

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11253 OF 2014**

Dr. Prem Balram Nichani & Anr. ...Petitioners
Versus
State of Maharashtra & Ors. ...Respondents

**WITH
CIVIL APPLICATION NO. 150 OF 2016**

Vishwa Kalyan Co-operative Housing Society
Ltd. ...Applicants
Versus
Dr. Prem Balram Nichani & Ors. ...Respondents

Dr. Birendra Saraf, *a/w Mr. Rohan Sawant, Ms. Sheetal Mehta, i/b
Mr. Yogesh N. Adhia, for the Petitioners.*
Mr. A.I.I. Patel, AGP, *for the Respondents Nos. 1 and 2.*
Mr. Girish Godbole, *i/b Mr. Sumit S. Rothari, for the Respondent
No. 3 and for the Applicant in CA/150/16.*
Mr. B. G. Ligade, *i/b Mr. Drupad S. Patil, for the Respondent No. 4.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**
DATED: 9th February 2016

PC:-

1. After the matter was heard for some time, Mr. Saraf, learned counsel appearing for the Petitioners, on instructions, seeks leave to

withdraw the Petition with liberty to adopt appropriate proceedings, including a suit in a competent Civil Court.

2. However, by way of abandon caution and in order to comply with the statutory requirement of a notice, prior to institution of the Suit, particularly enshrined in Section 164 of the Maharashtra Co-operative Societies Act, 1960, it is requested that there is a statement which is made by the Respondents Nos. 3 and 4 that they would maintain status-quo in relation to the property and the Deemed Conveyance which is subject matter of the impugned order. Let that statement be continued for a period of ten weeks from today so that the Petitioners can comply with all procedural requirements before institution of appropriate proceedings.

3. Mr. Godbole, learned counsel appearing on behalf of these Respondents would submit that there is no objection to the statement being continued for a period of ten weeks but the request is that the accompanying Civil Application be considered.

4. That is a Civil Application moved by Respondents Nos. 3 and 4 and they apprehend that if the statement is construed as a blanket bar to taking any steps in relation to the property, then, even a measurement thereof will not be possible. That is required only because unless the area is ascertained and in possession of the parties, the deemed conveyance will not take full effect.

5. We have heard counsel on this point and the Civil Application so also the request made therein. If our order passed today and earlier is recording the statement of Respondents Nos. 3

and 4 that they would maintain status-quo in relation to property involved, that will not bar the statutory authorities or others including these Respondents to carry out a measurement of the same, but such steps would be without prejudice to the rights and contentions, particularly, of the Petitioners. Equally, the direction to maintain status-quo based on the statement of the Respondents Nos. 3 and 4 is also without prejudice to the rights and contentions of the contesting Respondents.

6. We also clarify that having expressed no opinion on the merits of the controversy, no Court, Tribunal or Forum is bound to continue any order based on the statement of the either party.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)