

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

WRIT PETITION NO.1260 OF 2016

Indra Constructions Private Ltd.

..Petitioner

Versus

The State of Maharashtra and others

..Respondents

Shri. Vishwajit P. Sawant a/w Soumya Brajmohan i/by Kartikeya & Associates for the Petitioner.

Mrs. V. S. Nimbalkar, AGP for the Respondent Nos.1 & 2.

Shri. P. K. Dhakephalkar, Senior Senior a/w Shri. Ashish Kamat & Ranjeev Carvalho i/by Shri. Omkar Kulkarni for the Respondent Nos.3 to 8.

CORAM : R. M. SAVANT, J.

DATE : 8th DECEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 17.10.2015 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, by which order, the application for unilateral deemed conveyance filed by the Respondent Nos.3 to 8 herein came to be allowed and deemed conveyance of the area as mentioned in clause (3) of the certificate came to be granted.

2 The Petitioner herein is the owner and developer of the plot

of land bearing CTS No.58(pt) and 62 of village Magathane, Taluka Borivali. Pursuant to the layout and the Development Plans which were sanctioned in respect of the said plot of land, about 10 buildings have been constructed by the Petitioner herein. The said construction was completed sometime in the year 1978. The Respondent Nos.3 to 8 are the societies registered in respect of building Nos.C-1 to C-5 which are towards the East of the said plot of land. In so far as other five buildings i.e. A, B-1, B-2, B-3 and B-4 are concerned, they are the buildings of the Respondent No.9 society. In so far as the Respondent Nos.3 to 8 are concerned, they have been registered as Co-operative Housing Societies on 19.01.1985. The Respondent No.9 society has also been registered at the same contemporaneous time. It seems that a proposal of a road was in the Development Plan of the said area. The said Development Plan road as proposed was cutting through the lands in question thereby dividing the said lands into two plots of land one on the East of the said road and the other to the West of the said road. The buildings of the Respondent Nos.3 to 8 societies are situated towards East of the said Road, whereas the buildings of the Respondent No.9 society are situated towards the West of the said road. The said Development Plan road has been constructed by virtue of which the lands in question have been physically divided into two parts.

3 As indicated above, the Respondent Nos.3 to 8 filed the instant application invoking Section 11 of the Maharashtra Ownership of Flats Act, 1963 (For short "MOFA") for the grant of unilateral deemed conveyance as conveyance was not executed by the Petitioner in their favour though a period of almost 30 years had elapsed since the registration of the said Respondent Nos.3 to 8 societies. To the said application, the Petitioner as well as the Respondent No.9 were party Respondents. In support of their claim for the grant of unilateral deemed conveyance, the Respondent Nos.3 to 8 it seems had produced a certificate of an Architect, wherein the plot area and the FSI calculations were mentioned. It is in the context of the said Architect's certificate that the impugned order granting unilateral deemed conveyance has been passed. However the application as originally filed also contains the plot area of which deemed conveyance was sought by the Respondent Nos.3 to 8 societies. In so far as the said application is concerned, the impugned order discloses that the documents relevant for the purposes of an application under Section 11 of the MOFA were produced by the Respondent Nos.3 to 8 before the Competent Authority and the Deputy Registrar of Co-operative Societies. The parties were also heard before the Competent Authority and Deputy Registrar of Co-operative Societies including the Respondent No.9. It is on the basis of the material which

has come on record as also after hearing the parties that the impugned order dated 17.10.2015 came to be passed by the Competent Authority granting unilateral deemed conveyance to the extent mentioned in clause (3) of the certificate which has been issued pursuant to the said order of deemed conveyance.

4 The Learned Counsel Shri. Vishwajit P. Sawant appearing on behalf of the Petitioner would contend that in terms of the flat purchase agreements entered into between the parties any additional FSI which has become available would enure to the benefit of the Petitioner. It was the submission of the Learned Counsel that without considering the aforesaid aspects that the application for deemed conveyance has been adjudicated and the impugned order passed. It was also the submission of the Learned Counsel that the property cannot be sub-divided merely because a Development Plan road is passing through it as the property still remains in a layout which is indivisible

5 Per contra, the Learned Senior Counsel Shri. P. K. Dhakephalkar appearing on behalf of the Respondent Nos.3 to 8 would support the impugned order and would question the filing of the Petition by the Petitioner who claims to be the original owner and developer after the construction was completed in the year 1977-78 or thereabouts and

the Respondent Nos.3 to 8 societies registered in the year 1985.

6 In my view, it is not possible to accept the contentions urged on behalf of the Petitioner by the Learned Counsel Shri. Vishwajit P. Sawant. In terms of Section 11 of the MOFA, the developer/promoter is obliged to execute a conveyance within four months of the society of the flat purchasers being registered. As indicated above, in the instant case, the Respondent Nos.3 to 8 societies have been registered as long back as in the year 1985 and were still awaiting conveyance which constrained the Respondent Nos.3 to 8 to file the instant application for unilateral deemed conveyance in the year 2015. As indicated above, the Respondent Nos.3 to 8 are situated on the East side of the Development Plan road, whereas the buildings of the Respondent No.9 are situated towards the Western side. The Respondent Nos.3 to 8 have therefore sought unilateral deemed conveyance of the land on which their buildings are situated, which as indicated above are to the East of the said road. The Competent Authority has also granted deemed conveyance of the plot of land on which the buildings are situated and the proportionate share in the FSI which has become available on account of the Development Plan road. The FSI becoming available on account of the Development Plan road has accordingly been apportioned between the Respondent Nos.3 to 8 and the Respondent No.9 in the proportion of

the plots held by them. In so far as the Respondent No.9 is concerned, the said Respondent had also filed Writ Petition in this Court challenging the impugned order dated 17.10.2015 being Writ Petition No.1968 of 2016 which Writ Petition has been withdrawn by the Respondent No.9 with liberty to file a suit. The Petitioner herein also seeks to assert its rights in respect of the land in question which according to it has kept reserved to itself in the agreements entered into between the parties. The Competent Authority obviously cannot adjudicate upon the said rights as has been held by the judgments of this Court, the Competent Authority is only concerned with the application for grant of deemed conveyance and cannot adjudicate upon the alleged rights, if any claimed by the Petitioner under the agreements.

7 It would have to be borne in mind that the construction was completed in the year 1978 and the Respondent Nos.3 to 8 societies have been registered in the year 1985, the Petitioner herein seeks to now raise contentions based on the alleged rights, if any under the agreements entered into between the Petitioner and the flat purchasers. In my view, the grant of unilateral deemed conveyance cannot be stalled at the behest of owner/developer who has completed the construction in the year 1978 and who has failed to execute conveyance in favour of the Respondent Nos.3 to 8 for the last 30 years. In my view, therefore, no case for

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interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

8 Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]