

(2019) 09 CHH CK 0078

Chhattisgarh High Court

Case No: WA No. 396 Of 2019

PRT Constructions Through Its
Proprietor GS Solanki

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Sept. 13, 2019

Acts Referred:

- Municipal Corporation Act, 1956 - Section 301
- Chhattisgarh Real Estate (Regulation And Development) Act, 2016 - Section 2(n), 2(q), 3

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Ashsih Shrivastava, V. Sharma, Pankaj Agrawal, Anshul Tiwari

Final Decision: Dismissed

Judgement

Parth Prateem Sahu, J

1. Challenge in this writ appeal is to the order dated 26.8.2019 by which the learned Single Judge, while refusing to grant stay of the operation of order

dated 21.8.2018 passed by the Real Estate Regulatory Authority, Raipur (RERA), dismissed the application filed by the appellant herein for grant of

interim relief being I.A. No.1/2019.

2. Brief facts of the case are that petitioner/appellant is a proprietary concern engaged in the business of developing land and constructing building &

flats thereon for residential/ commercial purpose. After obtaining requisite permissions & sanctions from the competent authorities concerned, the

appellant constructed a residential building namely 'Usha Kiran Parisar' situated at Bhatagaon, Raipur. This residential project was launched in the

year 2011. On 29.8.2014 the appellant applied before the competent authority for issuance of completion certificate. However, the completion certificate was not issued. On 23.4.2018 several complaints were filed against the appellant before the RERA alleging non fulfilment of the promises made by appellant in the brochure and advertisement for sale of flats. The RERA took cognizance on the said complaints and passed the order dated 21.8.2018 against the appellant against which the appellant preferred a writ petition before the writ Court along with an application for grant of interim relief seeking stay of the effect and operation of the order passed by RERA. The said interim application came to be dismissed vide order impugned, which made the appellant to file this writ appeal.

3. Learned counsel for the appellant submits that complainants and other buyers have already taken possession of residential flats and started residing therein much prior to filing of complaints, which came to be filed only in the month of December, 2018. He also submits that all the necessary amenities/facilities, as promised by appellant, have been made available in the residential building in question, the project itself was completed in the year 2014 and application for grant of completion certificate was also submitted before the competent authority i.e. Commissioner, Municipal Corporation, Raipur, which was not granted within the time stipulated under the Municipal Corporation Act, 1956 (for short 'the Act of 1956'), therefore, under the deeming provision, as provided under Section 301 of the Act of 1956, it will be deemed that project has already been completed and certified. He further submits that even on 27.11.2018 the Municipal Corporation, Raipur had released the flats mortgaged with it. In these circumstances, the provisions of the Chhattisgarh Real Estate (Regulation and Development) Act, 2016 (for short 'the Act of 2016') are not applicable to the project of the appellant as it was not an ongoing project, rather the same was completed much prior to coming into force of the Act of 2016 i.e. in the year 2014.

However, the learned Single Judge while dismissing application for grant of interim relief, has not taken into consideration this legal aspect that the competent authority under the Act of 2016 is not having jurisdiction to entertain the complaint being filed in respect of project completed much prior to

commencement of the Act of 2016 and therefore the order passed by the competent authority under the Act of 2016 is null and void. He also submits

that learned Single Judge has decided the petition itself by deciding the application for grant of interim relief and now nothing remains for adjudication.

Therefore, the order impugned passed by the learned Single Judge is liable to be interfered with in this writ appeal.

4. On the other hand, learned counsel appearing for the respective respondents supported the impugned order.

5. We have heard learned counsel for the parties and perused the records.

6. The order passed by the RERA is filed as Annexure P-1 to the writ petition and a glance of the same would reveal that the RERA has considered

that as the completion certificate has not been issued in favour of appellant by the competent authority, therefore, the project of appellant would come

within the category of 'on going project' and as such, the provisions of the Act of 2016 would apply. Learned Single Judge while dismissing the

application for grant of stay of the operation of impugned order, has taken into consideration the provisions of the Chhattisgarh Nagarpalik Nigam

Tatha Nagarpalik (Colonizer Ka Registrikan, Nirbandan Tatha Sharten) Niyam, 2013 as well as Section 2 (q) of the Act of 2016. Learned Single

Judge took note of the finding recorded in the order of RERA with respect to the portion of work of project not completed to arrive at a conclusion

that the appellants are not entitled for interim relief as prayed for.

7. Court hearing on application for grant of interim relief has to assign reasons either to grant or reject application for grant of interim relief, when it is

pressed upon by the party seeking for relief. Rejection or grant of interim relief for the reasons recorded in the order does not mean that the said

finding or conclusion is final and will affect merits of the case. Final outcome of the proceedings will be based on the materials and submissions to be

placed on record by the counsel appearing for the respective parties.

8. In view of above, when the argument on behalf of appellant has been advanced on the interim application for grant of stay only, then this ground

cannot be raised that by the impugned order itself case of appellant has been decided finally. As stated above, learned Single Judge has to assign

reasons based on the arguments raised by the counsel pressing interim application on the basis of available records and applicable provisions of law.

We do not find any force in this submission raised by learned counsel for appellant.

9. First proviso to Section 3 of the Act of 2016 specifically provides for application of the Act of 2016 on all the ongoing projects on the date of

commencement of the Act of 2016 for which completion certificate has not been issued. Admittedly, in the instant case, the competent authority had

not issued completion certificate with respect to project 'Usha Kiran Parisar' of appellant.

10. Section 2 (n) of the Act of 2016 provides for definition of 'common area', which is very elaborate. Section 2 (q) provides for definition of

'completion certificate' and Section 2 (zn) defines 'real estate project'. Section 2 (q) reads as under:-

(q)""completion certificate"" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority

certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the

competent authority under the local laws;

The RERA in his order has very specifically recorded shortcomings of the projects 'Usha Kiran Parisar' of appellant, particularly with respect to non-

providing of amenities as per specifications in the brochure and advertisement, which prima facie attracts aforementioned provisions.

11. The orders on the application for grant of interim relief is based on the prima facie case, irreparable injury likely to be suffered by the party

seeking for interim relief. In the opinion of this Court, the appellant failed to make out a prima facie case in his favour for grant of interim relief. Most

importantly, the order of RERA dated 21.8.2018 was challenged by appellant in writ petition on 24.4.2019 i.e. nearly after about 8 months. The

aforementioned observation made by us is with respect to the disposal of this appeal which is with respect to dismissal of application of appellant for

grant of interim relief only.

12. In view of the above discussions, this Court is of the considered opinion that the learned Single Judge has not committed any illegality or

irregularity in rejecting application of the appellant for grant of interim relief. The grant of interim relief is purely discretionary and unless & until it is established by the person challenging granting or rejection of interim relief, that the order is patently illegal and contrary to the provisions of any law, the same does not call for any interference.

13. For the foregoing reasons, this appeal being bereft of merits is liable to be dismissed and is hereby dismissed.