

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

WRIT PETITION NO.351 OF 2015

Smt. Mandakini Narayan Karandikar : Petitioner.
Versus
Jai Jalaram Co-op Housing Society Ltd.
Through its Secretary and ors. : Respondents.

Mr. Shailesh Shah, Senior Advocate a/w Mr. Sandeep Ashok Bhagwat for the Petitioner.

Mr. Sandesh D Patil for the Respondent No.1.

Mr. S D Rayrikar, AGP, for the Respondent No.4 & 5.

CORAM : R. M. SAVANT, J.

DATE : 14th March 2016

P.C.

1 The above Writ Petition has been filed challenging the order dated 13/11/2014 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 amendment of its Application filed under Section 11 of the Maharashtra Ownership of Flats Act 1963 (for brevity's sake herein after referred to as "the MOFA") came to be allowed.

2 The Respondent No.1 Society has been established for two buildings i.e. Building – A and Building – B which are situated on Plot bearing Tika No.5, City Survey Nos.48, 49, 51 and 51 of village Thane (W). The Petitioner herein is the owner of the said plot of land in question and has her own bungalow in the said plot of land. The Respondent No.1 Society has filed

an Application for Deemed Conveyance on 31/05/2013 based on the agreements which the members of the Respondent No.1 Society had entered into with the Developer. It appears that a dispute between the Developer and the Petitioner – Owner ultimately culminated in the suit for specific performance filed by the Developer against the owner being dismissed. It is not necessary to go into the said aspect in the present proceedings. As indicated above the present proceedings arise out of the Application filed by the Respondent No.1 society for amendment of the Application filed by it under Section 11 of the MOFA being allowed. It is required to be noted that in the said Application reliance was placed on an Architect's Certificate dated 21/03/2013 in which the total plot area is shown as 2785.12 sq.mtr., Area under road is shown as 129.60 sq.mtrs and the Net Plot area (1-2) is shown as 2655.52 Sq.mtrs.

3 The said Application for Deemed Conveyance was replied to on behalf of the Petitioner – Owner and the entitlement of the Respondent No.1 Society to the Deemed Conveyance was questioned on the ground that the Developer had no ;right to enter into any agreement with the members of the Respondent No.1 Society. The matter proceeded thereafter till the instant Application came to be filed on 24/09/2014 for amendment of the Application. The said amendment sought was in view of the Architect's Certificate dated 01/08/2014. In the said Architect Certificate built-up area in so far as Building

A is concerned, the same is shown as 2626.18 sq.mtrs and proportionate area of plot is shown as 2005.12 sq.mtrs. The built-up area in so far as Building B is concerned, the same is shown as 444.81 sq.mtrs and proportionate area of plot is shown as 340.00 sq.mtrs. Thereafter built-up area of Bungalow No.1 is shown as 288.00 sq.mtrs and proportionate area is shown as 220.00 sq.mtrs. The built-up area of Bungalow No.2 is shown as 288.00 and proportionate area is shown as 220.00 sq.mtrs. Hence total built up area shown in the said Architect Certificate is 3646.99 sq.mtrs. and the total proportionate area of plot is shown as 2785.12 sq.mtrs. However what is relevant in so far as the present Petition is concerned is that the proportionate area of the plot in the said Architect's Certificate in respect of two buildings comes to 2345.12 sq.mtrs. The Respondent No.1 therefore sought the amendment of the Application filed by it for Deemed Conveyance so as to correct the area sought from 2785.12 sq.mtrs. to 2345.12 mtrs. i.e. a lesser area

4 The said Application has been opposed to on behalf of the Petitioner by filing her reply dated 30/10/2014 and in the said reply the contentions as regards merits of the case of the Respondent No.1 in so far as Deemed Conveyance, are sought to be raised. It is further stated in the said reply that having proceeded on the basis of the original plot area being 2785.12 sq.mtrs, the Respondent No.1 should not be allowed to correct the area to 2345.12 mtrs. In support of her case, the Petitioner relied upon the

order dated 15/04/2014 passed by this Court in Writ Petition No.4150 of 2014.

5 The Competent Authority and Deputy Registrar considered the said Application for amendment and as indicated above has passed the impugned order dated 13/11/2014 and has allowed the said Application. The Competent Authority has observed that if the amendment Application is not allowed, prejudice would be caused to the Respondent No.1 at the hearing of the Application. The Competent Authority has distinguished the facts in the order passed by this Court in Writ Petition 4150 of 2014 from the facts of the present case. As indicated above it is the said order dated 13/11/2014 which is taken exception to by way of the Petition.

6 Heard the learned counsel for the parties. It is well settled that in so far as the Application for amendment is concerned, if the principles which are applicable to an amendment sought under the Code of Civil Procedure are applied, then amendment should not result in the admission or defence being taken away. In the instant case, the Application as originally filed was for the area of 2785.12 sq.mtrs whereas the amendment sought is for the lesser area being 2345.12 sq.mtrs. and therefore amendment is allowed, no prejudice can be said to be caused to the Petitioner. It was sought to be contended that having proceeded on the basis of the area of 2785.12 sq.mtrs all along the Respondent No.1 should not have been allowed to change its stands and claim

the area 2345.12 sq.mtrs. The learned Senior Counsel appearing for the Petitioner Shri Shailesh Shah would once again seek to place reliance on the order dated 15/04/2014 passed in Writ Petition No.4150 of 2014. In so far as the said aspect is concerned, it is required to be noted that the defence of the Petitioner viz. that the Respondent No.1 Society is not entitled to file Application for Deemed Conveyance remains, whether it is in respect of 2785.12 sq.mtrs or 2345.12 sq.mtrs. as in fact in the present case lesser area is claimed rather than increase in the area. Hence no prejudice can be said to be caused to the Petitioner on the count of amendment being allowed.

7 In so far as the order passed in the Writ Petition No.4150 of 2014 is concerned, in my view, the facts in the said case are clearly distinguishable in the facts involved in the present case as in the said case the Plaintiff was proceeding on the basis that building known as Shri Sundar Narayan Ganesh and Indira Niwas are one and the same building and thereafter the amendment was sought. By the amendment it was sought to be contended that they are two separate buildings joined by a line of shops. That it is in the facts of the said case that this Court observed that the Trial Court was right in rejecting the Application for amendment.

8 In my view, it is not necessary to interdict with the impugned order in the writ jurisdiction of this Court. Needless to state that the

contentions of the parties on merits are kept open for being urged before the Competent Authority. Needless to further state that the Competent Authority would try the proceedings on their own merits and in accordance with law. The above Writ Petition is accordingly dismissed. All interim orders stand vacated. The parties to appear before the Competent Authority on 05/04/2016 at 3.00 pm. The Petitioner to keep the additional reply to the amended part of the Application ready on 05/04/2016.

9 All concerned parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associate/Sheristedar.

[R.M.SAVANT, J]