

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1172 OF 2014

Surendra Chunilal Gupta .. Petitioner
VS.
Hemresha Co-operative Housing
Society Limited & Ors. .. Respondents

Ms M. V. Thakkar with Mr. Rajan V. Thakkar i/b. Mr. Vijay P. Salunkhe for Petitioner.

Mr. P. S. Dani – Senior Advocate with Mr. Bipin Joshi, Mr. Parag Shah and Mr. P. B. Joshi for Respondents.

**CORAM : S. C. DHARMADHIKARI AND
M. S. SONAK, JJ.**

Date of Reserving the Judgment : 24 June 2016

Date of Pronouncing the Judgment : 08 July 2016

JUDGMENT : (Per : M. S. Sonak, J.)

1] The petitioner challenges order dated 15 February 2014 made by the competent authority (respondent no. 4) under Section 11 of the Maharashtra Ownership Flats (Regulation of promotion of construction, sale, management and transfer) Act, 1963 (MOFA) in deemed conveyance application no. 414 of 2013.

2] The petitioner and the respondent no. 3 claim to be co-owners of the property described in Exhibit 'A' to the petition. The respondent no. 2 has developed a portion of the said property, which is described in Exhibit 'B' to the petition, *inter alia* by

construction of buildings having apartments. The respondent no. 1 is a co-operative society comprising 47 members / purchasers of such apartments. The respondent no. 4 is the competent authority under section 5A of MOFA, who has made the impugned order dated 15 February 2014 allowing deemed conveyance application no. 414 of 2013 made by the respondent no. 1 society.

3] Ms Thakkar, learned counsel for the petitioner submits that the petitioner was neither the promoter nor the developer within meaning assigned to these expressions under the MOFA and therefore, the impugned order could not have been made as against the petitioner and the respondent no. 3 herein. Ms Thakkar submits that there is really no privity of contract between the petitioner and the respondent no. 1 society. In any case, Ms Thakkar pointed out that the impugned order has failed to take into consideration the agreement dated 1 October 1974, in terms of which the petitioner and the respondent no. 3 had merely agreed to lease the property described in Exhibit 'B' to the respondent no. 2, subject to certain terms and conditions. Ms Thakkar pointed out that the impugned order and the deemed conveyance directed thereby, completely ignore the agreements and understandings between the co-owners and the developers. The impugned order therefore, has the effect of re-writing the terms of agreement between the parties. Ms Thakkar

submits that since the respondent no. 2 – developer was only the lessee, there was no question of directing the petitioner, the respondent nos. 2 and 3 to execute deemed conveyance. Such direction, clearly infringes the proprietary and civil rights of the petitioner. Ms Thakkar also submitted that there were several procedural infirmities like absence of registered document on record, incomplete application etc. and on these basis the competent authority was required to reject the application for deemed conveyance made by the respondent no. 1 society. For all these reasons, Ms Thakkar submitted that this is a fit case to interfere with the impugned order made by the competent authority.

4] We have perused the impugned order, as well as the material on record. The record indicates and the impugned order accepts that there were procedural compliances on the part of the respondent no. 1 society. In any case, the so-called infirmities referred to by Ms Thakkar, were really, not as substantial, as to warrant the rejection of the application for deemed conveyance.

5] There is no dispute that the property in question was leased by the petitioner and the respondent no. 3 to the respondent no. 2. The respondent no. 2 has developed the property, *inter alia*, by way of construction of buildings comprising several apartments. Since,

despite demand, no conveyance was being executed, the respondent no. 1 was constrained to apply under the provisions of MOFA for the execution of deemed conveyance. There is no merit in the contention of Ms Thakkar that such application was not maintainable as against the petitioner and the respondent no. 3. The material on record and the definition of the expression '*promoter*' renders the view taken by the competent authority, quite sustainable. The competent authority, in the present case, has not ignored or re-written the terms of agreement as between the petitioner and the respondent no. 3 on one hand and the respondent no. 2 on the other. The direction issued by the impugned order, though, makes reference to deemed conveyance, the same is required to be construed in the context of the circumstance that the respondent no. 2 was himself a lessee of the property in question. Accordingly, the direction, in effect, relates to assignment of such leasehold rights.

6] In case of ***Mazda Construction Company & Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.***¹, this Court, upon consideration of various provisions of MOFA has held that what is to be conveyed even by a deemed conveyance, is an unilateral act which enables the flat purchasers to acquire the promoter's right, title and interest in the land and the building. Therefore, it cannot be

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said that an unilateral deemed conveyance conveys some thing more than what belongs to the promoter. Besides, in the said decision, it has been held that in case the parties have any issues or contentions, which, according to them, affect their proprietary rights or civil rights, the directions for execution of a deemed conveyance under the provisions of the MOFA, will not preclude the parties from raising such issues by instituting action before the civil courts or any other competent forum. All contentions of all parties in such proceedings, if instituted, can always be kept open.

7] In the facts and circumstances of the present case, we are satisfied that the impugned order made by the competent authority warrants no interference. This is because, notwithstanding the impugned order, the petitioner, is always at liberty to raise and agitate his alleged claims in respect of the property in question by approaching the competent civil court or other appropriate forum. We have no hesitation that if such claim is raised and agitated, the same will be considered by the competent civil court or other appropriate forum, notwithstanding the execution of deemed conveyance or the clauses stipulated therein. We accordingly, grant liberty to the petitioner in this regard, leaving contentions of all parties open.

8] Subject to the liberty as aforesaid, this petition is dismissed. There shall be no order as to costs.

9] At this stage Ms Thakkar appearing for the petitioner prays that the order impugned in the petition was passed on 15th February, 2014. That was stayed on 23rd September, 2014. Ms Thakkar states that the stay be continued for a period of 8 weeks. However, during the period, namely, from February to September 2014, the Sub-Registrar or concerned registration officer has not registered the instrument covered by the order as deemed conveyance.

10] The respondent's counsel has opposed the request made by Ms. Thakkar for continuation of the *status quo* order for a reasonable period, but also reports that he has no instructions.

11] After hearing both counsel on this point, we direct that the ad-interim order passed on the petition shall be continued for a period of 8 weeks from today, but without prejudice to the rights and contentions of both sides and our continuation of the same does not mean that the instrument in question is not capable of registration as deemed conveyance.

(M. S. SONAK, J.)

(S. C. DHARMADHIKARI, J.)