

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12331 OF 2015**

M/s. Sheth Enterprises & Anr

..Petitioners

Vs.

District Deputy Registrar (2) Mumbai & Ors

..Respondents

Mr. R. V. Misar i/b Kachwala Misar & Co. for the Petitioners

Mrs. V. S. Nimbalkar AGP for the Respondent Nos.1 & 3

Ms Pritha Dave i/b Ms Madhubala M Dave for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 16th APRIL, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 22-7-2015 passed by the Competent Authority and Deputy Registrar Co-operative Societies, Western Suburbs, Mumbai, by which order the application for deemed conveyance filed by the Respondent No.2 society came to be allowed and the deemed conveyance came to be granted of the plot of land which is mentioned in the certificate issued on the same day i.e. 22-7-2015 which is an area admeasuring 3886.60 sq.mtrs.

2 The Respondent No.2 herein is the society of the flat purchasers who had purchased the flats from the Petitioners herein in the building constructed by the Petitioners on the plot of land being Survey No.18 (part) Plot No.C CTS No.285 Village and Taluka Ghatkopar, Mumbai. Agreements executed with the flat purchasers are dating back to the year 1979. One such

agreement has been annexed to the above Petition at page 41. In the context of the challenge raised in the above Petition, covenant No.39 of the said agreement as also the schedule mentioned in Exhibit A to the said agreement, are material and are reproduced herein under

“39. After the building is completed and ready and fit for occupation and after the corporate body is incorporated and registered and only after all the flats / shop/garage in said building have been sold and disposed off by the Vendors and after the Vendors have received all dues payable to them under the terms of the Agreements with various flat/shop/garage holders the Vendors shall execute a proper conveyance in favour of such corporate body as herein provided in respect of the said land more particularly described in the Schedule hereto annexed and marked Ex. “A” together with the building standing thereon.

SCHEDULE OF THE PROPERTY

All that piece of parcel of Land situated in the village of Ghatkopar in the taluka Kurla, South Salsette Bombay & Suburban District now in Greater Bombay and in the Registration Sub-District of Bandra bearing S. No. 18(part) and bearing Plot NO.C of the layout sanctioned by the Municipal Corporation of Greater Bombay under No.CE/115/BS III/LO/N/S and containing by admeasurements 38679 sq.ft. (3625.02 sq.mt.) or there about and bounded as follows that is to say:

On or towards the East - Plot B of the lay out belonging to Vendor M/s. Sheth Enterprises.

On or towards the South and West – Plot of land belonging to Ciba Co-op Housing Society Ltd.”

On or towards the North - 60 D. P. Road.

3 Hence the Petitioners were obligated to convey the plot of land on which the building was constructed to the society comprising of the flat purchasers and the conveyance was to be of the plot of land mentioned in the schedule of the property. Since a period of more than 30 years had elapsed and in view of the fact that no conveyance was executed in favour of the Respondent No.2 society, a notice came to be issued on behalf of the Respondent No.2 society, through its Advocate on 27-10-2014 addressed to the Petitioners calling upon the Petitioners to convey the said plot of land mentioned in the agreement for sale admeasuring 3625.02 sq.mtrs a/w the structures standing thereon. Having received no reply to the said notice dated 27-10-2014, the Respondent No.2 society was constrained to file an application for deemed conveyance invoking Section 11 of the Maharashtra Ownership of Flats Act (for short "MOFA"). With the said application, the Respondent No.2 society filed various documents which were interalia the sale deeds executed in favour of the flat purchasers, the property card etc. The said application was opposed to on behalf of the Petitioners and it was denied that the Respondent No.2 society was entitled to the deemed conveyance to the extent sought vide the said application filed by it. The Competent Authority adjudicated upon the said application and having regard to the material on record amongst which was the property card, allowed the said application and granted deemed conveyance of the property. The extent of the plot of land has been mentioned in the certificate issued by the Competent Authority on the

same day which is an area of 3886.60 sq.mtrs. As indicated above, it is the said order dated 22-7-2015 which is taken exception to by way of the above Petition.

4 On behalf of the Petitioners the order has been challenged principally on the ground that what is granted to the Respondent No.2 society is beyond its entitlement mentioned in the agreement to sale, a copy of which as indicated above has been annexed to the above Petition at page 41. It is the submission of the Learned Counsel for the Petitioner that the Respondent No.2 society would be entitled to deemed conveyance of the plot of land admeasuring 38679 sq.ft. equivalent to 3594.70 sq.mtrs

5 Per contra the Learned Counsel appearing on behalf of the Respondent No.2 society would contend that the area granted is as per the property card and therefore no interference is called for with the impugned order.

6 It is trite that the entitlement of the society of the flat purchasers to the deemed conveyance would be in terms of the agreement entered into between the parties i.e. the flat purchasers and the developer. In the instant case the agreement postulates the conveyance being granted of a plot of land admeasuring 38679 sq.ft. equivalent to 3594.70 sq.mtrs. The mention of the

area of the plot being 3886.60 sq.mtrs in the property card would not entitle the Respondent No.2 Society to the said area as the said area is not part of the agreement which has been entered into between the parties. Hence though no interference is called for with the order passed by the Competent Authority and Deputy Registrar, in so far as the grant of deemed conveyance is concerned. However, the order would have to be modified, in so far as the area mentioned therein is concerned, the grant of deemed conveyance to the extent area of 3886.60 sq.mtrs. would have to be modified and the Respondent No.2 society would be entitled to the deemed conveyance of the area of 38679 sq.ft. equivalent to 3594.70 sq.mtrs. Hence the certificate issued by the Competent Authority and the Deputy Registrar would also accordingly stand modified to the said extent. The Competent Authority is directed to execute deemed conveyance in favour of the Respondent No.2 society expeditiously.

7 With the modification as aforesaid, the above Writ Petition is disposed of .

[R.M.SAVANT, J]