

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

WRIT PETITION STAMP NO.33581 OF 2016

Hemant Kapadia and another

..Petitioners

Versus

**The Competent Authority, District
Deputy Registrar of Co-operative Societies
and others**

..Respondents

Shri. Vineet Naik, Senior Advocate a/w Ms. Rati Lodha & Ms. Disha Kunder i/by Lodha Legal for the Petitioners.

Shri. S. D. Rayrikar, AGP for the Respondent No.1.

Shri. C. S. Balsara a/w Shri. H. N. Vakil, Ms. S. M. Vakil & Ms. M. R. Mehta i/by Mulla & Mulla & C. B. & C. for the Respondent No.2.

Shri. Karl Tamboly a/w Shri. Raghav Gupta i/by Wadia Ghandy & Co., for the Respondent Nos.3 & 4.

CORAM : R. M. SAVANT, J.

DATE : 8th DECEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 01.12.2016 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai (1) City, by which order, the intervention application filed by the Petitioners herein came to be rejected.

2 The Petitioners are the purchasers of a unit in the building known as “Marathon Icon” which is situated on land bearing City Survey No.2/142 of Lower Parel Division. The Respondent No.2 herein is a Co-operative Housing Society of the flat purchasers of buildings No.I, II, III

and IV compendiously known as Marathon Era which buildings have been constructed on the same plot i.e. City Survey No.2/142 of Lower Parel Division. The Respondent No.2 has filed an application for grant of unilateral deemed conveyance invoking Section 11 of the Maharashtra Ownership of Flats Act, 1963 (For short "MOFA"). In so far as the said application is concerned, the relief as originally sought is of unilateral conveyance of an area of 24900.75 sq.mtrs. of FSI corresponding to proportionate plot area of 17928.75 sq.mtrs. i.e. percentage of share works out to 59.28% of the plot area. In so far as the application for deemed conveyance is concerned, the Respondent No.5 herein whose plot is situated in the close vicinity of the plot of the Respondent No.2 had filed an application for intervention which had been rejected by the Competent Authority and Deputy Registrar of Co-operative Societies giving rise to filing of Writ Petition No.10183 of 2013 in this Court. The said Writ Petition came to be disposed of in the light of the statement made by the Learned Counsel for the Respondent No.2 therein, also the Respondent No.2 herein that the said Respondent did not have any objection to the intervention of the Petitioner in the said proceedings i.e. the Respondent No.5 herein. However vide clause 3 of the operative part of the order passed in the said Writ Petition, the Respondent No.1 i.e. the Competent Authority was directed that he shall not allow intervention

application of any other applicant, save and except of the present Petitioner i.e. the Respondent No.5 herein. After the said Writ Petition was disposed of, the matter proceeded before the Competent Authority and resulted in the order dated 22.11.2013 passed by the Competent Authority granting deemed conveyance to the Respondent No.2 herein. The said order came to be challenged by way of a Writ Petition being No.11802 of 2013 in this Court, which came to be allowed by a Learned Single Judge of this Court (Anoop V. Mohta, J) by order dated 18.04.2015. Resultantly, the impugned order dated 22.11.2013 came to be set aside and the matter came to be remanded back to the Competent Authority for a de-novo consideration of the application by giving proper opportunity to the parties.

3 On the application being remanded, the Respondent No.2 herein filed an application for amendment of the said application for deemed conveyance and in the context of the present Petition, the amendment incorporated vide paragraph 12(i) assumes importance and is reproduced hereinunder :-

“(12)(i) Conveying plot of land admeasuring 6787.82 sq.mtrs. more particularly described in 'the Second Schedule' along with 56.19% right, title and interest of the total FSI embedded in and derived from the entire plot of land being CS No.2/142 of Lower Parel Division on standard FSI of 1.33 basis as described in the First Schedule

of every Agreement for Sale of Flats in Building Known as Marathon Era-I, II, III & IV along with the said Buildings having total built up area of 24900.75 sq.mtrs. using FSI @ 1.33 standard of 18722.37 sq.mtrs...: and”

4 Hence, by the said paragraph 12(i) which is the prayer clause the Respondent No.2 has sought conveyance of the 4 buildings having total built up area of 24900.75 sq.mtrs. which by using FSI @ 1.33 will be equivalent to plot area admeasuring 18722.37 sq.mtrs. By the said prayer, the Respondent No.2 has also claimed that the FSI to the extent of 56.19% of the total FSI embedded in the said Plot should be conveyed to it. The said application for amendment came to be allowed by the Competent Authority by order dated 07.10.2016. After the said amendment was granted, the Petitioners herein filed the instant application for intervention. The said application was founded on the fact that the Petitioners though purchasers of a unit in the building known as “Marathon Icon” would be prejudicially affected in the light of the conveyance sought to the extent mentioned in paragraph 12(i) of the application. The said application for deemed conveyance was replied to on behalf of the Respondent No.2 herein and the intervention was sought to be opposed inter-alia on the grounds mentioned in the said reply, but principally on the ground that the Petitioners had no locus as also the order passed by the Learned Single Judge of this Court in Writ Petition No.10183 of 2013 does not permit of any such intervention. The said

Application No.14 of 2013 filed by the Petitioners as indicated above has been rejected by the Competent Authority and the District Deputy Registrar of Co-operative Societies by the impugned order dated 01.12.2016. The application has been rejected on the ground that the said application has been filed at a belated stage when the application for deemed conveyance filed by the Respondent No.2 has been substantially heard, that the Competent Authority would not be in a position to adjudicate the disputes, if any in respect of FSI between the parties, that the order dated 28.10.2013 passed in Writ Petition No.10183 of 2013 does not permit of any further intervention in the application for deemed conveyance filed by the Respondent No.2 and that the Petitioners since not being promoters/developers vis-a-vis the Respondent No.2 society would have no locus to intervene in the proceedings for deemed conveyance filed by the Respondent No.2. As indicated above, it is the said order dated 01.12.2016 which is taken exception to by way of the above Petition.

5 On behalf of the Petitioners, the Learned Senior Counsel Shri. Vineet Naik sought to make submissions in furtherance of the case of the Petitioners that the grant of deemed conveyance to the extent sought by the application is likely to prejudicially affect the Petitioners and therefore the intervention of the Petitioners is necessary. The said

submission was sought to be buttressed by the Learned Counsel by referring to the plot areas, the layout plan and the FSI i.e. available to be consumed in so far as the residential and commercial purposes are concerned. It was the submission of the Learned Senior Counsel that if the application ultimately results in the conveyance of the FSI as sought by the Respondent No.2 by the instant application there would be imbalance of FSI in so far as the Petitioners are concerned.

6 Per contra, the Learned Counsel Shri. C. S. Balsara appearing on behalf of the Respondent No.2 who is the main contesting Respondent and the proponent of the application would question the credibility or bonafides of the application filed on behalf of the Petitioners. It was the submission of the Learned Counsel that even assuming the conveyance is granted to the extent sought vide the instant application, the Petitioners would in no way be prejudiced as the Petitioners' structure is situated on plot area of 2328.23 sq.mtrs. which is situated to the North of the plot in question. It was also the submission of the Learned Counsel that the intervention of any other party except the Respondent No.5 cannot be permitted in view of the order dated 28.10.2013 passed in Writ Petition No.10183 of 2013. The Learned Counsel also sought to draw this Court's attention to a layout plan, wherein the plot on which the buildings of the Respondent No.2 society are situated as also the other plots including the

plot on which the building of the Petitioners is situated are shown.

7 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue that arises is whether the Petitioners can be allowed to intervene in an application filed for deemed conveyance under Section 11 of the MOFA by the Respondent No.2 herein. In the said context, it is required to be noted that the Petitioners are the purchasers of a unit in the building known as “Marathon Icon” which is situated on a plot admeasuring 2328.23 sq.mtrs. which is a fact stated in the above Petition. The said plot area can be said to be a minuscule area considering the larger plot area of City Survey No.2/142 which is to the extent of 34000 sq.m.trsr. and is therefore about 7 to 8 percent of the larger plot area. It is required to be noted that the four buildings of the Respondent No.2 society have resulted in the consumption of FSI to the extent of 24900.75 sq.mtrs. The said buildings are situated on the plot admeasuring 6787.82 sq.mtrs. The members of the Respondent No.2 society have undoubtedly agreements in their favour executed with the developer which agreements are referable to Section 4 of the MOFA. The Respondent No.2 society comprising of the flat purchasers would therefore be entitled to conveyance of the plot of land and FSI commensurate with the built up area of the four buildings as agreed by the developer/promoter in the agreement. It is in the said

context that the Respondent No.2 amended its application to probably make it more explicit in the matter of the claim for FSI by making reference to the plot area. It is in the said context that the Respondent No.2 had sought conveyance of 24900.75 sq.mtrs. of FSI i.e. built up area of the four buildings which at 1.33 FSI would be equivalent to 18722.37 sq.mtrs. of plot area. The Respondent No.5 herein as indicated above had filed an application for intervention which application was rejected by the Competent Authority however was allowed by this Court on the statement made by the Learned Counsel appearing for the Respondent No.2 herein i.e. the Applicant. In so far as the said application is concerned, it is made clear by the order dated 28.10.2013 passed in Writ Petition No.10183 of 2013 that no further interventions would be allowed. In my view, the amendment of the application for deemed conveyance by the Respondent No.2 would not make any material difference in so far as the restriction that was imposed by the order dated 28.10.2013 is concerned, as at the relevant time the Petitioners building was under construction and the building of the Respondent No.5 was already in existence. The factual basis for claiming the conveyance has not changed by the amendment. Hence, cumulatively taking the total plot area vis-a-vis the built up area of the Petitioners building as also plot area of the Petitioners building, the FSI which is available in so far as the

commercial user for IT park is concerned, as also taking into consideration the total FSI available for the entire plot and on a rough and ready calculation of the FSI, it cannot be said that the Petitioners would be prejudicially affected by any order passed in the application for deemed conveyance filed by the Respondent No.2 herein. As indicated above, the FSI applicable in so far as the Petitioners' plot is concerned is a higher of FSI 2.66, which in my view is the defining aspect in so far as the entitlement of the Petitioners for intervention is concerned in the context of the relief sought by the Respondent No.2 in its application for deemed conveyance. Though on behalf of the Respondent No.2 credentials or bonafides of the Applicant were sought to be questioned on the ground that the application for intervention has been filed at the behest of a third party just to stall the adjudication of the application for deemed conveyance filed by the Respondent No.2, this Court need not delve into the said aspect. However the fact remains that the Petitioners cannot be said to be either the developers or promoters and therefore would not be entitled to intervene in the proceedings filed for deemed conveyance by the Respondent No.2. As indicated above, the Petitioners would also not be prejudiced. The order passed by the Competent Authority rejecting the application of the Petitioners cannot be therefore said to suffer from any illegality or infirmity for this Court to interdict in

its writ jurisdiction. The Writ Petition is accordingly dismissed.

8 Needless to state that the observations if any made in the instant order are only for considering the application for intervention of the Petitioners. The main application for deemed conveyance would be considered on its own merits and in accordance with law.

[R.M.SAVANT, J]