

(1965) 09 BOM CK 0014
In the Bombay High Court
Case No : Appeal No. 448 of 1964

Gangavishindas Rijharam Bajaj	Vs	APPELLANT
Advent Corporation (Private) Ltd.		RESPONDENT

Date of Decision : 06-09-1965

Acts Referred:

Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 13

Citation : AIR 1967 Bom 54 : (1966) 68 BOMLR 161 : (1966) ILR (Bom) 910 : (1966) MhLj 357

Hon'ble Judges : Patel, J

Bench : Single Bench

Advocate : G.N. Vaidya, for the Appellant; J.I. Mehta, for the Respondent

Judgement

Patel, J.—This is a plaintiff's appeal.

2. The defendant, a private limited company, proposed to construct ownership flats on a piece of land at Foreshore Road in this city and invited purchasers for the same. It had prepared tentative plans which have yet to be sanctioned by the corporation. I am told that twenty-two flats were proposed to be constructed . The plaintiff was one of the eighteen who agreed to purchase the flat. He agreed to purchase one flat and paid Rs. 2,500 as earnest for the same on February 22, 1962, for which the Company executed a receipt. The price to be paid was Rs. 50,000. A formal agreement was later executed on March 11, 1963. The plaintiff agreed to accept the title of the company to the land without further investigation. It seems, as the Municipal Corporation proposed to widen the road, it did not sanction the plans as prepared by the defendant Company, it therefore, wrote letters to the purchasers of the flats showing its willingness to return the money taken by it. The plaintiff and some others are not willing to do so. On December 16, 1963 the Maharashtra Ownership flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act became law. The plaintiff instituted the present suit on September 11, 1964 claiming reliefs under

the Act. He does not, however, sue for specific performance of the agreement. Prayers are for (a) restraining the defendant company from dealing with the land on which the flats were to be built, (b) direction to the defendant for registration of the agreement of March 11, 1963, (c) direction that the defendant furnish information required to be furnished to an intending purchaser u/s 3 of the Act, and (d) the appointment of a receiver. The plaintiff then took out a Notice of Motion for interim injunction in terms of prayers (a) and (c). The learned trial Judge discharged the notice.

3. The plaintiff's suit is founded on the provisions of the Act which, he says, apply to the agreement in question. The defendant contends (1) that this Act does not apply to the agreement, as it was executed prior to its coming in force, (2) that the agreement stood ended or terminated, (3) that the frame of the suit is bad and if it were properly framed it would have been beyond the jurisdiction of the City Civil Court and (4) that on merits this is not a case where apart from anything else any injunction ought to issue.

4. The first questions whether this Act applies to an agreement which was executed before the Act became law. Mr. Mehta in support of his contention relies upon the following observations in Maxwell on Interpretation of Statutes, 11th Edn., p. 206:

"Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation".

No doubt this is the usual and important rule of construction. It is, however, clear that the ultimate aim of the Court in construing an Act is to find out the legislative intent which must be sought in the words of the Act. The above rule is based on the ground that the Legislature would not intend to produce unjust results by affecting vested rights. In recent days, there have been many enactments which have affected even vested rights for attaining greater good of the community. Moreover, in view of the requirements of the circumstances, if the legislation, either expressly or by clear implication, intends that the Act should affect vested rights, the Court cannot refuse to give it effect on the ground that it causes hardship, (Ibid 213) Nilkanth Ramchandra Chandole Vs. Rasiklal Mulchand Gujar, . I may also add that in a statute some provisions may be intended to have retrospective effect and some may not.

5. I must now examine the language of the Act. Section 2(c) defines a "promoter" to mean a person who constructs or causes to be constructed a block or building of flats for the purpose of selling some or all of them. the words taken in their ordinary sense will include the defendant, as at present it merely intends to construct the building of flats for the purpose of sale. Section 3 casts notwithstanding anything in any law to the contrary, certain duties on a promoter

intending to build flats, all or some of which (1) are to be taken or (2) "are taken on" ownership basis The underlined (here in " ") words of the section are applicable to a case where an agreement for the purchase of flats has already taken place. Mr. Mehta relies upon the words "persons intending to take or taking" in support of his contention. These words qualify the noun "persons" and do not control what has gone earlier. On the other hand, the words "shall be liable" which create the liability are more declaratory in nature, and are capable of being applicable to promoters who have already agreed to sell flats. Moreover, his liability is such as is usually imposed upon a vendor after he executes the agreement of sale with such modifications as are required by the circumstances of transactions such as present.

6. Section 4 no doubt limits the amount of deposit which the promoter can take to 20 percent and requires him to register the agreement. This section from its nature cannot apply to things past. The liability to register would apply only to documents the period for registration of which has not passed. Section 5 applies to future actions and is capable of application to amounts that may be received by the promoter after the Act came into operation. Sections 6 to 11 can apply to every case, whether the agreement to sell was before or after the Act came into force. Section 12 is equally applicable to such cases.

7. Section 13 the penal provision from its language can only apply to an act of commission or omission which is done or omitted to be done after the Act came into force, for the words are "fails to comply".

8. Mr. Mehta placed strong reliance upon the words of Section 17 and contended that, since by this section, Sections 2, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 are applied with certain modification to flats already constructed or converted and no provision is made respecting cases where agreements are made, the intention of the Legislature was to leave such cases out of the Act. That is not so. The language of sections referred to required modifications and some period had to be prescribed for complying with the provisions of the Act, and the stage for application of ss. 3, 4 and 5 had already passed in cases where flats were already handed over to the buyers.. Moreover, the argument based on the rule "expression unius est exclusio alterius" is not of universal application. Very often such provisions are made for clarifying the legislative intent. Section 17 was introduced as modifications were required in such cases. The very fact that the Act was applied to such flats would show that it was intended for all cases, whether or not agreement was executed before or after the Act came into force.

9. Mr. Mehta argues that the Act is to remain in force only for a short period of two years and, therefore, it could not be applied retrospectively. This could hardly be a reason to limit its application as suggested. The Act was enacted to prevent malpractices of promoters of building flats and if there is necessity the Legislature may further extend it as it has done in the case of some other enactments.

10. As shown above, the language of sections 3, 4, 5 and 9 is clearly applicable to cases where agreement had already taken place and building is to be erected or is being erected and the Court is not entitled to refuse to apply them. If the argument were accepted, it would lead to anomalous results, for what would be the position where some agreements of sale are executed before and some after the Act came into force? The learned Judge below has said that if the Act had been intended to apply to such cases, the definition of "promoter" would have been something different. The only thing that can be said is that the Legislature is entitled to use its own language to convey its intention and it has done so. It must also be remembered that the Act was passed to prevent rampant malpractices by promoters, and by limiting its application as suggested, its purpose would be frustrated. I am, therefore, clearly of opinion that the Act is applicable to all promoters of building flats except as suggested above, the penal S. 13 only applying to anything done or omitted to be done after the Act came into force.

11. Mr. Mehta argued that the agreement has terminated. I do not see how. In this connection, I am referred to letters of defendant dated November, 15, 1963, reply of the plaintiff dated November 20, 1963, annexure E a letter by the plaintiff dated April; 4, 1963 and the defendant's reply dated April 9, 1963 and the plaintiff's letter dated July 22, 1964. there is correspondence in between this period. there is nothing to show that the agreement stood terminated. Mr. Mehta argued that in spite of the defendant's letter, the plaintiff did not indicate that he would be prepared to abide by the agreement. But then unless the plaintiff were shown the new plans he could not make any reply. It is true that sometimes a contract may become impossible of performance. But this is not the case here. The Municipal Corporation has accepted the altered plans and the defendant has advertised for the flats as some of the purchasers have withdrawn. In my view, the agreement is still operative and binds the parties.

12. Mr. Mehta then contends that the suit should have been for specific performance and in that case the valuation of the suit would be Rs. 50,000 and thus beyond the jurisdiction of the City Civil court. In the first place, there is no clear denial on the part of the defendant to perform the contract. The time has not yet come for it. the plaintiff wants relief under the Act to which he is entitled and I do not see why the suit should be regarded as incompetent. No question of jurisdiction, therefore, can arise.

Mr. Mehta then contends that as the defendant's attitude has not at all been unfair and as a suit for specific performance would not have been decreed under the Specific Relief Act, as no building contract which would require supervision of the Court could be enforced no relief should be granted now. I am not dealing with a suit for specific performance. The question is, should the relief of interim injunction be granted? I cannot say that the conduct of the defendant is not honest or that he is guilty of underhand dealing. But that does not mean that the plaintiff's rights which require protection, should not be protected.

13. I accordingly set aside the order of the learned trial Judge and direct temporary injunction in terms of prayers (a) and (c) of the plaint.

Costs costs in the cause.

14. Appeal allowed.