

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

**WRIT PETITION NO.9954 OF 2017**

Bhatia Family Trust,  
Through its Managing Trustee & Anr. ...Petitioners

V/s.  
The District Deputy Registrar,  
Co-operative Societies, Mumbai & Ors. ...Respondents

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Ms.Shruti Tulpule for the Petitioners.

Mr.S.D. Rayrikar, AGP for Respondent No.1-State.

Mr.Vishal Kanade i/b M/s.A S D Associates for Respondent No.2

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**CORAM : M. S. SONAK, J.**

**DATE : 12<sup>th</sup> SEPTEMBER 2017**

**P.C.**

1. Not on board. Upon production, taken on board.
2. Heard Ms.Shruti Tulpule for the petitioner, learned AGP for respondent No.1 and Mr.Kanade for respondent No.2.
3. Ms.Tulpule states that notice has been served upon respondent No.3.
4. Ms.Tulpule submits that the suit property admeasures

2530.90 sq.mt. thereon, the petitioner, as builder/developer has constructed two buildings, in respect of which, two independent societies i.e. respondent Nos.2 and 3 have been formed. She submits that before the order of deemed conveyance could be made, it is necessary that some surveyor is appointed and some report is obtained demarcating the respective entitlements of the two societies. She points out that the respondent No.3-society has instituted proceedings under the Consumer Protection Act, in which, several claims have been raised against the petitioner. She submits that in case, the deemed conveyance is registered, it is possible that the respondent No.3 raises claims, which, the petitioners will not be able to meet. Ms.Tulpule further submits that in terms of the agreement between the parties, it is the petitioners who were entitled to rights in respect of the terrace as well as the rights to consume balance FSI. She submits that the authorities under the Maharashtra Ownership Flats Act, 1963 (MOFA Act) have ignored this aspect and therefore, the impugned orders are required to be set aside.

5. Mr.Kanade, the learned counsel for respondent No.2 submits that the entire exercise of demarcation was in fact carried out. He submits that the authorities have observed that the

demarcation is quite consistent with the agreement between the parties and completion plan sanctioned by Municipal Corporation of Greater Mumbai (MCGM). Mr.Kanade submits that the respondent No.3 has not challenged the impugned order and therefore, it is not for the petitioners to take up any cudgels on behalf of respondent No.3.

6. Mr.Kanade further points out that there is no merit in the contention raised by the petitioners with regard to any alleged rights to the terrace or balance FSI. In any case, he submits that such issues can neither be raised nor be decided by the authorities constituted under the MOFA Act. If at all, the petitioners, are serious as regards enforcement of such non-existing rights, then, it is for the petitioners, to take out appropriate proceedings before the Civil Court. He submits that for this reason there is no necessity to interfere with the impugned order.

7. The respondent No.3 has not questioned the impugned orders. In such circumstances, it is not for the petitioners to raise any issues apparently for the benefit of respondent No.3. The petitioner, ultimately, is required to execute the conveyance in respect of the entire area. In case, there are any *inter se* dispute

between respondent No.2 and 3, it is for them, to sort out the same. The petitioners, cannot in the facts of this case be permitted to challenge the impugned orders on the grounds of any alleged absence of demarcation or alleged possibility of conflict with the proceedings instituted by respondent No.3 before the Consumer Courts. Accordingly, on all such grounds there is no warrant to interfere with the impugned orders at the behest of the petitioners.

8. On the aspect of any rights to the terrace or to the balance FSI, notwithstanding the impugned order, in terms of the decision of this Court in the case of ***Mazda Construction Company and Others V/s. Sultanabad Darshan CHS Ltd. & Ors.***<sup>1</sup>, it is always open to the parties to apply the Civil Court for enforcement of their civil rights, if any. Accordingly, it is clarified that notwithstanding the impugned orders and the non-interference by this Court with such orders, the petitioners, will have the liberty to institute proceedings before the Civil Court for assertion and enforcement of their alleged civil rights ,if any.

9. It is made clear that this Court has not adjudicated upon any claims as to the civil rights of the respective parties.

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Therefore, in case, any such Civil suit is instituted by any of the parties including the petitioners herein, such civil suit will be disposed of on its own merits and in accordance with law.

10. With the liberty as aforesaid, this petition is dismissed.

There shall be no order as to costs.

**(M. S. SONAK, J.)**