

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10027 OF 2014
WITH
CIVIL APPLICATION NO.2518 OF 2014**

Ramesh Malhotra & Anr.

..Petitioners

Vs.

The State of Maharashtra & Ors.

..Respondents

Ms Deepa Pohuja for the Petitioners

Ms M. S. Bane "B" Panel Counsel for the Respondent Nos.1 and 2

Mr. Tejas Bhide for the Respondent No.3

CORAM : R. M. SAVANT, J.

DATE : 6th July, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 15-5-2014 passed by the Competent Authority and the Deputy Registrar Co-operative Society, Eastern Suburbs, Mumbai, by which order, the application for deemed conveyance filed by the Respondent No.3 society came to be allowed and the deemed conveyance in terms of the property mentioned in the application came to be granted.

2 The Respondent No.3 herein is the society of flat purchasers in a building constructed on a plot of land which was of the ownership of the Petitioners being land bearing CTS No.1634/56 and Survey No.418-A (part) and Final Plot No.572 of Suburban Scheme II of Village Chembur. The

Petitioners entered into a Development Agreement with the Respondent No.4 developer which is dated 20-11-1995 in terms of the said Development Agreement the developers i.e. the Respondent No.4 were to utilise the FSI to the extent of 9000 sq.ft. and the balance FSI of 2165 sq.ft. was to remain with the Petitioners. In so far as the additional FSI if any which was to become available in future, the Petitioners were entitled to the same in terms of the said Development Agreement. The building in question was completed initially as per the sanctioned plan in the year 1999 and thereafter it appears that on account of additional FSI becoming available, further construction took place and the additional construction was completed in the year 2005, the building in question is totally comprising of 18 flats.

3 In view of the fact that the conveyance was not executed in favour of the society that the Respondent No.3 society filed the instant application invoking Section 11(1) of the Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale Management & Transfer) Act 1963 for grant of unilateral deemed conveyance. In the said application, the area in respect of which the deemed conveyance was sought was mentioned that is land bearing CTS No.1634/56 and Survey No.418-A (part) and Final Plot No.572. The said application for deemed conveyance came to be replied to on behalf of the Petitioners and the Petitioners reply was revolving around the rights of the Petitioners under the said Development Agreement to the balance FSI of 2165

sq.ft. and the additional FSI which thereafter had become available and the right to load TDR.

4 The Competent Authority i.e. the Respondent No.2 herein considered the said application and has by the impugned order dated 15-5-2014, has allowed the said application. Whilst allowing the said application, the Competent Authority has observed that the Respondent No.3 society has been registered on 29-1-2005 and in terms of the MOFA and the Rules framed thereunder, the Respondent No.4 was required to execute the conveyance in favour of the Respondent No.3 society within 4 months and since the Respondent No.4 has not done so that a case for grant of unilateral deemed conveyance is made out and accordingly allowed the application by the impugned order dated 15-5-2014. The Deputy Registrar Co-operative Societies and the Competent Authority has also adverted to the utilisation of FSI by construction of the row houses

5 The Learned Counsel appearing on behalf of the Petitioner Ms Pohuja sought to question the impugned order passed granting deemed conveyance on the ground that the Petitioners in favour of the Development Agreement with the Respondent No.4 are entitled to utilise the balance FSI as well as the FSI which has become available in view of the increase of FSI for the said area as also to load TDR. The Learned Counsel would contend that the

Competent Authority was required to consider the said aspect and then decide as to whether the Respondent No.3 was entitled to the grant of deemed conveyance. The Learned Counsel sought to draw this Courts attention to the judgment of a Learned Single Judge of this court in the matter of **Mazda Construction Company & Ors. Vs. Sultanbad Darshan CHS Ltd & Ors.**¹ wherein the Learned Counsel submitted that a Learned Single Judge of this Court has observed that the entitlement of the applicant for deemed conveyance would be in terms of the Agreement and the Competent Authority cannot grant something which is beyond the Agreement.

6 In my view, the impugned order granting deemed conveyance cannot be faulted with considering the fact that conveyance was not executed by the Respondent No.4 developers who had a Development Agreement in their favour from the Petitioners who are the owners. The Competent Authority whilst exercising powers under Section 11 is enjoined to see whether the mandate of Section 11 has been followed by the developers in the matter of registering the society and conveying the properties to the society. In Mazda Construction Company's case (supra) a Learned Single Judge of this Court has observed that the entitlement would be in terms of the Agreement and where the parties are not ad-idem on the aspect of entitlement, then they are free to adopt proceedings in that regard. In the said case, it was observed that the order would not prevent the society from filing any independent civil suit or

¹ 2013(2) ALL MR 278

other proceedings so as to assert its rights under the Agreement which have been executed in its favour. Hence in my view, it is not necessary to go into the issue as to whether the Petitioners have in fact any right under the Development Agreement to the balance FSI, the additional FSI or to load TDR in terms of the Development Agreement with the Respondent No.4. The Competent Authority also could not have gone into the said aspects. What the Competent Authority has done is that it has granted deemed conveyance of the land. If the Petitioners have any right, under the Development Agreement to the balance FSI, additional FSI or TDR, it would be open for the Petitioners to assert the said right by adopting appropriate civil proceedings and the fact that the deemed conveyance has been granted in favour of the Respondent No.3 society would not come in their way from prosecuting the said proceedings.

7 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. Subject to what has been stated hereinabove, the Writ Petition is dismissed.

8 In view of the dismissal of the above Writ Petition, the Civil Application No.2518 of 2014 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]