

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1918 OF 2016

Sanjay Eknath Joshi and ors.

: Petitioners.

versus

State of Maharashtra and ors.

: Respondents.

Ms. Swati P Gautam for the Petitioners.

CORAM : R. M. SAVANT, J.

DATE : 29th August 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 07/07/2015 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4) and Competent authority by which order the Application filed by the Respondent No.3 Society for unilateral deemed conveyance came to be allowed and unilateral deemed conveyance of the plot of land in question being Plot No.71, Survey No.12 Part, CTS No.106, 106/1 to 106/03 admeasuring 492.7 sq.meters situated at village Pahadi Eksar, Taluka Borivali came to be granted.

2 The Petitioners herein are the heirs of one Eknath Gajanan Joshi who was the Chief Promoter of the Respondent No.3 Society. The Respondent No.3 Society comprises of the flat purchasers who have purchased the flats in

the building which is of the Respondent No.3 Society. The Respondent No.4 it appears is the original owner of the plot of land in question who has caused construction through the said Eknath Gajanan Joshi. The Respondent No.3 has been registered on 23/04/1976. In view of the fact that the conveyance was not being executed in its favour, the Respondent No.3 filed an Application on 20/06/2013 under Section 11(3) and 11(4) of the Maharashtra Ownership Flats Act (for short MOFA), 1963 for grant of unilateral deemed conveyance thereby conveying the rights, title and interest of the owner/promoter in the land and building in question.

3 The application was accompanied by the necessary documents being Resolution passed by the Respondent No.3 Society; copy of the 7x12 extract, certified copy of the property card, details of the members of the society, approval of the plans by the BMC dated 11/07/1975, Title search report dated 28/03/2013 etc.

4 The said application was opposed to on behalf of the Petitioners herein who, as indicated above, are the heirs of one Eknath Gajanan Joshi who were permitted to be joined as parties to the said proceedings. A reply came to be filed on behalf of the Petitioners by Sanjay Eknath Joshi. The application was sought to be opposed on the ground that the application does not disclose any cause of action and also does not disclose how the rights have devolved

from the original vendor to the present one. The application was also opposed on the ground that unless the area is confirmed by proper measurement of the plot of land, no order for deemed conveyance could be passed.

5 The Competent Authority considered the said application and has by the impugned order dated 07/07/2015 has allowed the same. The Competent Authority has observed that the opponents i.e. the Petitioners herein were under an obligation to convey the premises in favour of the Applicant – Society within the span of four months from the date of formation of the society as provided by Rule 9 of the MOFA Rules. The Competent Authority has observed that since the owner/developer has failed to convey the land and building within four months of the registration of the society, the Respondent No.3 society was entitled to make the application. The Competent Authority further held that the original opponent Eknath Gajanan Joshi in his capacity as developer had constructed a building and sold the flats which are now occupied by the members of the Respondent No.3 society. The Competent Authority therefore held that the original opponent Eknath Gajanan Joshi had become a promoter and therefore was required to convey the land in question in favour of the Respondent No.3 Society. The Competent Authority accordingly allowed the application and granted deemed conveyance of the plot of land mentioned in the operative part of the impugned order.

6 The learned counsel for the Petitioners would contend that the Petitioners herein who are the heirs of the said Eknath Gajanan Joshi have a right in respect of the stilt portion and are therefore required to be paid by the Respondent No.3 Society for the stilt portion which right has been recognized by the adjudication which took place in respect of a dispute in the Co-operative Court being Case CC No.334 of 1977 decided on 28/11/1986. It was the submission of the learned counsel for the Petitioners that the said application for deemed conveyance has been decided without taking the said judgment into consideration.

7 In my view, it is not possible to accept the contention urged on behalf of the Petitioners, firstly because though there is a reference to the adjudication of a dispute by the Co-operative Court bearing No.334 of 1977, the same would not come in the way of the Respondent No.3 from filing the application for deemed conveyance, and would also not come in the way of the Competent Authority from considering the said application, and secondly the right if any under the said judgment would not affect the entitlement of the Respondent No.3 Society for grant of unilateral deemed conveyance of the land on which the building is situated. If the Petitioners have any claim against the Respondent No.3 Society in respect of any payment that the Respondent No.3 was required to make to the Petitioners, it is for the Petitioners to file appropriate proceedings. However, they cannot stall the execution of

conveyance in favour of the Respondent No.3 as it is waiting for the same since the year 1976. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]