

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

WRIT PETITION NO.1101 OF 2014

Martina Alec Philomena Pereira and ors. : Petitioners.
versus
District Deputy Registrar Co-operative
Societies, Mumbai City (3) and ors. : Respondents.

Mr. Floyd Francis Mariano Gracias for the Petitioners.
Mr. Clive D'Souza for the Respondent No.4.

CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.
DATE : 19th JUNE 2017

P.C.

1 The writ jurisdiction of this Court is invoked the order dated 12/12/2013 passed by the Competent Authority & District Deputy Registrar, Co-operative Societies, Mumbai City (3) by which order the deemed conveyance/assignment of the plot of land in question came to be granted to the Respondent No.2 Society.

2 The Petitioners herein are the lessees of the plot of land in question. The Petitioners entered into a development agreement with the Respondent No.3 and a building of stilt plus six floors having 11 flats was constructed by the Respondent No.3. The Petitioners have been allotted a flat in the said building in terms of the said development agreement. The flat purchasers have constituted themselves into the Respondent No.2 Society. As

indicated above, the Petitioners are the lessees from the Respondent No.4 of the plot of land in question which is leased for a period of 998 years. The Respondent No.2 Society has been registered on 12/10/2007 under the Maharashtra Co-operative Societies Act. The Chief Promoter of the Respondent No.2 Society filed the instant application for being granted deemed conveyance by invoking Section 11 of the Maharashtra Ownership of Flats Act ("MOFA" for short). To the said application the documents relevant for consideration of the said application were annexed amongst which is the development agreement, the lease document in favour of the Petitioners and flat purchasers agreement. The said application for deemed conveyance came to be opposed on behalf of the Petitioners on the ground that the deemed conveyance of the lease which the Petitioners have in their favour could not be granted.

3 The Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai City (3) considered the said application and has by the impugned order dated 12/12/2013 allowed the said application. The operative part of the impugned order directs that the deemed conveyance/assignment be executed in favour of the Respondent No.2 Society. The Competent Authority and District Deputy Registrar has adverted to the antecedent facts leading to the filing of the application in the matter of the Society being registered in the year 2007 etc. and reluctance of the Petitioners

to execute the deed of conveyance. It seems that pursuant to the impugned order, the deed of conveyance/assignment dated 31/03/2015 has already been executed and the Respondent No.2 Society has also been made a member of the Respondent No.4 Society which can be said to be the parent Society.

4 The learned counsel appearing for the Petitioners Shri Gracias would seek to contend that the grant of the deemed conveyance/assignment in fact militates against the rights which the Respondent No.4 Society has in the plot of land in question. It is not possible to accept the said contention of the learned counsel for the Petitioners when firstly the Respondent No.4 Society has no such grievance and when the Respondent No.4 Society in fact has accepted the Respondent No.2 as its member. It is required to be borne in mind that the provisions of the MOFA have been enacted so as to protect the rights of the flat purchasers who otherwise were left high and dry in so far as conveyance of the plot of land on which building in which their flats are situated is concerned. Accepting such a contention as urged on behalf of the Petitioners would turn the provisions of the MOFA nugatory. In that view of the matter, no case for exercise of the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]