

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6359 OF 2015

Pundalik Vishram Gurav & ors. ... Petitioners

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr.A.A. Desai for the Petitioner
Mr.S.H. Kankal, AGP, for Resp. State
Mr.P.M. Khankar for for Respondent No.3

CORAM: **Mrs.MRIDULA BHATKAR, J.**

DATE: **OCTOBER 24, 2016**

ORAL JUDGMENT:

1. Rule. By consent of the parties, Rule made returnable forthwith and the petition is heard finally at the stage of admission itself.

2. This petition is directed against the order dated 25.3.2014 of the competent authority, whereby the competent authority by invoking its powers under section 11(3) of the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 has unilaterally granted conveyance of his society. The petitioner is a landlord, who has entered into an agreement with the Developer i.e., Respondent No.4, who has constructed a building on the plot admeasuring 885.3 sq.mtrs. The learned Counsel for the petitioner has submitted that the order passed by the competent authority is illegal

and is to be set aside. He submitted that the two buildings are standing on a plot out of which one building belongs to the society of the flat purchasers and the other building is of the tenants who were occupying the plot earlier. The two buildings are standing on undivided plot and it is necessary to sub-divide the said plot. He submitted that the competent authority without taking into account this important factor has passed unilateral order of deemed conveyance, thereby causing injustice on the petitioner, who owns the entire plot. He pointed out in the application filed by the society that the society has claimed the conveyance of the entire plot admeasuring 885.30 sq.mtrs and it is to be considered as the suit premises. In its application, the society has demanded the conveyance of the suit premises, which is obviously admeasuring 885.30 sqmtrs which is in fact an incorrect statement. The learned Counsel relied on the judgment in the case of Mazda Construction Company & Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.¹ He submitted that it is incumbent on the competent authority to make enquiry before issuing the certificate under section 11(4) of the MOFA about to claim of the land of the parties. He submitted that the competent authority has failed to enquire into this issue when raised by the petitioner before it. The area which is occupied by the building consisting of tenants and the society and the area of the building of the socetymay vary after conducting further enquiry because of

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the order of the competent authority of deemed conveyance. This area is fixed and sealed, which is illegal.

3. The learned Counsel for the respondent/State and Respondent No.4 society supported the order passed by the competent authority. The learned Counsel appearing for the society submitted that the society limits its claim upto the area claimed for registration for deemed conveyance i.e., upto 730.69 sq.mtrs and not more.

4. Read the impugned order and the petition. The competent authority has issued certificate under section 11(4) of the MOFA, wherein the area of the deemed conveyance is specifically mentioned as 730.69 sq.mtrs and is transferred in the name of Shree Sadan Cooperative Housing Society Ltd. Thus, in view of this certificate, it cannot be said that the competent authority has transferred or conveyed the entire area of the plot i.e., 885.30 sq.mtrs. Thus, the competent authority has in fact left out the area admeasuring 154.61 sq.mtrs for the building of the tenants.

5. Perused the judgment in the case of Mazda Construction Company & Ors. (supra). In the said case, a learned Single Judge of this Court has held that the competent authority cannot permit the parties to claim something which is beyond their agreement with the Promoters or other relevant documents. The spirit of this ratio laid down in Mazda Construction Company & Ors. (supra), is that the society should not get

more area or less area but the exact due of the society is to be given to it by the competent authority. In the present case, admittedly, the agreement entered into by the flat purchasers and Respondent No.4 with the Developer discloses the entire area of the plot i.e., 885.30 sq.mtrs. However, the competent authority after considering the position of the building occupied by the tenant and the building occupied by the flat purchasers have arrived at a balanced and correct statement that the area which is to be conveyed is 730.69 sq.mtrs. Moreover, the learned Counsel for the society has submitted before the Court that the society does not claim any area more than 730.69 sq.mtrs as mentioned in the certificate issued by the competent authority on 25.3.2014. Thus, I do not find any illegality in the order passed by the competent authority under section 110 of the MOFA. If the petitioner is aggrieved by the said order and has some issues in respect of the sub-division of the plot, then, he has recourse before the civil Court, which he may take, if advised.

6. Rule is discharged accordingly.

(MRIDULA BHATKAR, J.)