

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.245 OF 2017
WITH
NOTICE OF MOTION (L) NO.981 OF 2017
IN
SUIT NO.65 OF 2017**

Manju Sushil Trehan	...	Applicant/Plaintiff
Versus		
The District Deputy Registrar		
Co-operative Societies,		
Mumbai City (3) And Others	...	Defendants

Mr. S.A. Ahmed a/w Mr. M.A. Ahmed for the Applicant/Plaintiff.
Mr. Amar Mishra, AGP for Defendant Nos.1 and 19.
Mr. P.J. Thorat for Defendant Nos.2, 14 and 15.

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CORAM : S.C.GUPTE, J.

DATE : 13 JUNE 2017

P.C. :

Heard learned Counsel for the parties.

2 Notice of Motion No.245 of 2017 is taken out by original Plaintiff in
a suit challenging an order of deemed conveyance passed on 9 April 2014
in favour of Defendant No.2 society. The suit is filed more than two years
after the order of deemed conveyance was passed by the District Deputy
Registrar, Co-operative Societies.

3 It appears that the predecessor-in-title of the Plaintiff, one Sushilkumar Trehan, was the owner of the property consisting of a plot of land admeasuring 426.4 sq. mtrs., having succeeded to the same from one Bimlarani Satyaprakash Trehan. Sushilkumar Trehan appears to have entered into an agreement on 26 March 1982 with Defendant No.3 for development of the property. The rights under this agreement were subsequently transferred to Defendant No.4 by a tripartite agreement between Sushilkumar Trehan, Defendant No.3 and Defendant No.4 executed on 29 April 1982. In pursuance of this agreement, Defendant No.4 proceeded to develop the suit property and constructed a building thereon. The flats in the building were sold to various flat purchasers and a society of the flat owners was also formed. The society was registered on 18 December 1985. Between years 1985 and 2014, no conveyance was executed by Sushilkumar Trehan or his legal heirs in favour of Defendant No.2 society. In the premises, in 2014, Defendant No.2 society applied for deemed conveyance of the suit plot of land together with the construction thereon. The application was sought to be served on the original owner, Sushilkumar Trehan. It, however, appears that Sushilkumar Trehan had expired in or about 2007. The Deputy District Registrar, in any event, caused a public notice to be issued of the application for deemed conveyance. The public notice was published in two local newspapers on 3 March 2014. In response to this public notice, Defendant Nos.3 and 4 even appeared before the Deputy District Registrar and contested the application for deemed conveyance. By his order dated 9 April 2014, Deputy District Registrar granted deemed conveyance of the suit property in favour of Defendant No.2 society. After this deemed conveyance was granted, Defendant No.2 society entered into a redevelopment agreement

with Defendant No.14. Defendant No.14 demolished the original building which existed on the suit plot of land and reconstructed a new building in its place. The construction has been fully completed and all flats in the new building have even been allotted to the original occupants as also the new flat purchasers, who have since joined Defendant No.2 society.

4 In the backdrop of these events, more than two and half years after the order of deemed conveyance was passed by Deputy District Registrar, the Plaintiff, who claims to be a legal heir of Sushilkumar Trehan, has filed the present suit challenging the order of deemed conveyance. Practically, the only ground of challenge urged on behalf of the Plaintiff/Applicant, is that the impugned order was passed fraudulently. It is submitted that despite the knowledge of the fact that Sushilkumar Trehan had expired as far as back as in the year 2007, the application for deemed conveyance was moved without notice to his legal heirs. It is an admitted position that the Plaintiff, at one point of time, was a member of Defendant No.2 society and there is a reason to believe that she was aware of the entire developments concerning the society and its building, which are recounted above, including the application for deemed conveyance. Be that as it may, it is also on record that the application for deemed conveyance was duly notified by the Deputy District Registrar by a public notice in two local newspapers before any order was passed thereon. In fact, in pursuance of this public notice, Defendant Nos.3 and 4 appeared before the Deputy District Registrar and contested the application of Defendant No.2 society for deemed conveyance in its favour.

5 Be that as it may, when queried by this Court as to what defence do

late Sushilkumar and after him, his legal heirs have to the application for deemed conveyance, Learned Counsel for the Plaintiff/Applicant is unable to provide any satisfactory answer. It is submitted by learned Counsel that there were some disputes between the original developers, namely, Defendant Nos.3 and 4, and Sushilkumar Trehan in respect of the development-cum-sale agreement of 26 March 1982. Much water has flown and several important events have occurred since the agreement of 26 March 1982. Whatever rights Sushilkumar Trehan and through him, his legal heirs have arising of the agreement of 26 March 1982, at this point of time, any claim in respect thereof would be hopelessly time barred. Apart from that, the purported disputes, if any, are not even borne out by the pleadings of the Plaintiff/Applicant, though mentioned in passing in the plaint.

6 On these facts, merely because legal heirs of the deceased Sushilkumar Trehan were not issued any formal notice of the application for deemed conveyance, the flat purchasers of Defendant No.2 society cannot be restrained from exercising their rights to their individual flats in the suit property. It is too late in the day to apply for an order restraining Defendant Nos.2 to 15 from giving effect to the deemed conveyance dated 11 August 2014, which has been executed in pursuance of the order passed by the Deputy District Registrar, Co-operative Societies, on 9 April 2014. The parties have taken several steps, as noted above, in pursuance of the conveyance and altered their position irrevocably. There is absolutely no case for any restraint of redevelopment of the property in pursuance of the order of deemed conveyance. The redevelopment has long been over and done with. There is practically nothing executory, as of date, in respect of

the redevelopment.

7 In the premises, there is no merit in the Notice of Motion. Notice of Motion No.245 of 2017 is, accordingly, dismissed.

8 There is a new motion taken out by the Plaintiff/Applicant, being Notice of Motion (L) No.981 of 2017, during the pendency of Notice of Motion No.245 of 2017 *inter alia* praying for protective reliefs in respect of the suit property as also calling for a list of allottees / flat purchasers in the new building constructed on the suit property. Defendant No.14 has, in its affidavit-in-reply filed on 12 June 2017, furnished a list of all members/allottees of the flats in the new building. As far as the protective relief is concerned, this Court has already negated the same in terms of the order passed above. There is, accordingly, no relief to be granted even in this Notice of Motion. Notice of Motion (L) No.981 of 2017 is also dismissed accordingly.

9 Costs to be costs in the cause.

(S.C. GUPTE, J.)