

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9317/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Drupad S. Patil for the petitioner
Mr. S. S. Punde for respondent No.3.
Mrs. V. S. Nimbalkar, AGP for respondent No.4.

CORAM : K. K. TATED, J.

DATE : JULY 19, 2017

P.C.:

1. Heard. Though respondent Nos.1 and 2 are duly served by publication, none appeared for them.

2. By this petition under Article 227 of the Constitution of India, the petitioner challenges order dated 23.05.2014 passed by the Dist. Dy. Registrar and Competent Authority, Cooperative Societies No.2, Mumbai rejecting the petitioner's application u/s.11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion Construction, Sale, Management and Transfer) Act, 1963 for granting deemed conveyance in their favour in respect of the suit property i.e. land being CTS No.554 and 554/1 to 554/8, Plot No.3, Kurla

Diversion Road Scheme No.II & III in L Ward No.501, Street No.167, A.V.N. Purao Marg, admeasuring 1072 sq.yd. i.e. 896.5 sq.mtrs. along with the building constructed on the said plot.

3. The learned counsel for the petitioner submits that the authority has rejected their application only on the ground that a suit/litigation is pending before a civil court on the ground of unauthorised construction of four shops. The learned counsel for the petitioner submits that the shop owners had filed S.C. Suit No.2054/2004 before the Bombay City Civil Court at Mumbai, which was dismissed by oral judgment dated 16.12.2006. He submits that thereafter the shop owner preferred First Appeal being No.1378/2008 before this court. He submits that that first appeal was also withdrew by them on 01.09.2008 unconditionally. He submits that this court passed order in first appeal No.1378/2008 which reads thus:

“Learned counsel appearing on behalf of the appellant seeks to withdraw the appeal unconditionally. Appeal is dismissed as withdrawn”.

4. The learned counsel for the petitioner submits that in view of these facts the impugned order passed by the authority dated 23.05.2014 is

required to be set aside directing the authority to allow the petitioner's application for deemed conveyance being No.275/2013.

5. On the other hand, the learned counsel for respondent No.3 vehemently opposed the Writ Petition. He submits that the contentions raised by respondent No.3 before the Authority was not considered and not recorded in the impugned order. Therefore, there is no question of granting any deemed conveyance in favour of the petitioner in respect of the suit premises.

6. Bare reading of impugned order dated 23.05.2014 shows that the authority has rejected the petitioner's application without considering the merits on record, only on the ground that the suit filed by four shop owners was pending before the civil court. The Civil Court has already decided that litigation by order dated 16.12.2006. Even other two suits filed by the shop owner are pending without any interim relief. It is to be noted that, whether the dispute is pending in respect of the unauthorised structure or not shall not come in the way of the authority in deciding the application for deemed conveyance.

7. In view of these facts, I am of the opinion that the matter may be remanded to the authority for deciding on merits without being influenced by the fact that the litigation is pending before the Civil Court.

8. Hence, following order is passed:

a. Order dated 23.05.2014 passed by the Dist. Dy. Registrar and Competent Authority, Cooperative Societies No.2, Mumbai is set aside.

b. Matter is remanded to the Dist. Dy. Registrar and Competent Authority, Cooperative Societies No.2, Mumbai to decide on merits.

c. The authority is directed to decide the petitioner's application No.275/2013 on merits.

d. Liberty granted to the parties to file additional pleadings, if any, within three weeks from today with copy to other side before the Authority.

e. Both the parties shall remain present before the Authority on 21.08.2017 for fixing date of hearing.

f. The Authority is directed to decide the petitioner's application on merits without being influenced by the order passed by this court.

g. The Writ Petition stands disposed of accordingly.

h. Parties to act on an authenticated copy of this order.

JUDGE