

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

WRIT PETITION NO.1916 OF 2014

Naresh Kumar Kumariya

.. Petitioner

Versus

Navsayukta Co-operative Housing Society

Ltd. and another

.. Respondents

**Shri. Vishal Kanade with Parag Sharma & Kinshuk Kislaya i/by
Udwadia & Udeshi & Argus Partners, for the Petitioner.**

Shri. Rajani K. Kakkara i/by Aarey Legal, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 13th APRIL, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 28.08.2013 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies by which order the application for Deemed Conveyance filed by the Respondent No.1 society came to be allowed and the Deemed Conveyance of an area of 754 sq.mtrs. out of City Survey No.141-A came to be granted and consequentially a certificate of the same date came to be issued in favour of the Respondent No.1 society.

2. The Respondent No.1 society has been registered in the year 2005 and in spite of the said registration, the Petitioner who is the

developer of the said plot of land, and who therefore can be said to be the promoter under the Maharashtra Ownership of Flats Act did not fulfill his obligation under the said Act, resulting in the Petitioner society which comprises of two Wings i.e. Wing 'A' comprising of 18 flats, Wing 'B' comprising of 6 flats filing an application invoking Section 11 of the said Act for the grant of unilateral Deemed Conveyance. The said application was opposed to on behalf of the Petitioner on the ground that the building, wherein the two Wings are constructed is situated on both CTS No.141 now numbered as CTS No.141-A and CTS No.142 and therefore, the Respondent No.1 Society could not seek Deemed Conveyance only in respect of the CTS No.141-A. The said application was also opposed to on the ground that in terms of Section 11(4) the rights of the developer have to be transferred in toto to the society and if that be so the Deemed Conveyance could not be granted in a piece-meal manner only in respect of CTS No.141-A to the exclusion of CTS No.142. The Competent Authority whilst adjudicating upon the said application has adverted to the fact that one Smt. Anupama Kamat is the owner of CTS No.143 and that there is a dispute between the Petitioner and the said Smt. Anupama Kamat. The said dispute has been reflected in the fact that in so far as the entry to be made in the name of the Petitioner in the city survey record in respect of CTS No.142, the same has been opposed to on behalf of the said

Smt. Anupama Kamat on the ground that Petitioner has allegedly carried out unauthorized construction, resulting in the Tahsildar rejecting the application by order dated 30.08.2011 (subject matter of companion Writ Petition No.1917 of 2014). The Competent Authority having regard to the material on record deemed it appropriate to grant Deemed Conveyance in respect of the plot of land admeasuring 754 sq.mtrs. out of Survey No.141-A. In so far as the CTS No.142 is concerned, it is required to be noted that the said plot is smaller in size i.e. admeasuring 195 sq. mtrs., whereas CTS No.141-A is admeasuring 808 sq.mtrs. In the light of the fact that there is a dispute between the Petitioner and the said Smt. Anupama Kamat who is the Respondent No.2 in the companion Petition, which dispute is not likely to come to an end in the near future, the Competent Authority was right in granting the Deemed Conveyance in respect of the plot of land bearing CTS No.141-A having regard to the mandate of Section 11 of the MOFA. The Respondent Society cannot be made to wait for Conveyance being executed till the dispute between the Petitioner and the said Smt. Anupama Kamat is settled. In my view, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. All ad-interim orders stand vacated.

[R.M. SAVANT, J]