

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1291 OF 2015

Dhundiraj Chintman Gangal

Deceased by heirs :-

Smt. Shashikala Dhundiraj Gangal & ors. : Petitioners.

Versus

The Chairman,

Uma Saraswati Co-operative Housing

Society Ltd. Thane & Anr. : Respondents.

Ms. Anjali R S Baxi for the Petitioners.

Mr. R S Tanna for the Respondent No.1.

Mr. S M Oak i/by Mr. S A Joshi for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 27th July 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 24/11/2014 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Thane by which order the Application for deemed conveyance filed by the Respondent No.1 came to be allowed and the deemed conveyance as mentioned in the operative part of the order as also the certificate bearing the same date came to be granted.

2 The Respondent No.1 Society is a Society comprising of the flat purchasers who have purchased the flats from the Petitioners herein on ownership basis. The members of the Respondent No.1 Society were earlier the tenants of the original owners of the property. The property is CTS No.691,

Tika No.3, admeasuring 517.40 sq.meters. The Respondent No.1 Society comprises of 10 members plus representative of the Petitioners who is the promoter. Though the Respondent No.1 Society called upon the Petitioners to convey the lease hold rights in favour of the Respondent No.1 Society, on the said request being not acceded to by the Petitioners, that the Respondent No.1 Society was constrained to invoke the provisions of the Maharashtra Ownership Flats Act, 1963 and filed an Application for deemed conveyance.

3 The said Application was replied to on behalf of the Petitioners and the Application for deemed conveyance was opposed to on the ground that in terms of the agreements entered into with the flat purchasers, the conveyance or lease was to be executed after the development is complete.

4 The Competent Authority and the District Deputy Registrar, Co-operative Societies, Thane considered the said Application as well as the reply and as indicated above has by the impugned order allowed the said Application. In paragraph 9 of the impugned order the Competent Authority has observed that it is necessary to transfer the lease hold rights of the land in question in favour of the Respondent No.1 Society and has thereafter by the operative part of the impugned order allowed the said Application for grant of unilateral deemed conveyance. The Competent Authority has thereafter issued a certificate bearing the same date mentioning the property in respect of which

the deemed conveyance is granted.

5 On behalf of the Petitioners it is sought to be contended that the application for deemed conveyance could not have been considered in view of the fact that the development is not complete as the Petitioners intend to put up more construction by purchase of TDR. It is also contended that though the Petitioners have lease hold rights in respect of the property what is sought to be conveyed are the ownership rights.

6 In so far as the first contention of the learned counsel for the Petitioners is concerned, prima facie a reading of the agreement entered into by the Petitioners with the flat purchaser does not contain any clause covering utilization of TDR. In so far as the building in question is concerned, it appears that complete FSI of the plot of land has been utilized and the occupation certificate was obtained. Hence it is not possible to accept the contention of the learned counsel for the Petitioners that the development was not complete and therefore the application for deemed conveyance could not have been granted. In so far as the second contention of the learned counsel for the Petitioners is concerned, no doubt that the Respondent No.1 Society would be entitled to the rights which the developers/promoters have in the property in question. In the instant case, the developers/promoters have lease hold rights the Respondent No.1 Society would therefore be entitled to only the lease hold

rights of the Petitioners. In fact as mentioned herein above in paragraph 9 the Competent Authority has observed that it would be necessary to transfer the lease hold rights in the land in question in favour of the Respondent No.1 Society. Hence it is clarified that the Respondent No.1 Society would be entitled to the lease hold rights. If the Petitioners have any other rights under the agreements with the flat purchasers notwithstanding the grant of deemed conveyance, the Petitioners may assert the said rights by filing appropriate civil proceedings. Hence without interfering with the impugned order but by clarifying as above the above Writ Petition is disposed of.

[R.M.SAVANT, J]