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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10359 OF 2017

Yagnesh P. Gajaria	...Petitioner
V/s.	
District Deputy Registrar of Co-op. Soc. & Ors.	...Respondents

Mr.Siddharth Samantary with Mr.Rashmin Jain and Mr.Rishabh Ranka i/b Kanga & Co. for the Petitioner.

Mr.Arshil Shah with Ms.Rima Paradkar for the Respondent No.2.

Mrs.K.R. Kulkarni, AGP for the State – Respondent.

CORAM : M.S. SONAK, J.
DATE : 15TH SEPTEMBER, 2017.

P.C. :-

1. Not on board. Upon production, taken on board.
2. Heard Mr.Siddharth Samantary, learned counsel appearing for the petitioner and Mr.Arshil Shah for the respondent no.2. Mrs.Kulkarni, AGP appears for the State – Respondent.
3. The challenge in this petition is to the order dated 12th July, 2017 made by the Competent Authority, directing registration of the deemed conveyance in respect of the suit property. Mr.Samantary, learned counsel appearing for the petitioner submits that in terms of the agreements between the parties, there are several compliances

yet to be made by the respondents. He further points out that if the deemed conveyance is registered and FSI corresponding to such deemed conveyance is consumed, the same, will occasion serious and irreparable prejudice to the petitioner, who is in fact the owner of the suit property and the old building located therein. He relies upon the decision of this Court in case of **Tushar Jivram Chauhan & Anr. vs. State of Maharashtra & Ors.** in Writ Petition (Stamp) No.17637 of 2014, decided on 24th March, 2015, including, in particular, the observations in paragraph no.22, which read as follows :

“22. The property of such nature, where tenants are occupying the premises on same layout, their interest cannot be restricted in such fashion by giving/granting deemed conveyance of the land even beneath their respective tenanted flat/apartment. The common area, utility/facility of layout plot cannot be restricted for future, so also the undivided interest. The Competent Authority needs to consider all such related aspects/interest of all, who occupied the portion of flat/apartment on the common layout/plot, and at least must provide the reasons, if still wants to grant such unilateral conveyance. ”

4. The Division Bench of this Court in case of **Zainul Abedin Yusufali Massawawala & Ors. vs. The Competent Authority District Deputy Registrar, Co-Operative Housing Societies, Mumbai & Ors.** in Writ Petition No.2163 of 2014, decided on 29th

June, 2016, after considering the decision of this Court in case of **Tushar Jivram Chauhan & Anr.** (supra) has held that the said decision is not an authority for proposition that a challenge to an order of the Competent Authority invariably required to be entertained in an petition filed under Articles 226 and 227 of the Constitution of India. This is because, as observed by the Division Bench, the party which is aggrieved by the order for registration of the deemed conveyance, is always at liberty to institute a suit before the Civil Court for purposes of asserting, establishing and enforcing its civil rights.

5. The relevant observations in **Zainul Abedin Yusufali Massawawala & Ors.** read as follows :-

“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, the 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. Therefore, following ruling of the Division Bench, in this case also, there is no necessity to entertain the present petition. It is however, clarified that in case, the petitioner institutes a civil suit in order to assert its civil rights, the Civil court, to decide the same in accordance with law and on its own merits without, being influenced by the impugned order or circumstance that this Court, has not entertained the present petition questioning the impugned order.

7. All the contentions of all the parties are left open to be determined by the Civil Court, in case, the petitioner institutes such a civil suit.

8. With the aforesaid observations this petition is dismissed. There shall however, be no order as to costs.

(M.S. SONAK, J.)