

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.7555 OF 2017

M/S. HIMAX DEVELOPERS PRIVATE LIMITED ... PETITIONER(S)

VS.

JAGANNATH YASHWANT DESHMUKH & ORS. ... RESPONDENT(S)

WITH SLP(C)Nos.7671, 16050 of 2017 & M.A.No.348/2017

O R D E R

1. Delay condoned.
2. The High Court of Bombay passed final order dated 27.10.2016, in furtherance of an original challenge praying for interim directions.
3. It is not a matter of dispute, that the controversy relates to four plots of land - measuring 1650 square metres (Sector-19, Plot No.2, Ulwe Node, Taluka Panvel, District Raigad), 4000 square metres, 100 square metres and 40 square metres (a total of 5790 square metres). The stake therein was of seven siblings. On account of the death of one or the other, the afore-stated seven siblings have been arrayed as Respondent Nos.1 to 10. We are informed, that a settlement has been arrived at between the petitioner herein and Respondent Nos.1 to 9, and that, Respondent Nos.1 to 9 have agreed to take care of the interest of Respondent No.10, namely, Smt. Sharada Anant Deshmukh.
4. Respondent No.10 has serious reservations on this

issue. It is the contention of the learned counsel representing Respondent No.10, that she has 1/7th share in all the four plots and her share should be so protected in all the individual plots.

5. Learned counsel for the petitioner, namely, M/s. Himax Developers Private Limited, and those for respondent Nos.1 to 9, have vehemently contended, that 1/7th share of Respondent No.10 in all the four plots would at the most measure 827 square metres. It is therefore submitted, that if 827 square metres of land is secured for Respondent No.10, she would be fully secured. In spite of the above contention, it is stated, that the petitioner before this Court, as also Respondent Nos.1 to 9 have no objection in this Court passing an order with respect to the plot of land measuring 1650 square metres (Sector-19, Plot No.2, Ulwe Node, Taluka Panvel, District Raigad), i.e., almost double the share claimed by Respondent No.10, and restraining the parties to this petition from causing the transfer thereof, or creation of any third party rights therein, till the litigation between the parties is decided by the Court(s) where it is pending.

6. Learned counsel representing Respondent No.10, having obtained instructions in respect of the aforesaid plot measuring 1650 square metres states, that the said plot is under litigation, and a suit has been filed by Respondent No.11, namely, Mr. Prashant R. Joshi, the sole proprietor of M/s. Prathmesh Construction, seeking rights therein.

Mr. S.M. Jadhav, learned counsel appearing for Respondent No.11 states, that he has instructions from Respondent No.11 to the effect, that Respondent No.11 will forthwith withdraw the suit filed by him, with reference to plot measuring 1650 square metres. An affidavit dated 19.8.2017, has also been filed in Court by Respondent No.11-Prashant R. Joshi, to the above effect and the same is taken on record. The statement made to this Court on behalf of Respondent No.11, has been recorded, and shall be binding on him.

7. Before we can accept the contentions advanced on behalf of the petitioner and Respondent Nos.1 to 9, it is essential, that they affirm, that besides the suit preferred by aforesaid Respondent No.11, the land measuring 1650 square metres is otherwise absolutely free from all encumbrances, and is totally secure. Learned counsel representing the petitioner and Respondent Nos.1 to 9 affirm this factual position. The same is therefore also hereby recorded. In view of the above, we are satisfied, that an injunction limited to the above plot measuring 1650 square metres would sufficiently protect the interests of Respondent No.10. We hereby accordingly direct, that none of the parties to the present special leave petitions, shall create any encumbrance or third party rights in the aforesaid plot measuring 1650 square metres. In case any agreement or settlement has been entered into earlier, with reference to the above plot, the

same shall not be given effect to. The instant direction fully negates the adverse arrangement recorded in the settlement deed entered into between the petitioner and Respondent Nos.1 to 9, as would adversely affect or prejudice Respondent No.10. It is submitted on behalf of the petitioner and respondent Nos.1 to 9, that there are only three assignees, who have today placed their undertakings on record, by way of their respective affidavits, that their rights in the above-mentioned plot will not, in any manner, prejudice the claim of respondent No.10. The three affidavits are taken on record, and the statement made on behalf of the assignees is accepted as a part of this order and shall be binding on them.

8. In view of the above, the impugned order stands set aside, and the orders passed in SLP(C)No.35366 of 2014, SLP(C)No.1890 of 2015 and SLP(C)No.6642 of 2015 shall stand modified, in the manner indicated in the instant order.

9. The special leave petitions and MA stand disposed of in the above terms.

.....CJI.  
[JAGDISH SINGH KHEHAR]

.....J.  
[Dr. D.Y. CHANDRACHUD]

New Delhi;  
August 23, 2017.

ITEM NO.6

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).7555/2017

(Arising out of impugned final judgment and order dated 27-10-2016  
in AFO No.629/2016 passed by the High Court of Bombay)

M/S HIMAX DEVELOPERS PVT LTD

Petitioner(s)

VERSUS

JAGANNATH YASHWANT DESHMUKH &amp; ORS.

Respondent(s)

(IA No.58482/2017-CLARIFICATION/DIRECTION)

WITH

SLP(C) No.7671/2017 (IX)

(FOR CONDONATION OF DELAY IN FILING ON IA 51064/2017  
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA  
51068/2017)

D.No.16050/2017

MA 348/2017 (IX)

(FOR ADMISSION and IA No.60102/2017-XTRA)

Date : 23-08-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr.K.V.Viswanathan, Sr.Adv.  
Ms.Anushka Sarda, Adv.  
Ms.Sneha Jankiraman, Adv.  
For M/s. Khaitan & Co., AOR

In MA 348/17 in Mr.Jayant Bhushan, Sr.Adv.  
SLP(C) 35366/14 Mr.Prasenjit Keswani, Adv.  
Mr.Satyajit Saha, Adv.  
Mr.Vinod Shinde, Adv.  
Mr.Idris Vohra, Adv.  
Mr.Raghvendra Pratap Singh, Adv.  
Mr.Vinod Bobde, Adv.

For Respondent(s) Mr.Gaurav Agrawal, Adv.  
Mr.Abhikalp Pratap Singh, Adv.  
Mr.Abhay A., Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

The special leave petitions and MA stand disposed of in  
terms of the signed order.

(SATISH KUMAR YADAV)  
AR-CUM-PS

(RENUKA SADANA)  
ASST.REGISTRAR

(Signed order is placed on the file)

(NB: Three original affidavits of Mr.Prashant R.Joshi, Mr.Dastagir  
Chand Nadaf and Mr.Dilip Jayprakash Gupta are attached with this  
R/P)