

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

WRIT PETITION NO.4876 OF 2014

M/s S.S. Mishra & Co.,

.. Petitioner

Versus

The State of Maharashtra and Others

.. Respondents

Mr. E.K. Sasidharan for the Petitioner.

Mr. S.D. Rayrikar, Assistant Government Pleader for Respondent Nos. 1 and 2.

Mr. Ashutosh R. Gole for Respondent No.3.

CORAM : A.K. MENON, J.

DATED : OCTOBER 30, 2015

P.C. :

. The present Writ Petition seeks to challenge an order passed under Section 11 of Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 on an Application bearing No.107 of 2013 filed by Respondent No.3-society. The Petitioner is the Developer of the building, which now is occupied by the members of Respondent No.3-society. In their Application under Section 11, Respondent No.3 submitted the requisite documents and sought issuance of a Certificate of deemed

conveyance. The building consists of ground plus three upper floors, divided into two wings with 21 premises. There are 21 members of the society. The Competent Authority being the Deputy Registrar of the Co-operative Societies (3) after having received the application, permitted the Petitioner herein to file a reply to the Application. A reply was accordingly filed on 21 July 2013, copy of which is at Exhibit 'B'. Thereafter the written arguments were submitted by both sides.

2 The stated case of the Petitioner is that the Competent Authority could not have granted the deemed conveyance of the property in question, since the Certificate mentions an area of 789.30 sq.mts., whereas under the MOFA agreement, copy of which has been tendered during submissions before me, reference is made to an area of 709 sq.mtrs. equivalent to 839 sq. yards. It is case of the Petitioner that in view of this, difference in areas, the Competent Authority could have not issued the Certificate.

3 Shri Sasidharan, the learned Counsel appearing for the Petitioner submitted that the law requires the Petitioner to convey the area mentioned in the MOFA agreement and therefore, the

impugned order cannot be sustained. He further submitted that, when the building was constructed, it was agreed between the parties that the Petitioner will be entitled to construct one more garage on the property and an MoU came to be entered into between the Petitioner and the society, whereby the society agreed to pay certain additional amounts to the Petitioner.

4 Mr. Sasidharan relies upon MoU dated 28 December 2004, a copy of which is filed at Exhibit-'E' to the petition and submits that there were certain disputes between the parties which were resolved and recorded in the aforesaid MoU and Respondent No.3-society was obliged to pay sum of Rs.10,44,000/- to the Petitioner, out of which a sum of Rs.5,00,000/- has been paid to the Petitioner and the balance amount of Rs.5,44,000/- is yet unpaid. It is further contended that clause-(5) of the MoU also refers to fact that there is some balance FSI for construction of garage.

5 It is not disputed that the garage was to be constructed for the society's office. This is evident from the paragraph-8 of the MoU. The matter taking into accounts between the parties, cannot be gone into by the Competent Authority under the Act, nor it cannot

be looked into by exercising the writ jurisdiction of this Court. In view of the admitted position that the building of the society is constructed utilizing FSI of 789.30 sq.mtrs., the order of the Competent Authority cannot be faulted. Especially since the Respondent Nos.4 and 7 who have granted development rights to the Petitioner and the Petitioner is obliged to convey the area of land upon which the building is constructed and area appurtenant thereto. In the facts of the present case, the Petitioner is liable to convey the area of land admeasuring 789.30 sq mtrs.

6 What is pertinent to note is that it is not in dispute that the building of the society is actually constructed on 789.30 sq.mtrs. This aspect is not disputed by the Petitioner before the Competent Authority or before the Court today. It may be mentioned here that the original owners of the land being Respondent Nos. 5 to 7 (being heirs of the deceased Respondent No.4) have not challenged the order. They were made parties to the application under Section 11(3), but did not appear before the Competent Authority and nor they have appeared thereafter. Apropos the Petitioner's claim under the MoU, the Petitioner may have its remedies and nothing in this order shall affect any proceedings that the Petitioner may adopt in

relation to the MoU. In the circumstances, I do not find any perversity in the order impugned in this petition and I pass the following order.

: O R D E R :

- (A) The impugned order calls no interference, the Writ Petition is dismissed.
- (B) There shall be no order as to costs.

(A.K. MENON, J)