

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7297 OF 2015

Mr. Maneesh Bawa and ors. .. Petitioners
vs.
State of Maharashtra and ors. .. Respondents

Mr. J.S. Kini i/b Mr. Suresh Dubey for the Petitioners.
Mr. S.D. Rayrikar, AGP for Respondent Nos.1,2 and 5.

CORAM : M. S. SONAK, J.
DATE : 20 SEPTEMBER 2017.

P.C. :-

1] Heard Mr. Kini, learned counsel for the petitioners. He submits that in principle, the petitioners who are the owners have no difficulty in executing the conveyance. However, the impugned order, completely ignores the true and correct calculation of FSI in terms of approvals granted by the MCGM and on this ground, the impugned order is required to be interfered with. He submitted that there are in all four societies and deemed conveyance in terms of the impugned order may affect rights and interests of other three societies.

2] Admittedly, the other three societies have not challenged the impugned order. That apart, even assuming that there are any issues relating to FSI and thereby, any rights of the petitioners are likely to be violated, it is for the petitioners, to institute a suit before a Civil

Court in order to assert, establish and enforce their rights. The impugned order, will not come in the way of the petitioners in seeking such remedy. Recently, the Division Bench of this Court in ***Zainul Abedin Yusufali Massawawaal and ors. vs. The Competent Authority District Deputy Registrar of Co-operative Housing Societies, Mumbai and ors. - Writ Petition No. 2163 of 2014*** decided on 29th June 2016, has made the following observations:

“9. We are of the clear opinion that the society approached the Competent Authority with a limited request, namely, that having formed a legal entity namely the co-operative housing society of the flat purchasers, it is the obligation now of the promoter to convey the right, title and interest in the building and the land beneath, so that the legal entity will be entitled to enjoy the right, title and interest in the property. 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.

10. Having clarified the position, we do not think that the writ petition should be entertained”.

3] Applying the aforesaid principle, this petition is not entertained and the same is dismissed. However, the petitioners will have liberty to take out appropriate proceedings before the Civil Court and if they take out proceedings, the Civil Court to dispose of the same in accordance with law and on their own merits without being influenced by the order impugned in this petition or the fact that this petition is not entertained.

(M. S. SONAK, J.)