

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

WRIT PETITION NO.1301 OF 2015

Smt. Armiti Rustom Tirandaz and anr. : Petitioners.

Versus

**Dadar Amy Villa Co-operative Housing
Society : Respondent**

Nigel Qurashy for the Petitioners

**Mr. E P Bharucha, Senior Advocate a/w Mr. Karl Tamboly i/by Harish Joshi
& Co. for the Respondent.**

CORAM : R. M. SAVANT, J.

DATE : 10th March 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 09/01/2014 by which order the Competent Authority and Deputy Registrar, Co-operative Societies, Mumbai (1) City has allowed the application for deemed conveyance being No.59 of 2013 filed by the Respondent No.1-Society.

2 The Petitioner herein claims to be the owners of the plot of land on which building Amy Villa is situated. The said property is situated Road No.14, Parsi Colony, Dadar, Mumbai 400 014. It appears that in the year 1972 the owners had granted development rights to one Tarachand C Manwani by agreement which agreement is dated 21/10/1972. It is pursuant to the said agreement that the flats on the 3rd floor were constructed. It appears that

power of attorney was also executed in favour of the said Tarachand Manwani by the owners, which power of attorney is dated 15/04/1973 entitling the power of attorney holder to deal with the flats in question including formation of the society and apply for its registration. It appears that post 1973 the agreements were entered into between the occupants of the flats and the said Tarachand Manwani which agreements are reflected in the statement annexed to the above Petition at page 95 which was filed before the Competent Authority. By the agreements which find mention in the said statement the ownership rights in respect of the flats in respect of which the agreements were entered into were conferred. It is required to be noted that in respect of the agreement entered into with one Rusi Framroz Umrigar, the Petitioner No.2 Aspi Karani is a witness. The said agreement contemplates conveyance to be executed in favour of the society which was registered of the flat purchasers or the persons who had purchased the ownership rights in respect of the flats which with they were occupying in different capacities. In view of the fact that the conveyance was not being executed, the Respondent No.1 Society invoked Section 11 of the Maharashtra Ownership Flats Act, 1963 and applied for deemed conveyance. In support of the said application the Respondent No.1 Society submitted the documents which have been reflected in the impugned order and have been so listed in the impugned order from Item No.1 to 11. The said documents inter-alia included two copies of resolution passed by the Applicant Society, copy of the registration certificate, copy of the title

certificate, agreement of sale dated 01/04/1975 executed between Tarachand C Manwani and Dilip Gulabrao Bhuta, list of members of the society given details of registration numbers of agreements for sale, area of flats etc. and the notices which were addressed by Shri Cyrus Kakalia to the Respondent No.1 therein regarding the rights, authority and vested interests in respect of the land in question of the Applicant-Society.

3 The Petitioners herein who were the Respondent No.1(a) and 1(c) did not file any reply to the said application. In fact the reply was filed by the Respondent No.1(b). It was therefore the case of the Respondent No.1 Society that the Petitioners i.e. Respondent Nos.1(a) and 1(c) who were having knowledge of the agreements have chosen not to do so as filing of any reply by them would have cause embarrassment as the Petitioner No.2 as indicated above is a party to one of the agreements executed in favour of Rusi Umrigar. It seems that the written arguments were submitted on behalf of the Respondent No.1(b) and the principal contention that seems to have been raised is that some of the members of the Society were tenants and therefore deemed conveyance could not be executed in their favour as the same would result in conferment of ownership rights on them.

4 The Competent Authority considered the said Application being No.59 of 2013 and having regard to the documents which were produced on

record on behalf of the Respondent No.1 Society as also having regard to the fact that the Society has been registered as long as back in the year 1986 and still there was no conveyance executed in its favour deemed it appropriate to allow the application for deemed conveyance by the impugned order dated 09/10/2014.

5 The learned counsel appearing on behalf of the Petitioners would seek to contend that the contention raised on behalf of the Petitioners that since some of the occupants were tenants, deemed conveyance could not have been granted has not been dealt with by the Competent Authority. It was also the submission of the learned counsel for the Petitioners that the Petitioners were not aware of any agreement or power of attorney executed in favour of the said Tarachand Manwani by the owners. It was therefore the submission of the learned counsel for the Petitioners that exercise of powers under Section 11 of the MOFA was not warranted in the facts of the present case.

6 Per contra, the learned Senior Counsel appearing for the Respondent No.1 Society supports the impugned order. The learned Senior Counsel for the Respondent No.1 drew this Court's attention to the documents on record and especially the agreements which were executed in favour of the flat purchasers by the original developers or the purchasers from the original developers. The learned Senior Counsel drew this Court's attention to the

agreement of Rusi Umrigar to which agreement Shri Karani has signed as a witness. It was the submission of the learned Senior Counsel for the Respondent No.1 society that it would not lie in the mouth of the Petitioner No.1 Shri Karani to question the grant of deemed conveyance having been a party to the agreement executed in favour of one of the flat purchasers.

7 In my view, there is no merit in the above Petition. It is required to be noted that the cause for invocation of Section 11 of MOFA arises when there is reluctance or non-compliance in the matter of executing the conveyance in favour of the Society registered of the flat purchasers. In the instant case, as the statement at page 95 of the Petition discloses, that the agreements have been executed right from 1975 to the year 2005 between the parties, the reference to which agreements has already been made herein above. The said agreements mandate formation of the Society and execution of conveyance in favour of the Society registered of the flat purchasers. In the instant case, the conveyance being not executed in favour of the Respondent No.1 Society, it was within its rights to approach the authority for grant of deemed conveyance under Section 11 of the MOFA. The agreement executed in favour of Rusi Umrigar ex-facie discloses that the Petitioner No.2 Shri Karani is a party to the said agreement as a witness. This probably explains the reason as to why the Petitioner No.2 herein who was the Respondent No.1(c) has not filed any reply to the application for deemed conveyance filed by the Respondent No.1

Society. The submission of the learned counsel for the Petitioners that the contention of the Petitioner that since some of the occupants were the tenants and therefore deemed conveyance could not have been granted is misconceived in the light of the fact that there are agreements in favour of all the occupants of 11 flats owners in the building known as Amy Villa in which agreements there is an obligation to execute conveyance in favour of the Society of the flat purchasers. The contention that since some of the occupants were tenants and therefore were not entitled to deemed conveyance as the same would confer ownership rights on them is also misconceived. The deemed conveyance is in favour of the Society which becomes the owner of the land on which its building is situated. In my view, therefore the exercise of the writ jurisdiction is not warranted. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]