

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10618 OF 2014**

M/s. L & N Associates

..Petitioner

Vs.

Debonair Co-operative Housing Society Ltd. & Ors

..Respondents

Mr. A. G. Damle Senior Advocate i/b Ms Leena Patil for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 6th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 26-5-2014 passed by the Competent Authority and the Deputy Registrar Co-operative Societies, Thane, by which order the application for deemed conveyance filed by the Respondent No.1 society came to be allowed. The Petitioner herein at the relevant time was a partnership firm and was the developer who had undertaken the development of the building wherein the members of the Respondent No.1 society had purchased flats. The flat purchasers thereafter comprised themselves into the Respondent No.1 society which was registered in the year 1986. In terms of the provisions of the Maharashtra Ownership of Flats Act (MOFA for short) and especially Section 10 thereof the promoters / developers were obliged to convey the land along with the building to the society within 4 months of such registration. However the same was not done. Though the Petitioners were called upon to fulfill their obligations under the MOFA, they had failed to do so resulting in the

Respondent No.1 society filing the application for deemed conveyance under Section 11 of the MOFA. The said application was accompanied by the relevant documents namely the flat purchasers agreement etc., on which reliance was placed on behalf of the Respondent No.1 society.

2 On behalf of the Petitioners a reply came to be filed in the said application and an objection was taken to the maintainability inter alia on the ground that the Petitioner No.1 firm has been dissolved and all the partners of the firm have not been joined as the Respondents to the said application. The second ground urged was that the dispute between the original owners and the developers in respect of the development agreement is pending before the Apex Court. The third ground taken was that the Respondent No.1 has already filed a complaint before the Consumer Forum. The said three grounds were not countenanced by the Competent Authority and the Deputy Registrar Co-operative Societies who as indicated above by the impugned order has allowed the said application.

3 The Learned Senior Counsel appearing on behalf of the Petitioners would seeks to reurge the said three grounds which were agitated before the Competent Authority.

4 In my view, there is no merit in either of the said grounds. In so

far as the first ground is concerned, it is an admitted position that the firm though dissolved was sued through one of its partner i.e. Petitioner No.2 and the firm was also a party to the said proceedings. The Petitioners having participated in the said proceedings now cannot be heard to contend that the proceedings are vitiated on account of the fact that other partners of the Petitioner No.1 was not joined as parties to the said application. In so far as the second ground is concerned, the Respondent No.1 society is not concerned with the interse dispute between the original owners and the Petitioners as developers, the right of the Respondent No.1 society to obtain conveyance is an independent right in terms of Sections 10 and 11 of the MOFA. In so far as the third ground is concerned, it seems that the Respondent No.1 has withdrawn the complaint which it had filed before the Consumer Forum. The Petitioner have not been able to demonstrate as to who the Respondent No.1 society is not entitled to deemed conveyance, having regard to the fact that the Respondent No.1 has been registered as long back as in the year 1986 and was awaiting conveyance of the property till the filing of the instant application.

5 In my view, if the contentions as urged on behalf of the Petitioner by the Learned Senior Counsel are to be accepted, then the provisions of Sections 10 and 11 would turn otiose. Hence no case for interference in the Writ Jurisdiction of this court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]