

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 1904 OF 2012**

M/s. Omprakash Tolaram	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

Mr. Chirag Mody with Mr. Nilesh Tated with Mr. Rushabh P. i/b. M/s. DSK Legal for Petitioner.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.
DATE : 19 SEPTEMBER 2016**

P.C.:

- 1] Heard learned counsel for the parties.
- 2] In the peculiar facts and circumstances of the present case, we are satisfied that the challenge to Rule 13 of the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Rules 1964 (said Rules) is purely academic and therefore, need not be entertained.
- 3] The entire petition is mainly based upon certain alleged civil rights and claims of the petitioner in the context of agreements entered into by it with the respondent no. 4 or its members. It is the case of the petitioner that if the petitioner is required to execute the conveyance as directed or to suffer the deemed conveyance as directed, certain alleged civil rights of the petitioner, in terms of the agreements executed will be compromised.

4] By now, it is quite well settled that such disputes, which are really private and contractual in nature cannot be normally adjudicated in proceedings under Articles 226 and 227 of the Constitution of India. Besides, this Court, in the case of **Mazda Construction Company & Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.**¹, upon consideration of the various provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (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 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.

5] The same position has been reiterated in case of **Surendra Chunilal Gupta vs. Hemresha Co-operative Housing Society Ltd. & Ors.**²

6] In such circumstances, 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

1 2013 (2) ALL MR 278

2 O.S. Writ Petition No. 1172 of 2014 decided on 8 July 2016.

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.

7] We also clarify in case the petitioner institutes the civil suit, then the issues raised therein will be decided in accordance with law and on its own merits, without being influenced by the order impugned in the present petition.

8] With liberty and observations as aforesaid, the present petition is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)

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