

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5802 OF 2015**

Vijaykumar Kashinath Takle & Anr.

..Petitioners

Vs.

**The Chairman/Secretary Siddhi
Samruddhi Co-op Housing Society Ltd.**

..Respondents

Mr. Sachin Dhakephalkar for the Petitioners

CORAM : R. M. SAVANT, J.

DATE : 20th July, 2015

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 30-1-2014 passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies by which order, the application filed by the Respondent No.1 society for deemed conveyance under Section 11(3) of the Maharashtra Ownership of Flats Act 1963, came to be allowed and the deemed conveyance of an area of 230 sqmtrs. came to be granted.

2 The Petitioners herein claim to be the owners of the land in question being survey No.130/1 and 130/6 to the extent of 50 sq.mtrs. and 180 sq.mtrs. respectively, hence the total area is admeasuring 230 sq.mtrs. It is on the said land that the building of the Respondent No.1 society was existing. The society was registered sometime in the year 2013 with 13 members. In view of the fact that the Petitioners and the developer had shown their

disinclination to execute a conveyance in favour of the Respondent No.1 society, that it filed the application for deemed conveyance. To the said application were annexed the relevant documents i.e. 7/12 extract of the property, agreement entered into by one of the members Smt. Meera Rajaram Nevaskar and the developer, as also the resolution passed in the meeting of the society dated 5-10-2013 in favour of one Mr. Sudhir Rajaram Nevaskar for pursuing the matter of getting the deemed conveyance.

3 The said application was opposed to on behalf of the Petitioners herein. The Competent Authority and the District Deputy Registrar has by the impugned order dated 30-1-2014 has allowed the said application. The Competent Authority observed that the erstwhile tenants have been sold the flats in question by the owners and the society came to be registered in the year 2013. In spite of the society calling upon the developers to convey the property, on the refusal of the developers to do so that the instant application for deemed conveyance came to be filed. The Competent Authority held that in view of the reluctance of the developers to convey the property, the Respondent No.1 was left with no other alternative but to file the application for deemed conveyance. The Competent Authority accordingly by the impugned order dated 30-1-2014 allowed the said application.

4 The Learned Counsel Mr. Sachin Dhakephalkar appearing for the

Petitioners would question the impugned order on the ground that in the application filed for deemed conveyance to which the list of members was annexed, the names of the Petitioners qua two flats were not shown. It was the contention of the Learned Counsel for the Petitioners that the Petitioners have applied for de-registration of the Respondent No.1 society and therefore the said fact ought to have been taken into consideration by the Competent Authority. It was also sought to be contended that the Applicant Mr. Sudhir Rajaram Nevaskar is not a member and therefore could not have filed the application.

4 In my view, it is not possible to accept the said contentions urged on behalf of the Petitioners, insofar as the discrepancy in the list submitted by the society to the Competent Authority is concerned. It is required to be noted that the said list is of 13 persons, which has also been referred to in the order passed by the Competent Authority. However, in the list obtained by the Petitioners under the Right to Information Act, two names are not appearing against Flat No.2 and Flat No.10. In my view, assuming that the two names are not appearing, the same will not make any difference as even in the absence of two names, there are 11 persons who can be said to be the members of the society. In so far as the Applicant Mr. Sudhir Rajaram Nevaskar is concerned, it is required to be noted that the society has passed a resolution in favour of the said Mr. Sudhir Rajaram Nevaskar authorizing him to represent the society in

the proceedings before the Competent Authority. In the application also the said Mr. Sudhir Rajaram Nevaskar has stated that he is a member and the representative of the Applicant society. Hence merely because in the list of members his name is scored out and the first name of his sister is incorporated would not mean that the said Mr. Sudhir Rajaram Nevaskar is not a member of the society. In any event, the application is filed on behalf of the society and not for the benefit of any particular member or members, and lastly in so far as the case of the Petitioners that they have applied for cancellation of registration of the society is concerned, in my view, the said two proceedings are independent proceedings and it is for the authority exercising powers under the Maharashtra Co-operative Societies Act to consider the said application for de-registration filed by the Petitioners, but that would not impede the authorities exercising powers under Section 11 of the said Act to try the application filed for deemed conveyance.

5 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]