

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5571 OF 2018

Mr. Ajit Ramkrishna Mhatre & Ors.

... Petitioners

V/s.

**Rashtriya Mazdoor Anand Nagar Co.op.
Soc. Association Ltd. & Ors.**

... Respondents

Mr. Subhash Abhyankar for the Petitioner.

Mr. R.A. Shaikh a/w Anvar Mishra i/b L.S. Shetty for the Respondent No.1.

Mr. S.H. Kankal, AGP for the Respondent No.2.

Ms. Jesal Shah i/b D. Shah for Respondent No.3.

CORAM : R.D. DHANUKA, J.

DATE : 18th JUNE, 2018

P.C.:

. By this petition under Article 227 of the Constitution of India, the Petitioners have impugned the order dated 26.10.2017 passed by the Respondent No.2 thereby passing the order of deemed conveyance in favour of the Respondent No.1 society. Petitioners claim to be legal heirs of Mr. Ramkrishna Mhatre.

2 The order of deemed conveyance is challenged on the ground that Mr. Ramkrishna Mhatre had expired much prior to the date of passing of impugned order of the deemed conveyance passed by the Authority. The next ground of challenge is that the Competent Authority has allowed deemed conveyance in

respect of recreation ground, internal road etc. though there was no copy of plan annexed to the application. The third challenge is that the argument advanced by the Petitioners were not considered by the Authority.

3 Mr. Shaikh, learned Counsel appearing for the Society invited my attention to the various paragraphs of the order passed by the Authority. He submits that Competent Authority has considered number of documents produced by the society referred in paragraph 2 of the impugned order which was submitted along with the application for deemed conveyance under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. He also invited my attention to other paragraphs of the impugned order in support of his submission that all those documents were considered by the Competent Authority and has rendered findings of fact.

4 Insofar as the submission of the learned Counsel for the Petitioner that the impugned order is passed against the dead person is concerned, learned Counsel invited my attention to paragraph 14H of the impugned order in support of the submission that legal heirs of Mr. Ramkrishna Mhatre had appeared before the Authority, pursuant to the public notice issued in the newspaper having wide circulation.

5 It is not in dispute that the public notice was issued in various newspaper before passing of the impugned order by the learned Registrar on 26.10.2017. The learned Counsel appearing for the Petitioner has not disputed that those legal heirs had appeared before the Authority and had advanced various submissions. A perusal of the impugned order indicate that the argument advanced by the learned counsel have been summarized by the competent authority in the impugned order. The Petitioner did not apply for their impleadment in place of Mr. Ramkrishna Mhatre before the Competent Authority. Be that as it may, the Petitioner had appeared and made submission before the Competent Authority. I am thus, not inclined to accept the submission made by the Petitioner that Authority has passed order against the dead person. It was for the Petitioner to apply for the impleadment before the Authority.

6 Insofar as submission made by the learned Counsel for the Petitioner that the Competent Authority has passed the order in respect of recreation ground and internal road without any documents on record is concerned, a perusal of the impugned order clearly indicates that Respondent No.1 had filed several documents including the copy of building plan, commencement certificate, IOD and Architect certificate. The Competent Authority has considered all these documents in well reasoned impugned order passed by the Competent Authority and has given bifurcation of plinth area and the total area in the impugned order.

7 The finding of fact rendered by the Competent Authority in the impugned order passed by the Competent Authority being not perverse does not warrant any interference. The petition is devoid of any merit and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)