

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

REVIEW PETITION NO.115 OF 2015

IN

WRIT PETITION NO.1291 OF 2015

Dhundiraj Chintaman Gangal

Deceased by heirs

Smt. Shashikala Dhundiraj Gangal and others .. Petitioners

Versus

The Chairman, Uma Saraswati Co-operative

Housing Society Ltd. and another .. Respondents

Shri. Prashant P. Chawan i/by Ravindra R. Chile, for the Petitioners.

Shri. Roshan S. Tanna, for the Respondent No.1.

Shri. Sagar A. Joshi, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 23rd OCTOBER, 2015

PC.

1. By the above Review Petition, review is sought of the order dated 27.07.2015 passed in the above Petition. The review is sought in view of the recording made in paragraph 6 of the said order dated 27.07.2015. The relevant excerpt of paragraph 6 reads thus :-

“In so far as the first contention of the learned counsel for the Petitioners is concerned, prima facie a reading of the agreement entered into by the Petitioners with the flat purchaser does not contain any clause covering utilization of TDR.”

It is the submission of the Learned Counsel appearing for the Review Petitioners Shri. Prashant P. Chawan that in terms of clause 10(b) of the flat purchasers agreement the Promoter is entitled to utilize any additional FSI that may be available to him either by way of Transfer of Development Rights (TDR) or increase in FSI due to changes in Development Rules or under any Law. The said clause is sought to be relied upon to contend that the aforesaid recording made in the order of which review is sought is erroneous. To buttress the fact that TDR can be utilized on the plot of land in question, the information provided by the Thane Municipal Corporation under the Right to Information Act vide its letter dated 04.12.2014 of the Information Officer of the City Development Department of the Thane Municipal Corporation is sought to be relied upon. The said information is to the effect that as per the sanctioned plan TDR of 206.96 sq. mtrs. is permissible to be loaded out of which TDR of 53.50 sq. mtrs. has been loaded. The said information provided under the Right to Information Act is sought to be relied upon so as to contend that TDR to the extent of 206.96 sq. mtrs. minus 53.50 sq. mtrs. can be loaded on the building in question.

2. It is required to be noted that the above Writ Petition was filed challenged the order dated 24.11.2014 passed by the Competent Authority allowing the application for Deemed Conveyance filed by the

Respondent No.1 society. The said contention was also urged before the Competent Authority, however, the Competent Authority did not countenance the said contention. It is required to be noted that the Respondent No.1 society which is the society of the flat purchasers has been registered on 24.09.2007 and the Occupation Certificate in respect of the building in question has been granted on 24.07.2009. It is also required to be noted that the Architects of the Review Petitioners M/s. Shashi Deshmukh & Associates have issued a certificate dated 26.12.2013, in which certificate the available FSI, the FSI utilized and the balance built up area to be utilized are mentioned, according to the said certificate, the balance built up area is 1.32 sq. mtrs. At the foot of the table it is mentioned thus :-

“As per the plans issued along with the Occupation Certificate, entire permissible FSI has been utilized.”

Hence, the Architects of the Petitioners have issued a certificate that the entire permissible FSI for the plot has been utilized. The said clause 10(b) was not brought to the attention of this Court as also the letter dated 04.12.2014 of the Information Officer of the City Development Department of the Thane Municipal Corporation was also not brought to the notice of this Court. It is in the said circumstances that the recording has been made in paragraph 6 of the said order. As indicated above, the Respondent No.1 society has been registered on 13.09.2007 and the

Occupation Certificate has also been granted on 24.07.2009. The Architect's certificate extracted hereinabove mentions that the entire permissible FSI has been utilized. In my view, even though a wrong recording has been made in the impugned order which is on account of the reason mentioned as above, the same would not impact the grant of Deemed Conveyance to the Respondent No.1 society. This Court whilst dismissing the above Petition and confirming the order passed by the Competent Authority granting Deemed Conveyance has in the same paragraph observed thus :-

“If the Petitioners have any other rights under the agreements with the flat purchasers notwithstanding the grant of deemed conveyance, the Petitioners may assert the said rights by filing appropriate civil proceedings.”

Since the Review Petitioners seek to rely upon the letter dated 04.12.2014 issued by the Information Officer of the Thane Municipal Corporation, it would be open for the Petitioners to agitate the right if any which they claim to load TDR by relying upon the observations made herein above i.e. by adopting appropriate civil proceedings. Needless to state that the contentions of the parties on the said aspect are kept open for being agitated before the appropriate forum. Hence, no case for review of the order dated 27.07.2015 is made out, subject to the observations made herein before, the Review Petition is dismissed.

[R.M. SAVANT, J]