

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2964 OF 2015

Mahesh Gordhandas Garodia ... Petitioner
Vs.
District Deputy Registrar, Co-operative Societies
and others ... Respondents

Mr. Chirag Balsara a/w. Ms Asha Nair i/b. Diamondwala and Co. for
Petitioner.
Mr. Muktar Sayyad, AGP for Respondent No.1-State.
Mr. Nikunj Mehta a/w. Ms Rachana Kapasi shah i/b. Pimenta Kapasi & Co.
for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : JULY 05, 2017

P.C. :

Heard Mr. Balsara, learned Counsel for the petitioner,
Mr. Sayyad, learned AGP for respondent No.1-State and Mr. Mehta,
learned Counsel for respondent No.2 at length.

2. Mr. Balsara states that respondents No.10 to 13 are formal parties
and petitioner is not seeking any reliefs against them. He further states
that he has served proceedings on respondents No.3 to 9. However,
none appears on their behalf.

3. By this Petition under Article 226 of the Constitution of India,
petitioner has challenged the judgment and order dated 27.11.2014
passed by the respondent No.1, District Deputy Registrar, Co-operative
Societies (2), Eastern Suburbs in Application No.482 of 2014 filed by
the second respondent society under Section 11 of the Maharashtra
Ownership Flats (Regulation of the Promotion of Construction, Sale,
Management and Transfer) Act, 1963 (for short 'MOFA'). By that order,
respondent No.1 held respondent No.2-Society eligible for getting

Deemed Deed of Conveyance and also issued certificate dated 27.11.2014 of Deemed Deed of Conveyance for registration.

4. Rule. Learned Counsel for respondents waive service. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. In support of this Petition, Mr. Balsara submitted that Mrs. Parmeshwaridevi Gordhandas (lessor) executed indenture of lease dated 30.04.1974 in favour of Mohan Velji Patel and Nanji Devji Patel (lessee) for a period of 98 years commencing from 01.05.1974. He invited my attention to clause 3(h) providing lessee to quietly deliver up the demised premises at the expiration or sooner determination of the demise, leaving the demised premises in the same condition in which the same may be at the said time without in any way removing therefrom the buildings or structures, if any, that may be standing thereon at the said date and without claiming any compensation for any development or improvement effected to the demised premises or for the buildings and structures, if any, standing thereon. He further invited my attention to clause 5(d) providing for renewal of the lease for the further 98 years upon execution of a fresh lease deed subject to satisfaction of the conditions stipulated therein.

6. Mr. Balsara further submitted that Mrs. Parmeshwaridevi Gordhandas executed indenture of lease dated 05.06.1974 in favour of Mohan Velji Patel and Nanji Devji Patel for a period of 98 years commencing from 01.06.1974. He invited my attention to clause 3(h) as also clause 5(d) thereof. He submitted that though in the impugned order, the contentions based on this indenture of lease were specifically

referred, respondent No.1 did not deal with these contentions at all. He submitted that respondent No.1 has conveyed ownership rights in favour of the respondent No.2 and the same was clearly contrary to the indenture of lease dated 30.04.1974 and 05.06.1974. He also invited my attention to Articles of Agreement dated 31.05.1976 between respondent No.3, M/s. Gokul Builders and the flat purchasers and in particular clauses 3, 4, 5 and 11 thereof. He submitted that the respondent No.1 has not dealt with this agreement also in the impugned order.

7. On the other hand, Mr. Mehta supported the impugned order. He invited my attention to the Articles of Agreement dated 31.05.1976 between Mohan Velji Patel and Nanji Devji Patel on one hand and Chandrakant Shah and in particular clauses 1, 3, 5 and 7 thereof. Clause 3 thereof recorded that Mrs. Parmeshwaridevi Gordhandas conveyed her reversionary interest in plots No.60 and 62 on 27.03.1975 to Shri Mahadev Velji Patel and Shri Harshad Punjalal Dave, each of them to have an equal undivided share therein. He submitted that petitioner has no subsisting interest in plots No.60 and 62. He, therefore, submitted that no case is made out for interfering with the impugned order as petitioner has no locus to maintain this Petition.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that though the Competent Authority has referred to the various contentions advanced by the parties in support of their respective case, the same has not been dealt with. On one hand petitioner is relying upon clauses 3(h) and 5(d) of Indentures of Lease dated 30.04.1974 and 05.06.1974 and on the other, respondent is relying upon the Articles of Agreement dated 31.05.1976, and in particular clauses 1, 3, 5 and 7 thereof. Respondent

No.1 has not dealt with effect of these clauses in the impugned order.

9. In view thereof, the impugned order cannot be sustained and as such, is liable to be set aside thereby reviving proceedings in Application No.482 of 2014 for denovo consideration. Respondent No.1 will issue notices to all the concerned parties and thereafter proceed with the matter in accordance with law. Parties are at liberty to file additional documents, if any. Respondent No.1 will deal with the contentions raised by the petitioner based upon the Indentures of Lease dated 30.04.1974 and 05.06.1974 as also by respondent No.2 on the Articles of Agreement dated 31.05.1976. It is made clear that I have not examined the merits of the case. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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