

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1170 OF 2014

Mehboob Ali Humza & Others

.... Petitioners

Vs.

District Sub-Registrar (3), Mumbai/
Competent Authority & Others

.... Respondents

Dr. Milind Sathe, Senior Counsel with Mr. Bhushan
Deshmukh & Ms Mallika Taly i/by M/s. S. Mahomedbhai
& Co. for the Petitioners.

Mr. Drupad S. Patil for the Respondent No.2.

Mr. Milind More, Addl.GP, for the Respondent No.4.

CORAM: S.C. DHARMADHIKARI &
M.S. SONAK, JJ.

DATE : JUNE 24, 2016

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioners pray for issuance of a writ of certiorari or any other appropriate writ, order or direction calling for the records and proceedings relating to the impugned order dated 13-12-2013 passed by the respondent No.1 in Application No.91 of 2013.

2. The petitioners are claiming to be owners of an immoveable property in the City of Mumbai Suburban District. This property is more particularly described in the writ petition. The first respondent is the Competent Authority appointed under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA"). The second respondent is the Co-operative Housing Society of those members/occupants/unit holders who have purchased their respective units from the respondent No.3 under an Agreement which is subject to MOFA.

3. It is the case of this Society that the respondent No.3 is a promoter and having agreed to sell the flats/units, so also convey the building and the land underneath and appurtenant thereto and on failure of such obligation, the Developer can be called upon to execute the conveyance and if the conveyance is not forthcoming, then the intervention of the statutory authority can be sought and that is precisely the proceedings.

4. The Agreement dated 29-4-1994 between the petitioners on one part and the respondent No.3 on the other related to the grant of development rights to the third respondent in respect of this property. The third respondent took the preparatory steps, applied for sanction of plans for construction and the Mumbai Mahanagar Palika having sanctioned them, they constructed the building. The terms and conditions of this Agreement need not detain us for the simple reason that Mr. Sathe, learned Senior Counsel appearing for the petitioners, submits that there was a dispute between the petitioners and the respondent No.3 which arose out of this Agreement. This dispute led to the respondent No.3 filing a suit on the Original Side of this Court being Suit No.213 of 2001. Consent Terms were filed in that suit based on which a consent decree was passed.

5. The argument is that on page 68 of the paper-book, Annexure "B" to the Consent Terms, is a sketch/map of the plot under development by the respondent No.3 and in relation to

which a conveyance was sought by the registered Co-operative Housing Society. At a corner of this sketch and below the description of the final plot No.16 is a triangular portion and that is a property which belongs to the petitioners, but is without any access. The petitioners' argument is that this should be either taken over by the respondent No.2-Society or it should grant an access through its property to the petitioners and enjoy the same.

6. At the same time, it is not disputed that since the third respondent was proceeded against by the Society under Section 11 of the MOFA and it sought conveyance of an area admeasuring 1975.75 square metres, the petitioners state that the petitioners are offering to the second respondent-Society conveyance of 2028.43 square metres which would be inclusive of that triangular portion. That was the issue raised in writing by the petitioners by filing a miscellaneous application. However, unmindful of all this, the first respondent passed an order, which is impugned in the petition, allowing the application of the second respondent for an unilateral deemed conveyance.

7. We are of the clear view that the Agreement between the promoter and the flat purchasers which eventually led to the second respondent-Society of flat purchasers seeking intervention of the Competent Authority, and the Competent Authority's order granting a deemed conveyance shall not in any manner affect the claim of the petitioners even though they had sought the intervention of the first respondent. If their claim is that the triangular portion (page 68) belongs to them, but it is not possible to enjoy the same for want of access and despite such deemed conveyance the second respondent-Society must grant that access, then nothing prevents the petitioners from approaching the Competent Civil Court and on the strength of the documents of title establishing and proving their claim. We have no hesitation in our mind that when such a claim is being agitated, the same will be considered by the Competent Civil Court despite execution of the deemed conveyance or the clauses so stipulated thereof. For such a proceedings, the petitioners may have to implead not only the Developer but the Society as well as party respondents. But that does not mean

that we are entering into a factual dispute and consider it in our limited jurisdiction. The petitioners would be required to establish and prove their title by establishing the genuineness of the contents of the Agreements and their binding nature. This entire exercise is not possible in our limited jurisdiction. The writ petition is, therefore, dismissed, subject to above.

(M.S. SONAK, J.)

(S.C. DHARMADHIKARI, J.)