

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

**WRIT PETITION NO.8190 OF 2014**

Shri.Paresh J. Shah

...Petitioner

V/s.

Jayanti Niwas Co.Op.Hsg. Sco. Ltd.  
& Others

...Respondents

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Mr.M.B. Jadhav a/w Mr.Darshan M. Modi for the Petitioner.  
Mr.P.G. Karande for Respondent No.1.

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**CORAM : K.K. TATED, J.**

**DATE : 14<sup>th</sup> OCTOBER, 2016.**

**P.C.**

1. Heard the learned counsel for the parties.
2. By this petition under Article 227 of the Constitution of India petitioner is challenging the order and certificate dated 26<sup>th</sup> June 2014 passed by the Competent Officer and District Sub-Registrar of the Co-operative Societies(3), Mumbai in Application No.219 of 2013 granting deemed conveyance in respect of the property bearing Survey No.42, Hissa No.2, CTS No.190/E at Vile Parle, Mumbai admeasuring about 447.9 sq.meters in favour of the Respondent No.1-Society.

3. The main contention raised by the Advocate appearing on behalf of the petitioner is that before the Competent Authority the Respondent occupants failed to place on record all the documents. He submits that the Respondent placed only one article of agreement dated 24<sup>th</sup> October 2008 showing tenancy converted into ownership by landlord. He submits that as per Section 11(3) of the Maharashtra Ownership of Flat Act, 1963, it is the duty of occupant-applicant to place on record all the documents. The learned counsel for the petitioner submits that they have not received the consideration in respect of the each tenaments. He submits that these facts were not be considered by the authority at the time of passing the impugned order. Therefore same is required to be set aside.

4. On the other hand learned counsel Mr.P.G. Karande appearing on behalf of respondent-society vehemently opposed the present petition. He submits that the petitioner is predecessor of the owner of the suit premises. He submits that predecessor executed the Articles of Agreement giving ownership to the each tenant. He submits that even the predecessor of the petitioner executed a will and that was probated by the petitioner in Petition No.330 of 2006

before this Court. He submits that in the probate it is specifically stated that the predecessor of the petitioners executed the articles of agreement granting ownership to the tenant. In support of his contentions he relies on paragraph 10 of the said probate which reads thus :

*“I owned a large Plot of Land bearing C.T.S. No.190 situate at Juhu Road, Juhu, Mumbai No.400 049. The said Plot of Land was Sub-divided into smaller plots. One of such sub-divided Plot bearing C.T.S. No.190(d) consisted of a chawl type of structure known as 'Jayanti Nivas' which was occupied by monthly tenants. In or about 1978 I sold the tenements in the said Jayanti Nivas to the tenants of the said structure individually and the tenants made extensions to the said structure and also formed a Co-operative Society duly registered under the name of 'Jayanti Nivas Co-operative Housing Society Limited.' However, as yet the said property is not conveyed to the name of the said Jayanti Nivas Co-operative Housing Society Ltd. I have no right, title or interest in the said property. I hereby direct that my grand son Paresh J. Shah convey the said property to the said Jayanti Nivas Co-operative Housing Society Limited in the event of the members of the said society desire to take a conveyance of the said property paying the stamp duty and registration charges and other incidental expenses*

*thereof themselves.”*

5. On the basis of these submissions learned counsel for the Respondent submits that there is no substance in the present petition and the same is required to be dismissed.

6. I heard both the counsel. It is to be noted that the predecessor of the petitioner executed Articles of Agreement dated 24<sup>th</sup> October 1978 in favour of the tenants after accepting the consideration. Apart from that the probate issued by the High Court dated 04<sup>th</sup> March 2002 shows that the predecessor of the petitioner accepted the entire consideration from the occupants and agreed to execute the conveyance in favour of the Society i.e. Jayanti Niwas tenants. These facts were considered by the authority at the time of passing the impugned order. In view of these facts I do not find any substance in the present petition. The same stands rejected.

7. At this stage the learned counsel appearing on behalf of the petitioner seeks to continue ad-interim relief granted by this Court to prefer appropriate proceeding to challenge this order before appropriate Court. The same is vehemently rejected by the

learned counsel for the Respondent. Considering the fact that ad-interim protection is continued since 23<sup>rd</sup> September 2014, I am satisfied that the same to continued for four weeks from today. Hence, interim protection granted by this Court to continue for four weeks from today.

8. Writ Petition is rejected.

**(K.K. TATED, J.)**