

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

WRIT PETITION NO.6495 OF 2015

**M/s. Bal Enterprises : Petitioner.
Versus
District Deputy Registrar
MHADA Bulding, Bandra and ors. : Respondents.**

**Mr. Piyush Raheja i/by RVJ Associates for the Petitioner.
Mrs. V S Nimbalkar, AGP for the Respondent No.1.
Mr.Vishal Kanade a/w Mr. Mayuresh Borkar i/by Mr. Dinesh Rane for the
Respondent No.2.**

**CORAM : R. M. SAVANT, J.
DATE : 12th August 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 18/03/2015 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.2 Society came to be allowed and the Competent Authority held that the Respondent No.2 Society would be entitled to the deemed conveyance of the area which is mentioned in the certificate issued on the same day pursuant to the said order i.e. the area of 543.58 sq.mtrs.

2 The Petitioner herein is admittedly the developer who has put up the building in question. The flat purchasers in the said building have

comprised themselves into the Respondent No.2 Society. The said building has been put up pursuant to the development agreement dated 18/08/1983 entered into between the Petitioner and the Respondent Nos.3 to 9 who are the original owners. The development agreement was in respect of the development of the property admeasuring 1015.86 sq.mtrs bearing CTS No.1312 (Part), 1313 and 1313(1 to 9) of village Vile Parle (East), Mumbai – 400 057. The building of the Respondent No.2 Society comprises of 10 flats, and has been put up pursuant to the plan sanctioned 11/06/1984. The balance portion of the land was to be developed after the owners handed over possession of the structures standing thereon so as to facilitate putting up the 2nd building. However, it seems a dispute arose between the Petitioner and the Respondent Nos.3 to 9 in respect of the terms of the agreement entered into between the Petitioner and the Respondent Nos.3 to 9 resulting in the termination of the development agreement in turn resulting in a suit being filed by the Petitioner in this Court being Suit No.724 of 1992 for specific performance of the said development agreement dated 18/08/1983 in the matter of making the balance area available to the Petitioner for development. In the said suit Notice of Motion being No. 619 of 1992 came to be filed by the Petitioner in which Notice of Motion an order came to be passed by a learned Single Judge of this Court dated 24/07/1995 by which order the Defendants i.e. the owners were restrained from parting with possession of the suit property. In so far as the relief which the learned Single Judge has termed as

the larger relief is concerned, it was held that it is not possible to give that relief at the said stage.

3 The Petitioner by the agreement entered into with the flat purchasers sold the said flats to them and in the context of the present Petition covenants 12 and 36 of the agreement are material and are reproduced herein under :-

“12. Nothing contained in this Agreement shall be construed to confer upon the Purchasers any right, title or interest of any kind whatsoever or over the said land or buildings or any part thereof, such conferment to take place only upon the execution of the Conveyance and/or such other documents as is necessary, to a co-operative housing society, a Limited Company or an corporate body of the flat owners to be formed of the Purchaser of the various flats/shops of the said building as hereinafter stated.”

“36. After the Buildings are completely ready and fit for occupation and after the co-operative house society or limited company, as the case may be, is formed and duly registered and only after all the flats/other units in the same buildings are sold and disposed off by the Builders and after the Builders have received all the dues payable to them under the terms and conditions of the Agreement with the various flat/other unit holders, the Builders shall execute or cause to be executed a Deed of Conveyance and/or other documents in favour of such co-operative housing society or the limited company, as the case may be.”

4 The Occupation Certificate in respect of the Respondent No.2 Society was issued on 02/11/1985. The Respondent No.2 Society thereafter came to be registered on 26/03/2002 and the same was registered unilaterally

as the Petitioner did not take steps to register the same. It is after giving notice to the Petitioner that the Respondent No.2 Society filed the instant application for deemed conveyance claiming an area which was mentioned in the said application i.e. an area of 1015.86 sq.mtrs. of which the deemed conveyance was sought. To the said application were annexed various documents amongst which were the flat purchasers agreements, registration of the society etc.

5 The said application for deemed conveyance filed by the Respondent No.2 Society was replied to on behalf of the Petitioner and the said application was opposed inter alia on the ground of the pending suit between the Petitioner and the Respondent Nos.3 to 9 as also on the ground that the conveyance in terms of Clause 36 would only be granted after both the buildings are completed.

6 The Respondent Nos.,3 to 9 also opposed the said application by filing their reply on the ground that the said Respondents had already terminated the development agreement between them and the Petitioner.

7 The said application for deemed conveyance was considered by the Competent Authority and as indicated herein above by the impugned order has allowed the same. However, though the deemed conveyance was sought for an area of 1015.86 sq.mtrs, the Competent Authority has granted the

deemed conveyance of an area of 543.58 sq.mtrs. This, the Competent Authority seems to have done probably by taking into consideration the sanctioned plan which was produced before it. The Competent Authority held that since the Petitioner has not full-filled its obligations in terms of Section 11 of the Maharashtra Ownership of Flats Act (for brevity's sake hereinafter referred to as "MOFA") of executing the conveyance within four months of the registration of the Respondent No.2 Society, the Respondent No.2 Society was entitled to the grant of deemed conveyance.

8 The learned counsel for the Petitioner Shri Raheja would contend that in view of the fact that there is a suit pending between the Petitioner and the Respondent Nos.3 to 9, the Competent Authority ought not to have proceeded with the consideration of the application for deemed conveyance. The learned counsel for the Petitioner would by placing reliance on clause 36 of the agreement with the flat purchasers contend that the occasion to execute the conveyance would only arise after both the buildings are completed, and since in view of the pendency of the suit, the 2nd building cannot be put up, the Respondent No.2 Society could not have filed the application for deemed conveyance. The learned counsel would contend that though the deemed conveyance was sought of an area of 1015.86 sq.mtrs, the Competent Authority has granted deemed conveyance of an area of 543.58 sq.mtrs without assigning any reason for the same.

9 Per contra, it is the submission of the learned counsel appearing for the Respondent No.2 Society Shri Kanade that the grant of deemed conveyance to the Respondent No.2 Society cannot await the outcome of the proceedings between the Petitioner and the Respondent Nos.3 to 9 as the provisions of MOFA mandate that the conveyance has to be executed within four months of the registration of the society. The learned counsel would contend that since it is the Petitioner who has put up the building pursuant to the development agreement entered into between it and the Respondent Nos.3 to 9 who are the original owners the Petitioner had to fulfill its obligations as imposed by Section 11 of MOFA. The learned counsel would contend that the Respondent No.2 Society has nothing to do with the inter-se dispute between the Petitioner and the Respondent Nos. 3 to 9. The learned counsel would contend that since the Respondent Nos.3 to 9 by entering into the development agreement with the petitioner can be said to have caused the construction, the said Respondents are also the promoters within the meaning of MOFA and therefore they are also equally enjoined to fulfill the mandate of MOFA.

10 Having heard the learned counsel for the parties, I have considered the rival contentions. In the instant case, as indicated above the Petitioner has constructed the building pursuant to the plans which were sanctioned by the Municipal Corporation on 11/6/1984. The said building has

been undisputedly put up pursuant to the development agreement between the Petitioner and the Respondent Nos.3 to 9 and in the context of the provisions of MOFA can both be said to be promoters within the meaning of MOFA. It is well settled by the judgments of this Court that the Society would be entitled to the rights which the developers are entitled to under the agreement with the original owners. In the instant case, it is required to be noted that the owners have by entering into the development agreement can be said to have caused the construction and therefore qualify themselves to be termed as promoters within the meaning of MOFA. Hence apart from the rights of the developers which the Society of the flat purchasers would be entitled to, the members of the Respondent No.2 Society would also be entitled to the rights of the owners in the property in question. Since the Petitioner as developer had failed to fulfill its obligations in spite of the notice being issued to it, upon the application filed by the Respondent No.2 Society for deemed conveyance, the Competent Authority has rightly intervened and allowed the said application filed by the Respondent No.2 Society.

11 The contention of the learned counsel for the Petitioner that in terms of Clause 36 of the agreement with the flat purchasers it is only after both the buildings are completed that the Respondent No.2 society would be entitled to the conveyance, cannot be accepted. The said clause would have to be construed in the context of the fact that there is an ongoing dispute between

the Petitioner and the Respondent Nos.3 to 9 which may take its own time to be resolved. The building as indicated above is completed in the year 1985, the Respondent No.2 Society has been registered in the year 2002. Obviously, the Respondent No.2 Society cannot be made to wait till such time as the dispute between the Petitioner and the Respondent Nos.3 to 9 is finally resolved. If the said course of action is to be followed, then it would amount negation of the object with which the provisions of MOFA were amended so as to provide for the grant of unilateral deemed conveyance, it is precisely in the cases where the Societies were deprived of the conveyance on one pretext or the other that the provisions of MOFA came to be amended so as to provide for grant of unilateral deemed conveyance. In so far as grant of unilateral deemed conveyance of an area of 543.58 sq.mtrs. is concerned, since the sanctioned plan was filed before the Competent Authority, the Competent Authority probably referring to the built-up area of the building has deemed it appropriate to grant deemed conveyance of an area of 543.58 sq.mtrs.

12 However during the course of hearing of the above Petition, the learned counsel for the Petitioner Shri Raheja pointed out that the sanctioned plan dated 11/6/1984 discloses that there were two structures and the existing floor area of the two structures is 49.60 sq.mtrs and hence the said area would have to be deducted from the area of 543.58 sq.mtrs which has been granted to the Respondent No.2 Society. The learned counsel appearing on behalf of

the Respondent No.2 society Shri Kanade, on instructions of the advocate on record Shri Dinesh Rane states that the Respondent No.2 Society has no objection to the deletion of the said area of 49.60 sq.mtrs from the area mentioned in the certificate of deemed conveyance and that the Respondent No.2 Society would claim only 498.97 sq.mtrs. i.e. built up area comprised in the building. Hence though no interference is called for with the impugned order passed by the Competent Authority, however, in view of what has been stated herein above, the Respondent No.2 Society would be entitled to the grant of deemed conveyance of the area of 498.97 sq.mtrs. The impugned order as well as the certificate of deemed conveyance issued in consequence thereof would accordingly stand modified. The above Writ Petition is accordingly dismissed.

13 At this stage the learned counsel appearing for the Petitioner Shri Raheja prays for the stay of the instant order. In the facts and circumstances of the present case, the said prayer is rejected.

[R.M.SAVANT, J]