

Poonam Builders	}	Petitioner
versus		
Orchid Tower Co-operative	}	
Housing Society Limited	}	
and Ors.	}	Respondents

Ms. Neha Bhatt i/b. M/s. Bilawala and Co.
for Respondent No. 3.

DATED :- DECEMBER 10, 2015

The Petitioner, by this Writ Petition under Article 226 Constitution of India seeks a Writ of Certiorari or any other Writ, order or direction in the nature thereof calling for records and proceedings of the application filed by Respondent No. 1 before Respondent No. 5 and after examining the same, validity and propriety of an order dated 8th June, 2019, the copies of which are at Annexures 'O' to 'P' to the Petition to set aside the same.

2) The Petitioner is a sole proprietary firm carrying on business as Builder and Developer. The Petitioner had, by a duly registered agreement dated 16th October, 2003, between the

owner M/s. Arkay Builders and himself, become entitled to development of the balance/residuary right, title and interest in the layout sanctioned and modification or reversion thereafter in connection with a piece and parcel of vacant land and ground situate at village Oshiwara, Taluka-Andheri, Mumbai, admeasuring 1,17,072.96 square yards equivalent to 97887.09 square meters or thereabouts being a large plot of land bearing Survey No. 41(part).

3) The Petitioner claims that the layout was termed as Yamuna Nagar Layout. The Petitioner states that a Civil Suit was filed by Respondent No. 3 against M/s. Arkay Builders and thereafter, the claim in that Suit was settled. According to the Petitioner, a single conveyance regarding entire Yamuna Nagar Layout will be executed in favour of a Federation of the Co-operative Housing Societies. It is claimed that there are 16 Societies in the Yamuna Nagar Layout. They came together and formed a Federation, which is Respondent No. 4 to this Writ Petition. The Federation addressed a letter dated 2nd February, 2008 to Respondent No.3, who are owners/promoters, requesting them to execute the conveyance. Thereafter, correspondence continued and eventually an application under section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of

Construction, Sale, Management and Transfer) Act, 1963 (for short "MOFA") was filed. The Petitioner became aware of filing of such an application and the relief sought therein. The Petitioner apprehended that in unilateral deemed conveyance of something more than what the said Society was entitled to would be granted. Therefore, he applied by way of intervention application. That application was contested by the second Respondent and Respondent No. 3 to this Petition. Respondent No. 1 filed a rejoinder and eventually, the matter was heard by the statutory authority, namely, Respondent No.5 to this Writ Petition and he passed the impugned order.

4) The only contention raised before us in support of this Writ Petition is that Respondent No. 1 and Respondent No. 5 have lost sight of the fact that the deemed conveyance cannot be of a property which is not covered by the agreement under the MOFA. The whole or the larger property is part of a common layout sanctioned by the Municipal Corporation. It is in these circumstances it is urged that in the final order of Respondent No.5, there is a glaring error and defect. The order ignores the fact that a deemed conveyance can be granted only in consonance with the MOFA agreement and the entitlement of the parties thereunder. It cannot travel beyond the same. In the present

case, the operative part of the impugned order contains a direction that the deemed conveyance shall be in respect of not only the land beneath the buildings but other areas which are said to be common. If those are to be commonly enjoyed by the Co-operative Societies or the cluster of buildings in the layout, then, the order should have been only that the Society/Respondent No. 1 would be entitled to use some common areas along with others. Further, the Society would be entitled to 38,880 square feet of land together with the FSI but it should have been clarified that the entitlement of the Petitioner in terms of the layout to develop the property and construct other buildings shall not be affected or prejudiced by the deemed conveyance.

5) Our attention has been invited to the MOFA agreement in that behalf and copy of which has been annexed to the Writ Petition. Mr. Kapadia appearing for the Petitioner invites our attention to the seventh Schedule to the MOFA agreement to submit that the first Respondent Society is entitled to the benefits of FSI to the tune of 38,880 square feet (built-up area). The benefit that the Society has derived in terms of the impugned order is much more.

6) He therefore submits that instead of the words "carpet area" appearing in the impugned order, there should be a

clarification. The clarification ought to be that the deemed conveyance must contain a stipulation that Respondent No. 1 shall have right to use the layout recreation ground and internal layout roads. Further, there is no sub-division of the layout land and therefore the deemed conveyance shall not affect the development being undertaken under the present sanctions and future sanctions as regards the remaining land in the layout. If these clarifications are given, then, the Petitioner would not press for any reliefs in terms of the prayers of the Petition.

7) On the earlier occasion, we directed issuance of notice to Respondent No. 1 Society. On notice being served, the first Respondent has instructed Mr. J. Shekhar to appear on its behalf. He appears accordingly and accepts notice. He states that he would file Vakalatnama within a period of two weeks from today.

8) Mr. J. Shekhar would submit that the impugned order requires no interference in our Writ Jurisdiction under Article 226 of the Constitution of India and the Petition be dismissed.

9) With the assistance of both Advocates, we have perused the Writ Petition. We have duly considered the rival contentions.

10) We find that the agreement, copy of which is annexed to the Petition dated 13th April, 1988 is not the agreement under

which the Petitioner claims rights in the larger property. It is obvious that once the deemed conveyance has been issued on the basis that Respondent No.1 Society has sought such relief in relation to the dealings between the first Respondent Society and the Promoter within the meaning of MOFA. It is in furtherance of that MOFA agreement and to which the first Respondent and its members are parties that the deemed conveyance has been sought. The order of deemed conveyance thus concerns the first Respondent Society's members who are flat purchasers under the MOFA agreement. It is their right, title and interest in terms of that agreement which has been duly noted and considered in granting the deemed conveyance. If the Petitioner claims that it has higher right and in the larger property than the one covered by the deemed conveyance, yet, the order passed granting deemed conveyance prejudicially affects their rights in respect of the larger property, then, none prevents him from bringing a Civil Suit and asserting its such right, title and interest in the larger property. The right to bring such a Suit so also other remedies and contentions therein cannot be said to be affected by the granting of the deemed conveyance in favour of Respondent No.1.

11) With the aforesaid clarification, the Writ Petition is dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)