Atul

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## WRIT PETITION NO. 2189 OF 2016

Alka Mukul Sigtia …Petitioner
*Versus*
The District Deputy Registrar, Cooperative Societies, Mumbai City (IV) & Ors …Respondents

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**Mr Ajay K Rao**, *for the Petitioner.*
**Mr Kedar Dighe**, *AGP, for Respondents Nos. 1 & 11.*
**Mr Mayur Khandeparkar**, *i/b MG Agre, for Respondents Nos. 2 to 5.*

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**CORAM: G.S. PATEL, J**
**DATED: 27th November 2017**

**PC:-**

**1.** Heard.

**2.** The Petitioner challenges an order dated 27th May 2016 passed by the District Deputy Registrar, Cooperative Societies, Mumbai City (IV), a competent authority under Section 5A of the Maharashtra Ownership Flats Act 1963 (**"MOFA 1963"**). This was on an application filed by the 2nd Respondent – society demanding a deemed conveyance from the owner/developer, Respondent No. 10, Khan Kazi & Co., a partnership firm.

**3.** There is no dispute that the Petitioner is herself a member of the 2nd Respondent – society and occupant and allottee of Flat No. C-15. There is a great deal of controversy raised by the Petitioner about the legality of not only wing "C" but about parts of other construction.

**4.** The Petitioner claims that the deemed conveyance application itself was not maintainable since, according to her, the owner/developer, Khan Kazi & Co. were willing to execute a regular conveyance. The trouble with this submission is that the developer is not assailing the order of deemed conveyance at all. The society is the one that made the application and, therefore, as between the society (of which the Petitioner is a member) and the developer, there is no controversy in regard to the deemed conveyance.

**5.** The petition discloses that the Petitioner has very many grievances against the society. I do not believe that it is appropriate that the Petitioner be allowed to ventilate these grievances in this fashion. Her remedies lie elsewhere and indeed she has filed several proceedings herself. There are allegations made in the petition that certain resolutions of the Managing Committee of the 2nd Respondent are false and fabricated, that licensed surveyors had issued false certificates, that Advocates have issued false title certificates, that there are false and fabricated building plans and so on. The Petitioner has also filed criminal proceedings under the MOFA 1963. None of this can be examined here.

**6.** The petition itself is not maintainable for three distinct reasons. First, it raises significant disputed questions of fact that cannot possible be examined in a writ petition. Second, it is difficult to see how the Petitioner, as a constituent of the 2nd Respondent – society, can possibly be aggrieved by an order directing the perfection of title to the property in favour of the society itself. Third, there is a jurisdictional issue. The competent authority deciding an application for deemed conveyance does not have the jurisdiction to examine the question of legality of construction. That is wholly outside his jurisdictional remit and this is settled law: *see Sukhsagar CHSL & ors v State of Maharashtra*.[1]

**7.** *Prima facie* it appears that the entire petition is motivated by some personal grievances that the Petitioner has against the society or some of its members. It is not possible to hold up a conveyance while these grievances are sought to be agitated.

**8.** Even more interestingly, the Petitioner herself has filed a substantive suit in the City Civil Court at Dindoshi, being Suit No. 592 of 2015. Prayer (b) in that suit is one by which the Petitioner seeks a decree against Khan Kazi & Co. and others to execute a conveyance and to comply with their obligations under the MOFA 1963 and the prayer is for a decree in these terms against the present 2nd Respondent – society. I utterly fail to understand how the Petitioner can be aggrieved by the grant of the very relief that she herself has sought.

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**1** 2004 (3) Mah.L.J. 1010.

**9.** On behalf of the Respondent, reliance is placed on the decision of this Court in *Mazda Construction Co v Sultanabad Darshan CHS Ltd*.[2] This is discussed and explained in an unreported judgment of this Court in Writ Petition No. 2163 of 2014 decided on 29th June 2016.[3]

**10.** Despite several opportunities, the Petitioner has refused to come to Court. There is more to this than meets the eye.

**11.** The writ petition is rejected. There will be no order as to costs.

**(G. S. PATEL, J)**

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**2** 2012 SCC Online Bom 1266.

**3** *Zainul Abedin Yusufali Massawala & Ors v The Competent Authority*.