

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

WRIT PETITION NO.2745 OF 2016

**Prem Construction Company
(formerly known as Poonam Construction
Company)**

: Petitioner.

versus

**District Deputy Registrar,
Co-operative Societies & ors.**

: Respondents.

**Ms. Tanmayi Rajadhyaksha i/by Mr. Amit Shroff a/w Mr. Neha Bane for the
Petitioner.**

Mr. K R Trivedi AGP for the Respondent No.1.

Mr. Y K Sharma for the Respondent No.2.

**CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.**

DATE : 19th JUNE 2017

P.C.

1 At the outset the learned counsel for the Petitioner seeks leave to amend the above Writ Petition in terms of the draft amendment handed in. Leave granted. Amendment to be carried out in the course of the present week.

2 The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order dated 26/05/2016 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai. By the said order the deemed conveyance of the land in question came to be granted. The Respondent No.2 herein is the Society which comprises of the flat purchasers who had purchased the flats in the building

constructed by the Petitioner. The Respondent No.2 has been registered on 06/09/1984. The Respondent No.2 has been awaiting the grant of conveyance in respect of the land on which the building in question is situated. The flat purchasers agreements are pre-dating the registration of the Society. The Respondent No.2 in view of the fact that the conveyance of the land on which the building is situated was not being granted to the Respondent No.2 filed an application invoking Section 11 of the Maharashtra Ownership of Flats Act ("MOFA" for short). The said application came to be opposed on behalf of the Petitioner. It is required to be noted that to the said application all the relevant material which is necessary for adjudication of the application for deemed conveyance was annexed which inter-alia included the flat purchasers agreements, certificate of registration of society and as indicated above the other relevant documents.

3 The Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai has by the impugned order granted deemed conveyance of the plot of land in question and also issued certificate in that regard. The said order passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai is sought to be challenged by the Petitioner who is the developer on the ground that the deemed conveyance could not have been granted having regard to Clauses 23 and 29 of the flat purchasers agreements which contemplated that the conveyance could only be

granted if the flat purchasers discharge their obligation in the matter of making the payment to the Petitioner.

4 In our view, it is not possible to accept the said contention of the learned counsel for the Petitioner. The record discloses that some correspondence was exchanged between the parties as regards the amount due from the members of the Respondent No.2 towards maintenance of the property which was being carried out by the Petitioner. The offer that the Respondent No.2 Society made to the Petitioner was not acceptable to the Petitioner as is evidenced by the letter dated 04/09/2014 which was a reply by the advocate for the Petitioner to the Advocate of the Respondent No.2 Society Mr. Alok K Singh. This Court had also tried to intervene with a view to see to it that the matter is amicably resolved between the parties, but it seems that no resolution of the said dispute is possible.

5 In so far as grant of deemed conveyance is concerned, the same has been granted under Section 11 of the Maharashtra Ownership of Flats Act ("MOFA" for short). If the submission of the learned counsel for the Petitioner is to be accepted viz. that the grant of deemed conveyance would only be contingent upon the members of the Society fulfilling all their obligations towards the Petitioner then the said provision would become meaningless as there could never be a resolution of the disputes between the developer and

the flat purchasers, which would result in the conveyance of the property being delayed indefinitely.

6 In our view, the impugned order dated 26/05/2016 does not merit any interdiction at the hands of this Court in its writ jurisdiction. The above Writ Petition is accordingly dismissed. However, the Petitioner would be at liberty to adopt such proceedings as are permissible in law to recover the amounts which according to it are due from the members of the Respondent No.,2 Society. If any such proceedings are filed, needless to state that the same would be tried on their own merits and in accordance with.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]