

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8493 OF 2014

Smt. Geeta Bhaskar Pendse]
70 years Occ : Nil]
Residing at 101]
Shri Bramha Chaitanya Co-operative]
Housing Society Limited]
Plot No.38, Bramhan Society, Naupada]
Thane 400 602]..... Petitioner.

versus

- 1] Bramha Chaitanya Co-operative]
Housing Society Limited]
Plot No.38, Bramhan Society]
Naupada Thane 400 062]
Through Chairman/Secretary]
]
2] Bramhan Co-operative Housing]
Society Limited,]
Naupada, Thane]
Through Chairman/Secretary,]
]
3] M/s. Shrayas Enterprises,]
G/5, Ishan Ram Maruti Road,]
Sant Ram Maruti Maharaj Chowk]
Naupada, Thane]
]
4] Competent Authority and]
District Deputy Registrar]
Co-operative Societies, Thane]..... Respondents.

Mr. Kishor S Patil for the Petitioner.
Mr. R S Tanna for the Respondent No.1.
Mr. S M Oak i/by Mr. Sagar A Joshi for the Respondent No.2.
Mr. Rajesh S Datar for the Respondent No.3.
Mr. S D Rayrikar, AGP, for the Respondent No.4.

CORAM : R. M. SAVANT, J.
DATE : 11th April 2016

P.C.

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 23/04/2014 passed by the Competent Authority and Deputy Registrar, Co-operative Societies, Thane by which order the application filed by the Respondent No.1 Society for grant of unilateral deemed conveyance came to be allowed and the unilateral deemed conveyance came to be granted in respect of the property mentioned in the Certificate dated 23/04/2014 issued by the Competent Authority and Deputy Registrar, Co-operative Societies, Thane on the said date.

3 The Petitioner herein is the lessee of the plot of land, being Plot No.38 which is situated within the Respondent No.2 Society. The Respondent No.2 Society is a plot holders society wherein the plots have been allotted on long term lease basis to the holders thereof. It seems that the Petitioner's father in law was one such allottee of the said Plot No.38 in respect of which a lease was granted for 999 years by the Respondent No.2 Society. After the demise of the father in law of the Petitioner, it seems that the husband of the Petitioner entered into a Development Agreement with the Respondent No.3 herein to develop the said plot of land in question. The Respondent No.3 accordingly

has constructed a building having 5 storeys and comprising of 8 flats. The flat purchasers have constituted themselves into the Respondent No.1 Society. In terms of the agreements entered into with the flat purchasers and the covenants therein the Respondent No.1 invoked the provisions of the Maharashtra Ownership of Flats Act, 1963 (for short "the said Act") and especially Section 11 thereof to seek deemed conveyance of the said plot of land in view of the fact that there was reluctance on the part of the Petitioner herein to convey the said plot of land in favour of the Respondent No.1 Society. At this stage, it is required to be noted that in the said Application for deemed conveyance the aforesaid facts have been mentioned viz. that the husband of the Petitioner herein had only lease hold rights in respect of the plot of land.

4 The said application for deemed conveyance was opposed to on behalf of the Petitioner as well as the Respondent No.2. The opposition was on the ground that the application for deemed conveyance could not have been filed in view of the fact that the husband of the Petitioner who entered into development agreement had only lease hold rights in the plot of land in question.

5 The Competent Authority and Deputy Registrar, Co-operative Societies, Thane considered the said application and by the impugned order dated 23/04/2014 has allowed the said application. Though the Competent

Authority in the body of the order has referred to the factum of the Petitioner and her husband having only lease hold rights in the plot of land in question, however, in the operative part, the Competent Authority has directed that the conveyance be executed and that the Respondent No.1 Society should get the draft of the conveyance deed adjudicated by the Superintendent of Stamps to facilitate the execution of the conveyance deed. As indicated above, it is the said order dated 23/04/2014 passed by the Competent Authority and Deputy Registrar, Co-operative Societies, Thane which is taken exception to by way of the above Writ Petition.

6 The principal contention urged on behalf of the Petitioner is that in terms of the law laid down by this Court the applicant under Section 11 of the said Act would be only entitled to such rights as the promoter or developer had in the property and that the applicant cannot be conferred better rights than the promoter/developer. A useful reference can be made to the judgment of a learned Single Judge of this Court reported in **2013(2) ALL MR 278** in the matter of **Mazda Construction Company & ors. v/s. Sultanabad Darshan CHS Ltd. and ors.**

7 In my view, though the order passed by the Competent Authority and Deputy Registrar, Co-operative Societies, Thane cannot be found fault with in so far as entertaining the said application under Section 11 of the said Act is

concerned. In my view, the Competent Authority has erred in granting conveyance of the property in question when all that the promoter/developer had in the property was only lease hold rights. In my view, therefore, the order dated 23/04/2014 passed by the Competent Authority and Deputy Registrar, Co-operative Societies, Thane would have to be modified to the extent that the Respondent No.1 Society herein would be entitled to only the lease hold rights which the original owner i.e. the father in law of the Petitioner had in the plot of land in question. The order dated 23/04/2014 passed by the Competent Authority as well as the Certificate issued on the same day would stand modified accordingly. Needless to state that the grant of lease would be without prejudice to the rights and contentions of the Respondent No.2 Society which is the parent society. In the light of the above, the Respondent No.1 Society would therefore be liable to pay stamp duty in respect of the lease for the remaining period that it would be entitled to under the impugned order passed by the Competent Authority and Deputy Registrar, Co-operative Societies, Thane. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]