Meenakshi Sandeep Keni )  
An Adult Occ Housewife )  
Residing at Adivasi Pada, Kanheri Gunfa )  
Road, Borivali, Mumbai )
- 11 Smt. Asha Ramesh Parad )  
an adult Occ Housewife )
- 12 Mast. Vicky Ramesh Parad )
- 13 Ms Prachi Ramesh Parad )  
Nos.12 and 13 minors being represented by) )  
their mother, natural Guardian and next )  
friend No.11 Smt. Asha Ramesh Parad )  
Nos.11 to 13 residing at Village Manor, )  
Tal Palghar, Dist Thane )
- 14 Mr. Dilip Dattu Dukle )  
An Adult, Occu Service )
- 15 Mrs. Sunita Mahadev Survekar )  
An Adult, Occ Housewife )
- 16 Mrs. Meena Kishore Sambre )  
An Adult Occ. Housewife )  
Nos.14 to 16 residing at Adivasi Nagar, )  
Talepada, Kanheri Gumfa Road, )  
Borivali, Mumbai )
- 17 Mr. Ambika Prasad Kaushik )  
An Adult Occ Business )  
Residing at Indraprastha, Mulund (West) )  
Mumbai 400 080 )
- 18 Mr. Gopal Madhu Narang )

An Adult Occ. Business )  
Residing at 143-144 Cherisan, Saint Siril )  
Road, Bandra (W), Mumbai 400 050 )

19 Mr. Kishor Maganlal Mehta )  
An Adult Occ Business )  
Residing at Dindoshila Plot No.384 )  
Road No.15, Khar (West) Mumbai 400052 )

20 Mr. Vinod Nandlal Rohira )  
An Adult, Occ Business )  
Residing at Dindoshila Plot No.384 )  
Road No.15, Khar (West) Mumbai 400052 )..Respondents

Mr. G. S. Godbole with Mrs. Deepali Deshmukh i/b Mr. Balasaheb Deshmukh for the Petitioner  
Mr. P. S. Dani with Ms Radha Ved i/b Sanjay Udeshi & Co. for the Respondent Nos.1 to 16  
Mr. Vivek Shiralkar i/b Shiralkar & Co. for the Respondent Nos.17 to 20

**CORAM :- R.M.SAVANT, J .**

**JUDGMENT RESERVED ON: 20<sup>th</sup> NOVEMBER, 2013**  
**JUDGMENT PRONOUNCED ON: 12<sup>th</sup> DECEMBER 2013**

**JUDGMENT:**

1 Rule with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court under Article 226 of the Constitution of India has been invoked against the order dated 1-4-2013 passed by the Learned Joint Civil Judge Senior Division, Thane, by which order, the Trial Court has refused to exhibit the Development Agreement

dated 2-3-2005 on the ground that the said agreement has been entered into without complying with the provisions of Section 36A of the Maharashtra Land Revenue Code in the matter of obtaining permission of the Competent Authority as the land covered by the said agreement is a tribal land and that the said document showing consideration of Rs.10 lacs but the same was executed on a stamp paper of Rs.10 from which it is crystal clear that the said document is not properly stamped.

3 The factual matrix involved in the above Petition in brief can be stated thus:

The Petitioner herein is the original Plaintiff whereas the Respondents are the original Defendants. The Suit filed by the Plaintiff being Special Civil Suit No.608 of 2010 has been filed claiming declaration that the said Development Agreement is legal, valid and subsisting. The said Development Agreement dated 2-3-2005 duly executed and notarised before notary public Mr. J. T. Sonavane at Noted/Registered Sr. No.4319/05 on 2-9-2005 as also the Power of Attorney dated 28-3-2007 executed by the Defendants in favour of the Plaintiff are legal, valid, subsisting and binding upon the Defendants. Further declaration sought by the Plaintiff was that the notice dated 18-2-2010 issued by the Defendants and the Suit for declaration dated 18-2-

2010 sworn and executed by the Defendant No.1 is illegal, void-ab-initio and not binding or operative against the Plaintiff. It appears that the Suit was at the stage of the recording of evidence. The said Development Agreement was tendered by the Plaintiff during examination-in-chief. The Plaintiff had in the said examination-in-chief sought to prove the contents of the said Development Agreement, during the course of the evidence the admissibility of the said document was raised before the Court. The Plaintiff produced a certified copy of the said document. The Trial Court declined to mark the said Development Agreement executed by and between the Plaintiff and the Respondent Nos.1 to 16 as an Exhibit. The refusal of the Trial Court is inter alia on the grounds which have been mentioned herein above namely that the said document has been executed in breach of Section 36A of the Maharashtra Land Revenue Code, that the said document is not properly stamped. As indicated above, it is the said order dated 1-4-2013 which is impugned in the present Petition.

4 Heard the Learned Counsel appearing for the parties.

5 The Learned Counsel Mr. Godbole made the following submissions:

(i) that the said document was not compulsorily registrable under Section 17(1)(b) of the Registration Act as by the said document there is no transfer of property.

(ii) The covenants of the said Development Agreement indicate a nature of right creating in favour of the Plaintiff which cannot be said to be created a right of ownership in favour of the Plaintiff.

(iii) That the Trial Court had erred in taking into consideration Article 5(g-a) for the purpose of computing the stamp duty that was payable by loosing sight of the fact that the said provisions has been deleted.

(iv) that Section 36A does not provide for registration of the said document. The same only provides for permission to be sought from the Competent Authority in respect of purchase of tribal land and the same therefore cannot impinge upon the admissibility of the document.

6 Per contra Mr. Dani, the Learned Counsel appearing for the Respondent Nos.1 to 16 made the following submissions :

(i) That Section 17(1)(b) does not apply only in cases where transfer is effected but comes into play as soon as a right is created in any party. Hence submission made by the Learned Counsel for the Petitioner that the said document is not compulsorily registrable as there is no transfer or conveyance, is mis-founded.

(ii) That covenants 9, 14 and 15 as well as 26 unmistakably lead to a conclusion that the said document creates a right in favour of the Plaintiff and therefore the said document was compulsorily registrable. In fact

covenant 26 provides as to whose obligation it would be to pay the registration charges.

(iii) That the Trial Court though has held the document to be inadmissible on account of the non payment of proper stamp duty, ought to impounded the document and sent it to the Superintendent of Stamps for adjudication as mandated by Section 33 of the Stamp Act.

7 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The two grounds on which the document in question has been held to be inadmissible in evidence are that the document is not registered and the Plaintiff has not paid proper stamp duty in respect of the said document. In so far as the registration is concerned, it is the contention of the Learned Counsel appearing for the Petitioner that the said document is not compulsorily registrable under Section 17 of the Registration Act, 1908. For a proper appreciation of the said submission, it would be gainful to refer to Section 17(1) of the said Act.

#### 17. Documents of which registration is compulsory.-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.1864 (XVI of 1864 ), or the Indian Registration Act, 1866 (20 of 1866 ), or the Indian Registration Act, 1871 (8 of 1871 ), or the Indian Registration Act, 1877 (3 of 1877 ), or this Act came or comes into force,

namely:--

- (a) instruments of gift of immovable property;
- (b) other non- testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non- testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non- testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub- section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

( ) .....

Hence a reading of clause (b) of Section 17 makes it clear that in respect of non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest would be registrable. In the light of the said

provision, it would be also be gainful to refer to the Development Agreement. In clause (1), it is provided that the Petitioner has been granted irrevocable development rights in the property and the consideration mentioned is Rs.10 lacs. In clause (2) it has been mentioned that in furtherance of the development rights an irrevocable licence has been granted to the Petitioner as well as the irrevocable power of attorney. It would also be useful to reproduce clauses 10, 14, 15 and 26 of the said Development Agreement (English translation).

“10 It is agreed between the parties that the party of the First Part has agreed to make necessary Applications at their own expenses for the purpose of sub-division and amalgamation of the said property and the required authority for the said purpose has been given by the Party of the Second Part to the Party of the First Part.

14 The party of the First Part is giving the said property for the purpose of development by converting the same into non agricultural land whereby flats, bungalows, houses, shops or units, garages etc., to be developed on the said property, can be sold on ownership basis or any other basis and that the party of the Second Part has full knowledge of the same and have no complaint about the same.

15 The party of the Second Part shall execute Deed of Conveyance in respect of the said property in favour of Co-operative Society of flats/ unita purchasers occupying the building to be constructed on the said property. The party of the Second Part shall bear the expense and not cause any harm in respect of the matters relating to the expense of the said Conveyance of the said property to the Part of the First Part.

26 Expenses for stamp duty and registration charges for this Agreement is to be borne by the party of the first part entirely but the parties to bear the fees of their respective Advocates separately.”

A reading of the aforesaid clauses leads to a conclusion that substantial rights have been created in favour of the petitioner as apart from constructing flats, bungalows, row houses etc., the Petitioner is entitled to sell the said flats, bungalows, row houses etc., and in so far as the society that would be constituted of the flat purchasers etc, it is provided that the owners would execute a conveyance in their favour. In the light of the aforesaid it is not possible to accept the contention of the Learned Counsel appearing for the Petitioner that the agreement in question is a mere Development Agreement and can be said to be akin to an Agreement to Sale. The clauses of the Development Agreement which have been reproduced and referred to herein above are eloquent of the substantial rights that have been created in favour of the Petitioner and therefore the said document was compulsorily registrable. In fact as can be seen the owners are left with no choice in the matter of executing the conveyance as in the agreement provision is also made for the same vide clause 15. The contention of the Learned Counsel appearing for the Petitioner that only when there is a transfer that a document is

compulsorily registrable, cannot be countenanced in the teeth of Section 17 of the said Act, as the said provision comes into play as soon as any right is created. In my view therefore, the part of the order where the Trial Court holds the document to be inadmissible in evidence on account of its non registration, cannot be faulted with.

8 Now coming to the aspect of whether the document was properly stamped though the Trial Court has held that the document is exigible to the payment of stamp duty under Article 5(g-a) and that Article 5(h)(B) is not applicable. Though it is the contention of the Learned Counsel appearing on behalf of the Petitioner that it would be Article 5(h)(B) which would be applicable, in my view, it is not necessary to go into the said aspect as it is for the adjudicating authority to decide as to under which provision the document is required to be stamped. However, the Trial Court in my view, has erred in not impounding the document after it was brought before it. In that regard, Section 33 of the Bombay Stamp Act would have relevance. The said provision mandates that the Court before whom the document is produced, is required to impound the document if it is not duly stamped and send it to the authority for adjudication. In my view therefore, the document in question is required to be impounded and sent to the adjudicating authority for adjudication as regards the stamp

duty payable on it. If the stamp duty is paid by the Petitioner and the document in question is registered, the Petitioner can apply to the Trial Court that the said document be read in evidence. The Writ Petition is accordingly partly allowed to the aforesaid extent. Rule is accordingly made absolute to the said extent with parties to bear their respective costs of the Petition.

**(R M SAVANT, J)**