

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

WRIT PETITION (STAMP) NO.9204 OF 2015

M/s. Sonal Construction and others

.. Petitioners

Versus

State of Maharashtra and others

.. Respondents

Mr. G. S. Godbole i/by Mr. Y. R. Shah, for the Petitioners.

Mr. S. G. Deshmukh i/by Ms. Sangita S. Bhoole, for the Respondent No.3.

Mrs. V. S. Nimbalkar, AGP for the Respondent Nos.1 & 2.

Ms. S. John i/by M/s. M. P. Savla & Co., for the Respondent Nos.4 to 12.

CORAM : R.M. SAVANT, J.

DATE : 29th JULY, 2015

PC.

1. The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 16.10.2014 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai, by which order the application for deemed conveyance filed by the Respondent No.3 society came to be allowed and deemed conveyance of the property mentioned in the operative part of the impugned order and especially Clause 3 thereof came to be granted.

2. The Respondent No.3 society is a society of flat purchasers in

a building which has been constructed by the Petitioners herein pursuant to a development agreement entered into with the original owners who are the Respondent Nos.4 to 12. The building in question is standing on land bearing City Survey No.166, 166/1 to 23. The plan for the development of the building of the Respondent No.3 society was submitted to the Municipal Corporation of Greater Mumbai ("MCGM" for short) and the plot area shown therein was 3984.96. The said plan is annexed to the writ compilation at page No.192 which is tendered by the Petitioners. The said plan has been approved by the MCGM and bears the No.3586. The application invoking Section 11 of the Maharashtra Ownership of Flats Act, 1963 ("MOFA" for short) was initially filed for an area 1810 sq.mtrs. However, at the time of scrutiny of the application, the said application it seems was taken back and a fresh application was filed for an area of 2780 sq.mtrs. The said application was filed on 01.07.2013. It appears that the some of the Respondents i.e. the owners who were arrayed to the said fresh application had expired after the filing of the said application. The Respondent No.3 society had therefore applied for bringing the heirs on record. The said application had accordingly come up for hearing before the Competent Authority on 20.09.2013. On which day, the application was allowed to be corrected so as to bring the heirs on record and copies of the application were furnished to all the Respondents

in the said application for deemed conveyance. The said application for deemed conveyance was further sought to be amended by an application filed by the Respondent No.3. The said amendment application is dated 30.07.2013 and the change was sought from 2780 sq.mtrs. to 4590 sq.mtrs. The said application was taken on record on 20.12.2013 and by an order passed on 05.02.2014 the Competent Authority allowed the said application. The Competent Authority has recorded in the Roznama of the said day that the area sought is on the basis of the plans approved by the MCGM and in view of the fact that the set back area of 1810 sq.mtrs. is to be handed over to the MCGM. The said amended application for deemed conveyance was opposed on behalf of the Petitioners herein. The Petitioners relied upon the suits which are pending between the Petitioners and the original owners amongst which is the suit wherein specific performance is sought by the Petitioners of the development agreement and the orders passed therein, as also the suit filed by the owners seeking a declaration i.e. there is valid termination of the development agreement. The Competent Authority considered the said application and has by the impugned order dated 16.10.2014 allowed the said application and in paragraph 17 of the impugned order has recorded that the Respondent No.3 society i.e. the applicant is entitled to get the area of land admeasuring 3984.96 sq.mtrs. as and by way of deemed conveyance.

However, in paragraph 18 it is stated that the Competent Authority is pleased to issue a certificate of entitlement of unilateral conveyance admeasuring 4590 sq.mtrs. The Competent Authority has adverted to the documents which were filed on behalf of the Respondent No.3 as also the affidavit in reply filed on behalf of the Petitioners and the affidavit-in-rejoinder filed on behalf of the Respondent No.3 society in the said proceedings. The Competent Authority has also referred to the suits filed which are pending in this Court being Suit No.1377 of 1982 which has been filed for dissolution of the partnership and Suit No.2689 of 1995 which has been filed by the Petitioners for specific performance against the owners and suit bearing No.386 of 1997 which has been filed by the owners seeking a declaration that there is valid termination of the development agreement. It is after considering the aforesaid material that the Competent Authority has allowed the application for deemed conveyance by the impugned order.

3. The Learned Counsel Mr. G. S. Godbole appearing for the Petitioners would contend that there is no explanation as to why the area originally claimed that is 1810 sq.mtrs. was changed to 2780 sq.mtrs. and thereafter how the Authority has chosen to grant deemed conveyance of the area 3984.96 sq.mtrs. The Learned Counsel would contend that the order passed by the Competent Authority as regards necessity to grant

deemed conveyance in respect of 3984.96 sq.mtrs. is bereft of any reasons. The Learned Counsel would contend that since the suits between the developers and the owners are pending, the Competent Authority ought not to have been proceeded with the consideration of the application for deemed conveyance.

4. Per contra, the Learned Counsel appearing for the Respondent No.3 society i.e. the Applicant Mr. S. G. Deshmukh would contend that though in one of the affidavits in reply filed in the above Petition it has been stated that the application for deemed conveyance was never filed for 1810 sq.mtrs. in fact such an application was filed which was served along with notice issued by the Competent Authority to the Petitioners. In so far as the change which was effected from 1810 sq.mtrs. to 2780 sq.mtrs. it is at the time of scrutiny that the said change was made and the said change has its basis in the certificate of the Architect Mr. R. D.Kamat which is at page No.134 of the compilation. The Learned Counsel would contend that the changed application was served on the Respondent No.3 as is evidenced by the Roznama. The Learned Counsel would contend that the said area of 3984.96 sq.mtrs. of which deemed conveyance has been granted is as mentioned in the approved plan submitted by the Petitioner to the MCGM in which it has been mentioned that the area of the plot is 3984.96 sq.mtrs. The said area of 3984.96 sq.mtrs. is therefore ascribable

to the approved plan. Hence, the absence of any reasons in the impugned order justifying the said area of 3984.96 sq.mtrs. would not make any difference.

5. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the approved plan of the building in question i.e. building of the Respondent No.3 society, the plot area mentioned is 3984.96 sq.mtrs. It is on the said basis that the amendment application permitting the amendment from 2780 sq.mtrs. to 3984.96 sq.mtrs. was allowed by the Competent Authority. The Petitioners were very well aware of the said amendment application and also the basis thereof. As the Petitioners had submitted plans to the MCGM stating that the plot area of 3984.96 sq.mtrs., the Petitioners now therefore cannot be heard to say that the order passed by the Competent Authority granting deemed conveyance of 3984.96 sq.mtrs. is bereft of any reasons. In so far as the change which has taken place from 1810 sq.mtrs. to 2780 sq.mtrs. is concerned, the said change has been explained by the Learned Counsel for the Respondent No.3. The Petitioners were also served with a copy of the application filed by the Respondent No.3 at the time of the scrutiny which includes the changed area. In my view therefore, no prejudice has been caused to the Petitioners in view of the such change which was effected.

6. In so far as the disputes between the Petitioners and the owners are concerned, that cannot be a relevant consideration whilst considering an application for deemed conveyance under Section 11 of the MOFA. It is precisely on account of the long delay in executing the conveyance in favour of the societies that the amendment in the MOFA was introduced so as to provide for grant of unilateral deemed conveyance, if there was reluctance on the part of the promoters/ developers to the property. In the instant case, it is required to be borne in mind that the Respondent No.3 society is registered in the year 1982 and is still awaiting conveyance. In my view, therefore, the impugned order passed by the Competent Authority does not suffer from any error or illegality or infirmity for this Court to interdict in its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]