

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8085 OF 2015

Kirtikumar Rasiklal Ajmera & Ors.

.. Petitioners

Vs.

Venus Tower Co-op. Housing Society
Ltd. & Ors.

.. Respondents

Mr. G. S. Godbole i/b Yatin Shah for the Petitioner.

Mr. Vishal Kanade a/w. Ms. Rima Paradkar for Respondent No.1.

Ms. A. D. Vhatkar, AGP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 7th AUGUST, 2017.

P. C. :

1. By the present petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 21.04.2014 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies (3), Mumbai thereby allowing the application of respondent No.1 society for deemed conveyance as contemplated under Section 11(3) and (4) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. The petitioners are the owners of the piece and parcel of land bearing Survey Nos. 98, 98/A, 1A, Hissa No.2 (Part), 98-C, Old Survey No.98, Plot Nos. 3, 4 and 11 CTS Nos. 655, 655/1 to 32 lying and situated at village Ambivali, Taluka Andheri, Mumbai Suburban District admeasuring about 4118.30 sq. mtrs. By a development agreement dated

25.02.1988, the petitioners permitted the developer to develop and construct the building of respondent No.1 society on a part of the land admeasuring 1200 sq. mtrs. of the aforestated larger portion. The developer, accordingly, constructed the building and transferred the tenements in favour of the purchasers for valuable consideration in or around 1992 by executing registered agreements. The occupants of the respondent-society thereafter formed a co-operative housing society on 10.01.1994. As the developer did not convey the property in favour of the respondent-society, the respondent filed an application, seeking deemed conveyance and certificate thereto. The record indicates that in the year 1991 the petitioners filed a suit in the High Court, Mumbai for cancellation of development agreement dated 25.02.1988. The said suit has now been transferred to the City Civil Court, Mumbai having No. 9834 of 1991 and is pending for final adjudication. The Competent Authority by its order dated 21.04.2014 allowed the application of respondent-society and issued certificate of deemed conveyance pertaining to the land beneath the building of the society admeasuring 1200 sq. mtrs. along with 28000 sq. ft. FSI utilized for constructing the respondent-society's building including internal road and other appurtenants thereon.

3. Learned counsel for the petitioners submitted that in view of the pendency of the civil suit before the City Civil Court, Mumbai seeking declaration of cancellation of development agreement dated 25.02.1988, the Competent Authority ought not to have granted the conveyance to the

respondent-society. He further submitted that assuming for the sake of argument by the impugned order the certificate granted by the Competent Authority is valid certificate, the said certificate ought to have mentioned and/or incorporated the fact of pendency of the suit and the rights of the petitioners with respect to the land in question. He submitted that the petitioners are having lawful rights over the entire property and if the petitioners succeed in the suit, they will also have monetary claim against the respondent-society. He, therefore, submitted that the impugned order be quashed and set aside.

4. As stated earlier, the record clearly indicates that in pursuance of the development agreement dated 25.02.1988, the occupants of the respondent-society have purchased the tenements in the building in or around 1992 after executing registered agreements and for last about 25 years, the developer and/or petitioners have failed to convey the property in favour of the respondent-society. For the dispute *inter se* between the petitioners and developer, the respondent-society and/or its members should not be deprived of their right of having conveyance in their favour. According to me, the petitioners even if succeed in the suit filed by it before the City Civil Court, Mumbai will be entitled to have claim on the residual property out of the larger area of 4118.50 sq. mtrs. after excluding the land beneath the building of the respondent-society admeasuring approximately 1200 sq. mtrs.

The Competent Authority after taking into consideration the entire

material available before it, according to me has rightly passed the order dated 21.04.2014. It clearly appears that there is no error apparent either in law or on facts and therefore the exercise of jurisdiction under Article 227 of the Constitution of India by this Court is not warranted to interfere with the impugned order.

In view of the above, I find no merits in the petition and is accordingly rejected.

[A. S. GADKARI, J.]