

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5333 OF 2017

Deepak Industries	..	Petitioner
vs.		
Ashok Cooperative Industrial Estate Ltd. & Ors.	..	Respondents

Mr. Rajesh Datar for Petitioner.
Mr. Deepak Shah – Partner of the Petitioner present in person.
Mr. R. Singh for Respondent Nos. 3 and 4.
Mr. S. H. Kankal – AGP for Respondent No. 5.

CORAM : M. S. SONAK, J.
DATE: 25 SEPTEMBER 2017

P.C :

- 1] Not on board. Upon production, taken on production board.
- 2] Heard Mr. Datar for the petitioner. Mr. Deepak Shah, partner of the petitioner was also permitted to address this Court in person.
- 3] Mr. Datar submits that the impugned order by which deemed conveyance has been ordered is untenable. He submits that the deemed conveyance excludes the petitioner, who has been in possession of the suit premises for the last 40 years. The deemed conveyance, however, purports to convey land beneath the premises, again, to the detriment of the civil rights of the petitioner. Mr. Datar points out that land beneath the suit premises has been

purchased by the petitioner by means of an agreement for sale. For all these reasons, Mr. Datar Submits that the impugned order is liable to be set aside.

4] By the impugned order, deemed conveyance has been directed to be registered. The competent authority, in such matters, is required to go by the agreement between the parties. However, the jurisdiction vested with the competent authority, is not in substitution of jurisdiction, which is otherwise vested in the civil courts to determine civil rights of the parties. If by granting the deemed conveyance, the competent authority has, travelled beyond the stipulations in the agreements or, has in any manner impinged upon any civil rights of any parties, then, it is always open to said parties to institute appropriate proceedings before the civil courts to assert or enforce their rights. If such proceedings are taken out, the order made by the competent authority will not come in the way of such party, establishing its alleged rights or seeking enforcement of the same.

5] In fact, the Division Bench of this Court in the case of ***Zainul Abedin Yusufali Massawawala & Ors. vs. The Competent Authority District Deputy Registrar of Co-operative Housing Societies, Mumbai & Ors.***¹ has made the following observations in

1 Writ Petition No. 2163 of 2014 decided on 29.6.2016.

the matters of challenges as to orders of deemed conveyance :

*“.....If while granting the deemed conveyance, the Competent Authority has in any manner, traveled beyond the stipulations in the agreement, and the grievance of the petitioners is that a larger property is allowed to be claimed by the society contrary to the covenant and recitals of the two agreements, then the remedy of the petitioners even in terms of two decisions of this court in **Tushar Jivram Chauhan & Anr. vs. State of Maharashtra & Ors. 2015 (4) Mh.L.J. and Mazda Construction Company vs. Sultanabad Darshan CHS Ltd. 2012 SCC Online Bom 1266** relied upon by Mr. Khandeparkar is not to file a writ petition under Article 226 in this court, but to approach competent civil court and establish this right, title and interest in relation to the larger property. While establishing and seeking to prove it, the petitioners can also allege that contrary to the Development Agreement and a MOFA Agreement, the society claimed a larger property and relying upon those submissions the Competent Authority has granted the relief in relation thereto. That is the prejudice caused and which the petitioners can seek a redressal thereof by approaching such a court. During the course of such proceedings, the petitioners can highlight the alleged wrongful conduct of the society in firstly bringing a suit and withdrawing it and for the same relief namely for failure to discharge MOFA obligations, then approaching the Competent Authority belatedly and obtaining the Deemed Conveyance in the absence of the petitioners. Therefore, that adjudication, if at all one can term it, and the order therein, would not be binding on the petitioners, ought to be the eventual declaration. That, they can claim irrespective of any application under Section 11 of MOFA, which has been made in this case. From the contents thereof or the observations and conclusions in the impugned order, we are of the opinion that the jurisdiction of the competent civil court is not barred, despite such document being placed on record and relied upon by respondent no. 3. The Civil court will adjudicate the issue of right, title and interest of the petitioners in the larger property by independently applying its mind and on a total appraisal of the oral and documentary evidence before it. Once all such remedies are intact, then, we do not think that in writ jurisdiction we should entertain such a dispute.”*

6] Applying the aforesaid principles, there is no necessity to

entertain the present petition. The petitioner, is however, granted liberty to institute appropriate proceedings before the civil courts or to pursue the proceedings which are said to have been already instituted by the petitioner before the civil courts in order to establish and enforce its alleged civil rights. In case, such proceedings are instituted or continued, the impugned order made by the competent authority will not come in the way of the civil courts deciding such matters. Similarly, the circumstance that the order of the competent authority has not been interfered with by this Court, will not also not come in the way of the petitioner in establishing and/or enforcing its alleged civil rights.

7] For the aforesaid reasons, the present petition is not entertained. However, aforesaid liberty is reserved in the petitioner.

8] It is made clear that this Court has not adjudicated upon the merits and demerits of the contentions of the petitioner or for that matter the contentions of the respondents. Accordingly, all contentions are left open to be determined by the civil courts, in case, appropriate proceedings are instituted or continued in this regard.

(M. S. SONAK, J.)