

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

WRIT PETITION NO.11284 OF 2014

**Shubham Vipra Developers
Through one of its Parnters
Vinay Khushalchand Badera**

: Petitioner

versus

**Shubham Wishva Co-op. Housing
Society Ltd. & ors.**

: Respondents.

Mr. P S Dani, Senior Advocate with Ms. Jui Nerurkar for the Petitioner.

Mr. T D Deshmukh for the Respondent No.1

Mrs. V S Nimbalkar AGP for the Respondent Nos.2 and 3.

CORAM : R. M. SAVANT, J.

DATE : 17th August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 1/12/2014 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune (Rural) by which the application for deemed conveyance filed by the Respondent No.1 Society invoking Section 11(3) of the Maharashtra Ownership of Flats Act, 1963 (MOFA for short) came to be allowed.

2 The Petitioner herein is the developer who has developed the property in question admeasuring 9600 sq.mtrs. The Petitioner has put up 3 buildings which are shown in the lay out as Building Nos.A B and C. The Respondent No.1 Society is comprised of 152 flat purchasers of the said 3

buildings. The Respondent No.1 Society has been registered in the year 2012 and in view of the fact that the Petitioner was not fulfilling its obligations of conveying the property in question to the Respondent No.1 Society, that the Respondent No.1 Society filed the instant application for grant of unilateral deemed conveyance.

3 The said application was filed after a notice to that effect was issued to the Petitioner calling upon it to execute the deemed conveyance. To the application, the Respondent No.1 Society has annexed relevant documents which are required to be annexed in support of the grant of deemed conveyance which documents inter alia included the sanctioned plan and the flat purchaser's agreement entered into with the Petitioner.

4 The said application filed by the Respondent No.1 Society was opposed to on behalf of the Petitioner. The Petitioner inter alia relied upon certain clauses of the flat purchaser's agreement to contend that since the Petitioner has reserved certain rights in the matter of availing the TDR (clause 5), putting up the construction on the terraces (clause 16), that the application for deemed conveyance could not be proceeded with much less granted.

5 The Competent Authority considered the said application and as indicated above by the impugned order dated 1/12/2014 has allowed the

same. The Competent Authority has adverted to the fact that the development has taken place on the plot land admeasuring 9600 sq.mtrs as per sanctioned plan and in view thereof the Respondent No.1 Society was entitled to the grant of unilateral deemed conveyance.

6 The learned Senior Counsel appearing on behalf of the Petitioner Shri Dani would draw this Court's attention to clauses (5), (7) and (16) of the agreement entered into by the Petitioner with the flat purchasers. It is relying on the said clauses, that the learned Senior Counsel would contend that the Petitioner has reserved to itself the rights under the said clauses. It was also the submission of the learned Senior Counsel that the Petitioner is entitled to avail of the amenities space as also the open space to the extent of 24000 sq.ft. to put up additional construction that may be permissible to put up in terms of clause (5) of the said agreement.

7 Per contra, the learned counsel appearing on behalf of the Respondent No.1 Society Shri Deshmukh would support the order of deemed conveyance. The learned counsel would contend that the Petitioner cannot have any right in respect of the amenities space or the open space in the lay out. It was the submission of the learned counsel that the amenities space is 1375 sq.mtrs i.e. about 14000 sq.ft. and therefore how the Petitioner has arrived at the figure 24000 sq.ft. of open space is not clear.

8 Having heard the learned counsel for the parties, I have considered the rival contentions. The sanctioned plan annexed to the above Petition at page 54 of the paper book discloses that the amenities space is 1375 sq.mtrs. equivalent to about 14000 sq.ft.. Hence the contention of the learned Senior Counsel for the Petitioner that the Petitioner is entitled to utilize the open space to the extent of 24000 sq.ft. prima facie is not borne out by the sanctioned plan as the amenities space is only 1375 sq.ft. The agreement also does not contain any covenant as regards utilization of the amenities space by the Petitioner. The only covenants are those relating to the TDR and putting up the construction on the terrace in the event the TDR becomes available. In my view, the said covenants cannot come in the way of the Respondent No.1 Society from seeking unilateral deemed conveyance. The order passed by the Competent Authority therefore does not merit any interdiction at the hands of this Court in its writ jurisdiction, as it is well settled that where there is reluctance on the part of the promoter/developer to convey the property then the Competent Authority has to step in and this is what the Competent Authority has precisely done in the instant case.

9 If the Petitioner seeks to lay a claim to the TDR or the right to put up the construction on the terraces of the buildings, it would be open for the Petitioner to adopt appropriate civil proceedings to assert its rights under the

said covenants. This Court does not express any opinion in that regard. If any such proceeding or proceedings are filed by the Petitioner, needless to state that the same would have to be considered in accordance with law especially having regard to the relevant provisions of the MOFA. Hence without interfering with the impugned order, however, with the observations as above, the above Petition is dismissed.

[R.M.SAVANT, J]