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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4638 OF 2013

Smt. Indira Shreeniwas Desai

..Petitioner.

Vs.

The State of Maharashtra & Ors.

..Respondents.

Mr. S.J. Rairkar a/w Mr. Nikhil R. Vidwans, for Petitioner.

Mr. P.P. Kakade, AGP for Respondent No.1.

Mr. Sandeep V. Marne for Respondent Nos.2.

**CORAM: NARESH H. PATIL &
A.S. GADKARI, JJ.**

DATE : 6th January 2015.

P.C.

Heard.

2 In this Petition, the Petitioner challenges an order dated 23rd July 2012 passed by the Joint District Sub-Registrar, Co-operative Society, Pune directing execution of the document of Deemed Conveyance in the proceedings initiated by the Respondent No.2-Society in Application No.26 of 2012.

3 The Petitioner's contention is that, he was a co-owner of the

subject plot. The parties had reached an agreement that the subject plot was to be developed by the Developer-Respondent No.3 prior to year 1988. Five buildings were constructed on the plot. It was agreed between the parties that instead of Petitioner getting a flat in the constructed building, she would get a constructed bungalow in the corner of the said plot. Sixty-two occupants occupy the said buildings. There is no dispute that the Petitioner is occupying a Bungalow. Some dispute arose at the time when the conveyance deed was to be executed. Under the Agreement it was decided to convey the title of the land excluding the portion of the land occupied by the Petitioner in favour of the Respondent-Society. As the same could not take place, the Respondent-Society initiated an Application for grant of Deemed Conveyance.

4 The learned Counsel appearing for the Petitioner submits that it was agreed that a separate open space should be kept for the exclusive use of the Petitioner. Though, there is a common space available for the use of the occupants of the five-buildings, the Petitioner was not allotted separate open space though agreed by the contesting parties. The Petitioner, therefore, raised an objection to the Application filed by the Respondent-Society.

5 The learned Counsel appearing for the Respondent-Society referred to a lay-out plan of the Society, which was sanctioned. It was submitted that a common open space as earmarked in the sanctioned plan was to be utilized by the occupants of the five-buildings, except the Petitioner. The Petitioner had agreed for allotment of the separate portion of the land. Therefore, there was no question of Petitioner being allowed to utilize the open space. For about twenty-five years, the Society Members could not get the Deed of Conveyance executed in their favour.

6 We have perused the impugned order and relevant records and sanctioned-plan. We do not find any error committed by the Respondent-Authority in directing execution of the Deed of Conveyance. The open space was demarcated for exclusive use of the occupants of the five-buildings. We have not noticed in plan separate open space kept for exclusive use of the Petitioner.

7 Petitioner's contention that there has to be a separate access and exclusive open space for use of the Petitioner, cannot be accepted in view of the basic documents placed on record and the conclusion reached by the Respondent-Authority. There is no merit in the petition and we are

not convinced to exercise writ jurisdiction.

8 In the circumstances, the Writ Petition is dismissed.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)