

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

**CIVIL APPLICATION NO.919 OF 2016
IN
WRIT PETITION NO.7228 OF 2014**

Konark Indraprastha Co-operative
Housing Society Ltd.

.. Petitioner.

Vs.

District Deputy Registrar,
Co-operative Societies II, Mumbai & Ors.

.. Respondents.

Mr. P.S. Dani, Senior Advocate with Mr.Raju Hardas and Mr.Amol
P. Mhatre for the applicant.
Mr. Ashish Kamat for Respondent No.3.

CORAM : A.K. MENON, J.

DATED : 12TH AUGUST, 2016

P.C. :

1. This Civil Application is taken out by the original
Petitioner in a disposed of Writ Petition seeking the following
reliefs :

*“(a) Quash and set aside the notice dated
12/2/2016 issued by the Competent Authority
thereby calling upon the Applicant Society for fresh
hearing in the said matter;*

*(b) Direct the Competent Authority to implement
the Order passed by the Honb'le High Court in Writ
Petition No.7228 of 2014 as it is thereby granting
larger area in favour of the Society.”*

2. The occasion to move this Civil Application is a notice

dated 12.2.2016 issued by the District Deputy Registrar of Co-operative Societies, Mumbai.

3. The petitioner had challenged the decision of the District Deputy Registrar in having granted a certificate of deemed conveyance to the petitioner - society of area admeasuring 15,772.11 sq. mtrs. instead of larger plot area of 18,367.60 sq. mtrs. Vide order dated 29th September, 2015, Writ Petition No.7228 of 2014 was allowed. While allowing writ petition this Court set aside the order granting lesser area of 15,772.11 sq. mtrs. was set aside. Neither party sought any clarification at that stage.

4. It transpires that the respondent - District Deputy Registrar has since construed the order as meaning that a fresh inquiry and hearing had be conducted on the application of the petitioner - society seeking deemed conveyance. This is how the impugned notice came to be issued calling upon the parties to attend his office for hearing on 17.2.2016. The petitioner therefore moved present civil application to quash the said notice. The application is opposed on behalf of respondent no.3, who has filed an affidavit of one Sunil Agarwal to say that present Civil Application is beyond scope of Writ Petition No.7228 of 2014 and that issue of notice dated 12th April, 2016 is an

administrative act of the Competent Authority and therefore civil application is not maintainable.

5. Mr. Dani, learned Senior counsel appearing on behalf of the petitioner submitted that intention of the Court while passing the order in Writ Petition is crystal clear that grant of lesser area has been set aside. Since the larger area identified in the said order is 18,367.60 sq. mtrs. ought to have been granted and therefore the order needs to be clarified to that extent. Mr. Kamat, learned counsel appearing on behalf of the respondent opposed the civil application on the ground that the application is not maintainable since the order did not clarify the operative portion that a certificate for larger area has to be granted.

6. The Civil Application came to be moved before my brother Judge Shri R.M. Savant, J., on 22nd April, 2016, since the assignment had changed by then. On the said application, the Court observed that the Civil Application would involve interpretation of the order dated 29th September, 2015 and it would be appropriate that the civil application is placed before this Court. In the meantime, the District Deputy Registrar, Co-operative Societies was directed not to precipitate matters. Pursuant to directions passed in the order of 22nd April, 2016, the applicant moved this Court on 2nd May, 2016 when this court

observed that it would be appropriate that the applicant files an application in the Registry to obtain suitable orders of the Hon'ble the Chief Justice on the Administrative Side. This was accordingly done and that is how the civil application is placed before this Court.

7. I have since heard the parties and found that all that is required in the order dated 29th September, 2015 was clarification on the area to be certified for purpose of deemed conveyance. On reading paragraphs 18, it is evident that the counsel for the Respondent No.3 has admitted that the total plot area is correctly shown as 18,367.60 sq. mtrs. In paragraph 21 it is observed as follows :

"21. There is sufficient evidence on record to show that the FSI utilisation in the Municipal sanctioned plans indicate utilisation of approximately 18367 Sq. Mtrs was in contemplation at the time of construction on the plot, therefore the contention of Mr.Kamat learned counsel for respondent no. 3 that on 15772.11 sq.mts was to be conveyed cannot be sustained."

In paragraph 27 it has been observed as follows :

"27. This provision along with approved plan which is an agreed document

between parties before me today, clearly reveals that plot area considered by the Municipal Corporation while granting the sanction of the plan was at least 18,367.60. There is no dispute between parties as to utilisation of FSI. It is not the case of Respondent no. 3 that any excess FSI has been utilised. Since there is no dispute about extent of construction, there can be no dispute that plan and its contents are binding upon all parties. The building would not have been permitted to be constructed under FSI of the area admeasuring 18,367 sq.mts was not utilised.

28. The Competent Authority seems to have been confused between the built up area of the structure as against the net area of the plot. Whereas the plot admeasures 18367.60 sq.mts, the built up area is 15772.11 sq.mts."

8. From the above portions of the order dated 29th September, 2015 it is clear that what is intended by the Court was that the certificate to be granted was for 18,367.60 sq. mtrs. and not 15,772.11 sq. mtrs. The grant of a certificate to lesser area 15,772.11 sq. mtrs. has been set aside. In my view the objection is now taken up demonstrates an obstructive stance. The order dated 29th September, 2015 has not been challenged by Respondent no.3 and the only objection taken is maintainability of Civil Application, in view of disposal of writ petition.

9. In view of inherent power vested in this Court to pass orders meeting the ends of justice, I am of the view that it is necessary to clarify that the District Deputy Registrar Co-operative Societies-II, Mumbai/Competent Authority is not required to hear the matter afresh and a certificate of deemed conveyance for larger area be granted in view of the observations quoted in this order. It is not necessary in my view to pass separate order on the civil application, except for aforesaid clarification. Considering all facts necessary which are already before the competent authority it is only area of a certificate that requires to be enhanced as contemplated in the order dated 29th September, 2015. Hence I pass the following order :

- (i) As consequence of the order passed in Writ Petition No.7228 of 2014, there will be no occasion for the District Deputy Registrar Co-operative Societies-II, Mumbai to conduct any fresh hearing since the area has already been determined as specified in the order dated 29th September, 2015. Respondent no.1 to issue a certificate of deemed conveyance of 18,367.60 sq. mtrs.
- (ii) Civil Application is disposed of with the aforesaid clarification.
- (iii) There will be no order as to costs.

(A.K.MENON, J.)