

M/s. Shree Chintamani Builders	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Mr. A. S. Khandeparkar with Mr. Shantanu Chandratre i/b. M/s. Khandeparkar and Associates for respondent no. 3.

DATED :- August 11, 2016

Having heard both sides, we do not find that we should interfere with the impugned order granting the deemed conveyance in favour of respondent no. 3 society.

2) The petitioner's contention is that respondent no. 3 has no right, title and interest of whatsoever nature in CTS No. 2396/2 and that is wrongly included in the deemed conveyance. The apprehension is that this area would be usurped by the society (respondent no. 3) on the strength of this deemed conveyance and the order in that behalf.

3) We do not think that the petitioner's apprehension has any basis. This court in number of judgments and particularly in the case of *Mazda Construction Company vs. Sultanabad Darshan Chs. Ltd. and Ors.*¹ has clarified that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property and to such an extent as is apprehended by the petitioner. It is not as if such an order is passed that the petitioners have no remedy to question the act of the society on the strength of such deemed conveyance. The petitioner can still bring a substantive suit on title and point out therein that as far as CTS No. 2396/2 is concerned, the reservation was shifted. The petitioner was not allowed to put up any construction and both plots, namely, CTS No. 2396/2 and 2396/1A are separate having separate property cards and survey numbers. The possession of the respective plot sold to respondent no. 3 was given and the occupation certificate is also handed over. The possession of CTS No. 2396/2 still continues with the petitioner. All these assertions and by pointing out the relevant documents and records so also by leading oral evidence can be substantiated by the petitioner in the substantive suit. We do not think that in writ jurisdiction and in the garb of examining the legality and correctness so also validity of deemed

¹ 2013(2) All M. R. 278

conveyance we can examine these issues. They concern the right, title and interest in the immovable property. Therefore, by clarifying that the order of deemed conveyance shall not preclude or prevent the petitioner from filing a suit and claiming therein appropriate reliefs, we dispose of this writ petition.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)