

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

**WRIT PETITION NO.2346 OF 2015
ALONGWITH
CIVIL APPLICATION NO.609 OF 2015**

**Mr. Srikant Mitharam Bhortakke
(Since deceased through his Legal Heirs)
Prafulla Shrikant Bhortakke and others .. Petitioners**

Versus

State of Maharashtra and others .. Respondents

Mr. S. D. Paithane, for the Petitioners.

Ms. Sneha Sonawane a/w Mr. Chacko Joseph, for the Respondent No.3.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 & 2.

**CORAM : R.M. SAVANT, J.
DATE : 15th JUNE, 2015**

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.11.2014 passed by the Competent Authority, by which order the deemed conveyance application filed by the Respondent No.3 society came to be allowed and the society was granted deemed conveyance of the plot of land as mentioned in the said order dated

20.11.2014 i.e. on plot admeasuring 398.6 sq. mtrs. The Respondent No.3 is a society of flat purchasers who had purchased the flats in question from the Respondent No.4 who had undertaken development of the said plot of land. The Petitioners are the original owners who had entered into an agreement at the relevant time with the Respondent No.4(a) who is one of partners of the developer firm. It seems that initially a building of ground plus two floors was constructed in the year 1986. Thereafter it seems that one and half floors were added to the said building in the year 2001 and presently there is building comprising of 3 floors having 11 units i.e. 10 flats and one commercial premises. The Respondent No.3 was registered in or about 2005 and in view of the fact that the Respondent No.4 had shown its reluctance to execute a conveyance in favour of the Respondent No.3 society that the application for deemed conveyance by invoking Section 11 of the Maharashtra Ownership of Flats Act, 1963 ("MOFA" for short) came to be filed. The said application was founded on the aforesaid facts and especially clause 31 of the flat purchase agreement entered into by the Respondent No.4 with the flat purchasers. By the clause 31, the developer/builder was obligated to execute proper conveyance in favour of the society of the flat purchasers or a limited company. The said application was served on the Respondent No.4 developer as well as the Petitioners herein who are the heirs of the original owner who had entered

into an agreement in the year 1982 with the Respondent No.4(a) to the present Petition. However, the developers did not remain present before the competent authority and it is the Petitioners herein who opposed the grant of deemed conveyance. The opposition of the Petitioners was principally on the ground that the developer has not fulfilled his obligation under the said agreement of the year 1982 entered into between the purchasers of the Petitioners and the developer. The competent authority considered the said application as well as the say filed on behalf of the developer and has by the impugned order dated 20.11.2014 allowed the said application. The competent authority has observed that since the society of the flat purchasers is registered and since that there is compliance in the matter of filing the requisite documents, the application for deemed conveyance was required to be allowed. The competent authority has also observed that the dispute if any between the Petitioners i.e. owners and the developer do not concern the Respondent No.3 society which according to the competent authority would be entitled to unilateral deemed conveyance in view of the fact that the builder/developer had defaulted in executing a conveyance in favour of the Petitioners within the time stipulated in the MOFA. As indicated above, the competent authority has allowed the said application by the impugned order dated 20.11.2014. The deemed conveyance is granted of 398.6 sq. mtrs. which is the area on

which the building in question is situated.

2. The Learned Counsel for the Petitioners Mr. S. D. Paithane would seek to reiterate the case of the Petitioners which was urged before the Competent Authority. The Learned Counsel would reiterate that the developers have defaulted in their obligation towards the owners and therefore, the deemed conveyance ought not to have been granted by the competent authority in favour of the Respondent No.3 society. The Learned Counsel would also contend that the developer is also a member of the society.

3. In my view the aforesaid contentions have no merit. Firstly, it is required to be noted that the agreement entered into by the predecessor of the Petitioners with the developers is in the year 1982, the building was completed in the year 1986 and thereafter one more floor was added to the building in the year 2001, all along the Petitioners have not taken objection to the said construction being put up. It is only in the deemed conveyance proceedings filed by the society of the flat purchasers that the stand is now taken by the Petitioners that the developers has not fulfilled their obligation towards the owners. In my view, as rightly held by the competent authority, the dispute if any between the developers and the owners can not have any impact on the right of the society of the flat purchasers to get the deemed conveyance under the provisions of the

MOFA. In my view, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. In view of the dismissal of the Petition, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]