

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

WRIT PETITION NO.10650 OF 2014

Proprietor M/s. Strapcon Engg.

Through Sahebrao Gangadhar Kadam

.. Petitioner

Versus

Sarth Co-operative Housing Society Ltd.

.. Respondent

Shri. Milind M. Sathaye, for the Petitioner.

Ms. Chaitrali A. Deshmukh, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 20th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.10.2014 passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies, Nashik, by which order the application under Section 11 filed by the Respondent No.1 society for unilateral Deemed Conveyance came to be allowed. The Respondent No.1 society comprises of the flat purchasers who have purchased the flats from the Petitioner who is the owner and developer of a plot of land admeasuring about 580 sq.mtrs. In the building put up on the said plot there are 17 flats and out of that 14 flat purchasers are the members of the Respondent No.1 society. The Respondent No.1 has been registered as

a co-operative society on 26.11.1997 and in spite of it being registered on 26.11.1997, no conveyance has been executed in favour of the Respondent No.1 society. At this stage, it is required to be noted that the some members of the Respondent No.1 society had approached the Consumer Disputes Redressal Forum for the relief sought in the said application which, was in respect of direction being issued to the Petitioner i.e. owner/developer for obtaining the occupation certificate and execution of the Sale Deeds in respect of the flats. The said complaint filed in the Consumer Disputes Redressal Forum was by one Shri. Prakash Phulkar who was the chairman of the Respondent No.1 society at the relevant time, the said complaint was partly allowed by the District Consumer Forum, Nashik. The complainant dissatisfied by the relief granted by the District Consumer Forum challenged the same by way of a First Appeal being No.A/04/1621 before the State Consumer Disputes Redressal Forum. The said Appeal came to be dismissed by the State Consumer Disputes Redressal Forum. In so far as the relief sought by way of the occupation certificate is concerned, the said forum observed that the occupancy certificate could not be obtained because of the unauthorized acts of the flat purchasers including the complainant, then certainly the builder cannot be held to be responsible for any deficiency on that count. The said dismissal was by order dated 16.07.2013.

2. The Respondent No.1 thereafter filed the instant application under Section 11 of the Maharashtra Ownership of Flats Act, 1963 (MOFA for short) for the grant of unilateral Deemed Conveyance and was founded on the fact that in spite of the society being registered in the year 1997 conveyance has not been executed in its favour. Suffice it to say that the said application was opposed to on behalf of the Petitioner inter-alia on the ground that the Petitioner has filed an application for de-registration of the society, that the agreements to sale which have been produced by the Respondent No.1 are illegal as they have not been executed by the Petitioner that the said agreements to sale have not been registered, and that there is dispute about the consideration, that the development is also not complete as further development is to be carried out by purchasing TDR.

3. The competent authority considered the said application which was numbered as Application No.18 of 2014 and has by the impugned order dated 20.10.2014 allowed the same and thereafter has issued the certificate which is a consequence of the said order. The competent authority has after adverting to the background facts has also adverted to the contentions which were urged on behalf of the Petitioner, but did not find any merit in the said contentions. The competent authority observed that though the society has been registered on

20.11.1997 the dispute about the registration is now sought to be raised, which dispute would not lie within the domain of the competent authority. In so far as the dismissal of the Appeal before the Consumer Forum is concerned, the competent authority observed that in view of Section 11 of the MOFA, the Respondent No.1 is entitled to file an application for Deemed Conveyance and that the competent authority has been vested with the power to consider such an application. The competent authority observed that the Respondent No.1 society has complied with pre-requisites of Section 11 of the MOFA in the matter of filing an application thereunder. The competent authority lastly recorded that the Petitioner herein who is the Respondent in the said application having defaulted in the matter of conveying the land on which the building of the society is situated the competent authority is required to interfere and to exercise powers under Section 11 of the MOFA and accordingly allowed the said application.

4. The Learned Counsel appearing for the Petitioner Shri. Milind Sathaye would seek to reiterate the contentions which were raised in the reply filed to the application for Deemed Conveyance by the Respondent No.1. The Learned Counsel would contend that since the registered Sale Deeds have not been executed and since there is no occupation certificate, the application filed under Section 11 could not have been allowed as the

said documents are a pre-requisite for filing the said application. In my view, it is not possible to accept the said contentions. If the said contentions are to be accepted the same would militate against the very object of the MOFA. It is precisely for taking care of the eventualities of the owner/developer not executing the Conveyance that Section 11 has been introduced. The fact that the registered Sale Deeds have not been executed and that there is no occupation certificate to the building, in my view cannot come in the way of the Respondent society from getting a Deemed Conveyance. In my view, therefore, the order passed by the competent authority granting Deemed Conveyance and consequently the certificate is not suffering from any infirmity or any illegality for this Court to invoke its Writ Jurisdiction and interfere with the said order. The above Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]