

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 262 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1482 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1483 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1484 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1485 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1486 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1487 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1488 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1489 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1490 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1491 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1492 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1493 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1494 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1495 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 1496 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE A.Y. KOGJE****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>No</b>
2	To be referred to the Reporter or not ?	<b>No</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>No</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>No</b>

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SHRADDHANAND CO-OPERATIVE HOUSING SOCIETY

Versus

SUB - REGISTRAR OF DOCUMENTS & 1 other(s)

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**Appearance: SCA Nos.262 and 1482 to 1484 of 2015**

ADITYA A GUPTA(7875) for the Petitioner(s) No. 1

MR AR GUPTA(1262) for the Petitioner(s) No. 1

MR DHAWAN JAYSWAL, AGP for Respondent Nos.1 and 2

MR DIPEN DESAI for Respondent No.3

**Appearance: SCA Nos.1485 to 1488 of 2015**

ADITYA A GUPTA(7875) for the Petitioner(s) No. 1

MR AR GUPTA(1262) for the Petitioner(s) No. 1

MS ASMITA PATEL, AGP for Respondent Nos.1 and 2

MR DIPEN DESAI for Respondent No.3

**Appearance: SCA Nos.1489 to 1492 of 2015**

ADITYA A GUPTA(7875) for the Petitioner(s) No. 1

MR AR GUPTA(1262) for the Petitioner(s) No. 1

MS VRUNDA SHAH, AGP for Respondent Nos.1 and 2

MR DIPEN DESAI for Respondent No.3

**Appearance: SCA Nos.1493 to 1496 of 2015**

ADITYA A GUPTA(7875) for the Petitioner(s) No. 1

MR AR GUPTA(1262) for the Petitioner(s) No. 1

MR MEET THAKKAR, AGP for Respondent Nos.1 and 2

MR DIPEN DESAI for Respondent No.3

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CORAM: HONOURABLE MR.JUSTICE A.Y. KOGJE

**Date : 30/04/2019**

**ORAL JUDGMENT**

1. **RULE.** Learned AGPs service of Rule on behalf of respondent Nos.1 and 2 and learned AGP Mr.Dipen Desai waives service of Rule on behalf of newly added respondent No.3 in all these petitions.

2. This group of petitions arises out of the same subject matter and raises same contentions. Hence, with

consent of all the parties, taken up for joint hearing and disposal. The facts are extracted from Special Civil Application No.262 of 2015.

3. The petition is filed seeking direction to forthwith register and release the registered allotment letter dated 30.03.2011 issued in favour of one Mr.Aakash Yashraj Benigar, who is a member of the petitioner society. The challenge is to the communication of the Sub-registrar, Ahmedabad-6 (Naroda) dated 16.12.2013, whereby the petitioner through its Advocate has been communicated that its request for registering and release of 16 documents, viz. Allotment letters in favour of the members is not proceeded on account of pending Civil Suit and the orders passed therein and also communicating the petitioner to produce final order of the Civil Court in this connection to enable to proceed further with the process for registration and release of the allotment deed.

4. Learned Advocate for the petitioner submitted that the petitioner is a Cooperative Society, which had entered into a development agreement dated 04.03.2010 with one M/s.Kantam Developers for the purpose of developing houses for its members. It is the case of the petitioner that the said developer, in violation of the terms and conditions of the development agreement and

also illegally, allotted the constructed tenements to third parties who were not the members of the society. Hence, the development agreement came to be terminated.

4.1 It is submitted that on 30.03.2011, the petitioner-society issued allotment letters to its members and also paid applicable stamp duty and presented the same for registration before respondent No.1. The registration fee was also paid. It is submitted that though there was no deficiency in terms of stamp duty or any other manner, respondent No.1 refused to register the document. Such an act of refusing to register the document of allotment letter is deliberate and arbitrary as at that time, there was no occasion for respondent No.1 to object or impound the document. Again on 01.04.2011, the petitioner society made request for registration of the document, but was informed about "yadi" received from the Board of Nominees, as a result of which, document could not be released.

4.2 It is submitted that as the developer had created dispute by illegally allotting residential units to the non-members of the petitioner-society, the petitioner-society cannot be withheld and registration of such documents also cannot be withheld. It is submitted that there is no provision under the Registration Act which would empower respondent No.1 to refuse

registration as and when the documents are produced.

4.3 It is submitted that civil litigations have been filed by the petitioner-society as well as developer in the form of Civil Suits. The litigation is also filed by the non-members of the society before the Board of Nominees, which had reached till the High Court on the ground of preliminary objection that the plaintiffs before the Board of Nominees not being the members, cannot invoke provisions of the Cooperative Societies Act. It is submitted that though such litigations are pending, it would not be of any consequence or effect on release of registration lease in favour of the society members.

4.4 It is also submitted, by relying upon Section 47 of the Registration Act, that the day on which the document was produced for registration, there was no stay operating and therefore, on that very day, the document ought to have been registered. By not doing so, respondent No.1 has failed in his duty and thereby sided the developer.

4.5 Learned Advocate for the petitioner relied upon judgment of the Madras High Court in the case of **M.Chitra Vs. Sub-Registrar in W.P.(MD) No.14388 of 2014 dated 01.09.2014** and judgment of the Bombay High Court in the

case of ***Chairman /Secretary, Deep Apartment CHS Ltd. Vs. The State of Maharashtra & Ors.,*** in Writ Petition No.1966 of 2012 dated 10.10.2012, to contend that it is not open for the registering authority to decide upon civil rights of the rival parties. The registering authority only has to consider fulfillment of the requirements of the Registration Act and thereafter proceed to register the document.

5. As against this, learned Advocate for the developer, who is permitted to be joined as party respondent, as no objection is recorded from the petitioner and is permitted to point out his case on the basis of the documents produced along with his Civil Application to join him as party respondent under O-1, R-10 of the Civil Procedure Code, submitted that the development agreement clearly provided for the authority of the developer to carry out construction and make new members in the scheme by receiving funds towards the land, construction, development fees, legal fees and other expenditure. It is submitted that while the developer was acting under the development agreement and had incurred huge expenditure in construction residential units, for some unknown reasons, the petitioner-society decided not to act as per the development agreement and tried to enter into another development agreement with

third party for very same land of the petitioner-society. While development agreement of the developer was in existence, the petitioner-society entered into such development agreement with one Bholi Corporation and based on such development agreement, started making allotment of the very residential units, which the developer had allotted to others. He drew attention of this Court to the allotment letter where said Bholi Corporation is shown as confirming party to the allotment letter. It is therefore submitted that the petitioner is creating third party interest on the same residential units which the petitioner has also sold as per the authority given to him under the development agreement.

5.1 It is submitted that the allotment letters, therefore, which are sought to be registered and released by the petitioner-society are purportedly executed in favour of new allottees through new developer, viz. Bholi Corporation.

5.2 Learned Advocate has drawn attention of this Court to the prayer clause of the suit filed by the developer and the pursis /declaration Exh.67 made by the petitioner-society in such Civil Suit and assured the Court of not dispossessing the allottees of the residential units by the developer without following due process of law, subject to result of the Civil Suit and

not to transfer the properties. Now by seeking direction to register the allotment letter, the petitioner-society is going back on its solemn words declared in the pursis before the Civil Court, which cannot be permitted.

6. Learned AGP opposed the petitions submitting that respondent No.1 was justified in issuing the impugned communication in the peculiar facts and circumstances of the case. It is submitted that where the allotment is in dispute and third party interest is sought to be created, the stand of the respondent authorities is justified as registration and release of the allotment letter would lead to multiplicity of litigation. It is submitted that already the allotment has seen three litigations, one in the form of Civil Suit filed by the society, second being Civil Suit filed by the developer and the proceedings before the Board of Nominees instituted by new members of the society through the allotment letters by new developer-Bholi Corporation. In such fluid situation, the impugned communication is only postponing the act of registration and not refusing the registration.

7. Having considered the rival submissions and having perused documents on record, it appears that the development agreement dated 04.03.2010 came to be executed between the petitioner-society and the



developer-M/s.Kantam Developers    The relevant clauses of the agreement read as under:-

"5) The party of the second part, on behalf of the party of the first part, shall get aforesaid plans sanctioned in Ahmedabad Municipal Corporation for residential construction scheme of its members and shall develop the scheme with name Shraddhanand. The said construction includes entire liability to construct Ground Floor, First Floor, Stair-cabin, Underground and Overhead Water Tank, Stair, eaves, compound wall, gate, margin flooring etc. The said construction shall be completed on completion of the said scheme.

6) The party of the second part shall have to collect land subscription, construction fund, development fee, legal fee and all other expenses as decided by the party of the second part from the persons, companies and firms who desire to be the member in the said scheme. The party of the second part is authorised to recover its remuneration / commission directly from the said amount. The party of the second part, could enter into agreements directly with interested members, if necessary and could issue receipts of money. The party of the second part is authorised to do all these acts.

7) The party of the second part is authorised to register new members in the said scheme, besides old members - depositors and also authorised to book, allot or sell units as per the scheme. Moreover, the party of the second

part is authorised to enter into agreements or any other writings with the members of the scheme, if necessary. The party of the second part is also authorised to fix the price of the said units and to enter into all financial transactions with the members who booked Unit / purchasers."

8. It appears that on account of dispute between the developer on one side and the society on the other side, the petitioner-society resolved to initiate proceedings against the developer including filing of suit and cancelling the development agreement. Notice came to be issued by the petitioner-society on 02.02.2011. It appears that on 30.03.2011, allotment letter was executed in favour of new member of the society through Bholi Corporation being the confirming party in connection with the very residential unit which was constructed by the developer and under the development agreement, allotted to the purchaser from him. The individuals, who purchased residential units from the developer, filed Lavad Case No.184 of 2011, wherein an order came to be passed on 01.04.2011. Under that order, temporary injunction in terms of prayer clause-5A was granted, which reads as under:-

"(5) It is prayed that,

A) Be pleased to pass interim injunction order that the respondent no.1 society itself or through its servants, agents or any other

person do not act that may affect my right and titles as member over the duplex allotted to me and do not enter into any sale agreement, leave and license, lease deed etc. with any other person except of the plaintiff or do not create any right or interest in the said property or do not execute mortgage in favour of anyone or do not enter into any agreement or declaration and do not alter in the present condition of the property in question and do not trespass and do not take possession of the property in question without due procedure of law and kindly forward yadi thereof to the Sub-Registrar, Ahmedabad-6 (Naroda) at Meghaninagar, Ahmedabad.

9. It appears that thereafter, suit came to be filed by the developer being Civil Suit No.1990 of 2011 along with notice of motion. The said Civil Suit was filed with following prayers:-

"A) the Hon'ble Court be pleased to declare that agreement dated 04/03/2010 entered into between the plaintiff and defendant No: 1 is legal, valid and in force and the defendant No: 1 has no right to act contrary to the terms of the said agreement.

B) be further pleased to declare that action of the defendant No: 1 to terminate the aforesaid contract dated 04/03/2010 vide letter dated 02/02/2011 is illegal, bad in law, arbitrary, unilateral and against the

terms and conditions of the said agreement; and

- C) be further pleased to declare that the agreement entered into by and between defendant No: 1 & 18 dated 29/03/2011 is fraud in respect of the suit property and with the plaintiff and defendant No: 2 to 17 and it is illegal, bad in law and without authority and defendant No: 1 & 18 be permanently restrained from doing anything in pursuance to the illegal agreement dated 29/03/2011; and
- D) be further pleased to declare that, the deed of allotment sought to be registered with the office of Sub Registrar, Naroda 6, Ahmedabd vide receipts respectively mentioned in para 7 of the plaint in favor of defendant No: 19 to 24 are illegal, without authority and without consideration and are fraudulent in law and be pleased to cancel the registration of these 16 Deed of Allotments dated 30/03/2011; and
- E) Hon'ble Court be pleased to direct the defendant No: 1 to issue share certificate respectively in favor of defendant No: 2 to 17 and be pleased to direct the defendant No: 1 to execute Letter of Allotment in favor of defendant No: 2 to 17 forthwith; and further be pleased to order that if the defendant No: 1 fails to issue share certificate and execute Letter

of Allotment, the court commissioner be appointed and be directed to issue share certificate and execute Letter of Allotment to defendant No: 2 to 17;"

10. In the aforesaid Civil Suit, plaintiff is the developer and defendant No.1 is Cooperative Society and defendant Nos.19 to 34 are allottees through Bholi Corporation and defendant Nos.2 to 17 are the allottees through the plaintiff-developer. In the said suit, pursis Exh.67 came to be filed by the petitioner-society and the allottees through Bholi Corporation, which reads as under:-

"The Defendant No.1 and 19 to 34 hereby states that as there is order of status quo is granted by this Hon'ble Court in other suits filed by above referred defendants, the defendants hereinabove shall not dispossess the defendant No.2 to 17 without following due process of law and subject to result of the civil suits pending and other litigations pending before the courts and the defendant hereinabove shall not tranfer the property."

11. It is pertinent to note that the prayer made by the developer in the Civil Suit and also questioned questioned the action on the part of the petitioner-society for proceeding with the registration of the allotment letter. Before Civil Suit can consider the prayers made in the notice of motion, the petitioner

society filed pursis as narrated hereinabove, thereby leading to disposal of notice of motion by recording that the defendant (petitioner-society) having undertaken neither to transfer the suit property nor to evict defendant Nos.2 to 17 without due process of law, on the basis of which notice of motion came to be disposed of in terms of pursis Exh.67.

12. It is also brought to the notice of the Court that the allottees of the developer under the development agreement, who filed proceedings before the Board of Nominees, were objected by the petitioner-society by filing SCA No.10862 of 2014 and allied matters, which also came to be disposed of by order dated 24.07.2015 inter alia directing the issue of the member /non/member raised as a preliminary objection by the society to be dealt with as preliminary issue and decided. The Court is informed that such preliminary issue is decided against the petitioner-society.

13. The intention of the petitioner society can be gathered from its conduct which is apparent on record. On one hand, development agreement is entered into with the developer-M/s.Kantam Developer, who undertook the responsibility and incurred expenditure of construction residential units and on the other thereafter, the society introduced subsequent another developer through

whom the society makes allotments of the same residential units to third parties and make application for registration of the allotment letters, which is the subject matter of this petition. When the issue is rightly adjudicated by the developer before the City Civil Court, including issue of authority /disposing capacity of the petitioner-society along with newly introduced developer, a pursis is filed which is reproduced hereinabove, where the society undertook not to transfer the residential units in question and not to dispossess allottees of the developer-M/s.Kantam Developer without following due process of law and in the same breath, the petitioner proceeds to get allotment letters registered and files the present petition to get the same registered and released. Therefore, on one hand, the petitioner has prevented the City Civil Court, a Court of competent jurisdiction, to decide upon the civil rights of the parties by filing pursis and on the other hand, acting contrary to the declaration made before the Court and seek for registration, which would effectively mean to transfer the subject residential units in favour of third parties. In the peculiar facts of such case, this Court is of the view that the respondent-authority was justified in issuing the impugned communication dated 16.12.2013, which does not mean to have refused registration of the allotment

letters, but only communicating the act of the Sub-registrar to be in conformity with the order passed in the pending Civil Suit and also provides for proceeding with registration as and when necessary orders are passed in pending civil litigation. It can be argued on behalf of the petitioner by relying upon the judgment relied upon by the petitioner that it is not open for the Sub-registrar to decide upon the civil rights and refuse registration. In the facts of the present case, this Court is of the view that the Sub-registrar has not embarked upon deciding on the civil rights of the parties, but is only acting in conformity with the proceedings pending before the Civil Court where civil rights are pending decision.

14. Lastly, this Court is also of the view that directing respondent No.1 to register and release of the allotment letters has a potentiality of multiplicity of litigation as the same would thereafter create third party interests in the very property which is also the subject matter of civil litigations. Hence also, the Court is not inclined to invoke Article 226 of the Constitution of India in directing respondent No.1 to register and release allotment letters in favour of the petitioner-society and the allottees. The impugned communication dated 16.12.2013 is therefore confirmed.



15. In view of the aforesaid the petitions deserve to be and are hereby by dismissed. Rule is discharged. No order as to costs.

**Sd/-**  
**(A.Y. KOGJE, J)**

SHITOLE