

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

WRIT PETITION NO.3697 OF 2015

Gardan View Building No.2,
C-Wing, Co-operative Hsg. Soc.Ltd. ...Petitioner

V/s.

The State of Maharashtra
Through Govt. Pleader Office & Ors. ...Respondents

Mr.Mukesh Subramaniam for the Petitioner.
Mr.S.D. Rayrikar, AGP for Respondent-State.

CORAM : K.K. TATED, J.

DATE : 21st OCTOBER, 2016.

P.C.

1. Heard learned counsel Mr.Mukesh Subramaniam for the petitioner. Mr.S.D. Rayrikar learned AGP for Respondent.

2. Though other Respondents are duly served no one appeared on behalf of them, when the matter is called out.

3. By this petition under Article 227 of the Constitution of India petitioner Co-operative Society challenges the order dated 30th October 2014 passed by the Respondent No.2 granting deemed Conveyance in favour of petitioner. At the time of granting the

deemed conveyance the plot number recorded as 84 instead of 85 and area 575 instead of 566.

4. The learned counsel for the petitioner submits that they filed the application for deemed conveyance on the basis of the documents provided by the Builder along with Agreement of Sale in respect of flats. He submits that in Scheduled A, B and C to the Agreement for Sale the builder shown the plot no.84 and 85 together. He submits that on the basis of the Agreement for Sale they filed the application for deemed conveyance and the same was allowed. When they carried out survey that time the petitioner learnt that there is mistake in deemed conveyance in describing the property. He submits that for the first time they learnt on the basis of the survey report that the petitioner's building is situated in plot no.85 admeasuring 566 sq. meter area. Hence, the petitioner filed application on 27th January 2015 before the Competent Authority at Thane for rectification of the order dated 30th October 2014. He submits that the said application is pending as it is.

5. The learned counsel for the petitioner submits that the concerned Officer orally informed the petitioner that they do not have Revisionary power, hence it is not possible for them to rectify

the said mistake in order dated 30th October 2014. Hence, the petitioner preferred the present Petition.

6. Though the other respondents are duly served no one appeared on behalf of them when the matter is called out.

7. Heard the learned counsel for the petitioner and Mr.S.D. Rayrikar learned AGP for Respondent.

8. In Agreement for Sale of flats Scheduled No.A,B and C read thus:-

Schedule-A

The Schedule Above Referred To

“ All those pieces and parcels of Land bearing Plot No.84, admeasuring 575 square meteres and Plot No.85, admeasuring 566 Square meters, Out of Survey No.111 Part, laying being and situate at Village More, Taluka Vasai, District Thane, within the are of Sub-Registrar at Vasai.

Schedule-B

The Schedule Above Referred To Flat

Flat No.001, on the Ground Floor, admesuring 565 square feet (Built up area), in the Building known as “GARDEN VIEW” constructed on Land bearing plot No.84, admeasuring 575 Square metres and

Plot No.85, admeasuring 566 square meters, Out of Survey No.111 Part, laying being and situate at village More, Taluka Vasai, District-Thane, within the area of Sub-Registrar at Vasai.

Schedule-C

TO WHOMSOEVER IT MAY CONCERN

This is to certify that I has investigated the title of Land bearing Plot No.85, admeasuring 566 square meters, Out of Survey No.111 part, lying being and situate at village more, Taluka-Vasai, District-Thane, within the area of sub-Registrar at Vasai, belonging to M/s.Shreejee Developers and the title thereof is clear marketable and without any encumbrances.

I further certify that by an agreement for sale dated 23/03/1995 entered into between M/s.Shreejee Developers, a partnership firm (Therein called "The Vendors) of the First part and M/s.ABHISHEK BUILDER (therein called "The Purchaser) of the second part, M/s.Shreejee developers has agreed to sell the said plots to M/s.ABHISHEK Builders, on the terms and conditions mentioned in the said agreement.

9. Fair reading of Schedules shows that the builder/developer has shown the land bearing Plot No.84 admeasuring 575 sq.meters, plot No.85 admeasuring 566 sq.meters

out of the survey no.111 (part) at Village-More, Taluka-Vasai, District-Thane. On the basis of the said description of the property the petitioner filed application for deemed conveyance. On the basis of the said application, Competent Authority passed the order dated 30th October 2014 in respect of the Plot No.84 admeasuring 575 sq.meters. Bare reading of the Scheduled annexed to the Agreement for Sale shows that there is a reference of Plot No.85 also. Petitioner learnt about their mistake when they carried out survey and survey Report. Petitioner must gets Conveyance of property with correct description.

10. Considering these facts and as no one appeared on behalf of other Respondents, I am of the opinion that petitioner has made out case for allowing this Writ Petition. Hence following order.

ORDER

(a) Writ Petition allowed in terms of prayer clause (b) which read thus :-

“b. That this Hon'ble Court may be pleased to issue a Writ of Certiorari and/or a Writ in the nature of Certiorari and/or any other appropriate writ, order and/or directing calling for the records and proceedings of Application No.153 of 2014

made by the Petitioner and the Order dated 30/10/2014 passed by the Respondent No.2 therein and after examining the validity and legality of the said Order the mistake occurred in Plot No.84 and the area of the said plot 575 sq.mts in Survey No.111, H.No.(Pt), Taluka Vasai, Nallasopara (W), Dist-Thane-401203 be rectified and/or modified as plot No.85 and the area be rectified/modified as 566 sq.mts in Survey No.111, H.No.(Pt.), Taluka-Vasai, Nallasopra(W), Dist-Thane-401203.”

- (b) Respondent No.2 District Deputy Registrar, Competent Authority who passed the order dated 30th October 2014 is directed to issue corrected certified copy of order as well as certificates showing the petitioners land bearing Survey No.111, H (Part), Plot No.85 area 566 sq.meters.
- (c) Petition is disposed of accordingly.
- (d) No order as costs.

(K.K. TATED, J.)