

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

WRIT PETITION NO.2655 OF 2016

Dilip Sakharam Shedge

..Petitioner

Versus

District Deputy Registrar,

Co-operative Societies, Pune and others

..Respondents

Shri. Prashant Darandale for the Petitioner.

Shri. S. D. Rayrikar, AGP for the Respondent No.1.

Shri. Ganesh Bhujbal for the Respondent No.2.

CORAM : R. M. SAVANT, J.

DATE : 5th DECEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 19.01.2016 passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies, Pune City, Pune, by which order, the application for deemed conveyance filed by the Respondent No.2 herein came to be allowed and the deemed conveyance of 1100 sq.mtrs. of land and 991.04 sq.mtrs of built up area was granted to the Respondent No.2 society.

2 The Respondent No.2 society is a society of flat purchasers in the building which has been constructed by the Petitioner herein. The agreements which have been relied upon by the flat purchasers are the agreements dated 09.07.1999, 19.08.1999 and 13.09.2008. In terms of

the said agreements, the Petitioner herein is enjoined to convey the land and the building situated thereon in favour of the Respondent No.2 society. On failure of the Petitioner to do so, the Respondent No.2 filed the instant application invoking Section 11 of the Maharashtra Ownership of Flats Act, 1963 (For short "the MOFA"). The said application was accompanied by the agreements in favour of the flat purchasers as also other documents. It seems that an application was moved for amendment of the said application so as to correct the area in respect of which deemed conveyance was sought. The said application for amendment was allowed and the application for deemed conveyance came to be amended in so far as the area of which deemed conveyance was sought. The Petitioner herein who can be said to be the developer/promoter within the meaning of the said Act opposed the said application by filing his reply. In the said reply, it was contended on behalf of the Petitioner that the description of the property is not properly mentioned in the said application. It was also opposed on the ground that the Petitioner has a revised sanctioned plan for the year 2012, whereby he is entitled to put up additional construction on the building which is already in existence. The Competent Authority proceeded to consider the said application and having regard to the mandate of Section 11 of the MOFA deemed it appropriate to allow the said application. The

Competent Authority has referred to the fact that the Respondent No.2 society has been registered as long back as on 01.11.2009. The Competent Authority has also adverted to the fact that 27 flats and 4 shops are in existence on the land in question being 1100 sq.mtrs. with built up area of 991.04 sq.mtrs. That in terms of the agreement entered into by the Petitioner with the members of the Respondent No.2, the Petitioner is obliged to convey the property in question in favour of the Respondent No.2 society. The Competent Authority as indicated above has accordingly by the impugned order dated 19.01.2016 allowed the said application and granted deemed conveyance of land admeasuring 1100 sq.mtrs and built up area of 991.04 sq.mtrs. and consequently has also issued a certificate to the said extent.

3 The Learned Counsel appearing on behalf of the Petitioner Shri. Prashant Darandale would seek to reiterate the contentions which were sought to be raised before the Competent Authority and would also contend that since the two flats on third floor i.e. Flat Nos.23 and 24 are under construction, the Competent Authority has erred in passing an order of deemed conveyance. The Learned Counsel would also contend that the Petitioner is entitled to put up additional construction on the building in question in terms of the said agreement.

4 In my view, it is not possible to accept the said contentions. In so far as the order of deemed conveyance is concerned, as indicated above, it has been passed in favour of the Respondent No.2 society which comprises of the flat purchasers of 27 flats and 4 shops. The society has been registered as long back as on 01.11.2009 and is yet awaiting a conveyance being executed in its favour. Having regard to the mandate of Section 11 of the said Act, the order passed by the Competent Authority of granting unilateral deemed conveyance in favour of the Respondent No.2 cannot be faulted with.

5 In so far as the construction of the 3rd floor i.e. Flat Nos.23 and 24 is concerned, it has been stated in paragraph 6 of the affidavit in reply filed on behalf of the Respondent No.2 society to the following effect :-

“I say that the Society is not claiming any right over the flats No.23 and 24 which are under construction.”

6 The Learned Counsel appearing on behalf of the Respondent No.2 society Shri. Ganesh Bhujbal in furtherance of the said statement submitted that the Respondent No.2 society would not interfere with the Petitioner completing the construction on the 3rd floor i.e. of Flat Nos.23 and 24 however the same be directed to be done within a particular time

frame. The Petitioner therefore in terms of what has been stated in the affidavit as also on the basis of the statement made by Shri. Ganesh Bhujbal would be entitled to complete the said construction. However, the same to be done latest by 31.03.2017. In so far as the other rights which the Petitioner is claiming i.e. the right to put up additional construction etc., the same obviously cannot be adjudicated by the Competent Authority whilst dealing with an application for deemed conveyance. It would be open for the Petitioner to adopt such proceedings in law for the assertion of the said rights if any. Needless to state that if any proceedings are filed, the same would be dealt with on their own merits and in accordance with law. With the aforesaid observations, the Writ Petition is dismissed.

[R.M.SAVANT, J]