

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.8879 OF 2017

M/s. Ajmera Housing Corporation	]	Petitioners
Vs.		
Hilton CHS Limited and others.	]	Respondents

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Mr. Suraj Swamy a/w Satyadev Joshi i/b Devendra B. Singh, for Petitioner.

Mr. N.N. Bhadrashete, for Respondents No.1,12,25 and 26.

Mr. S.H. Kankal, A.G.P, for Respondents No.38.

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CORAM : R.G. KETKAR, J.

DATE : 21ST DECEMBER, 2018.

P.C.

Heard Mr. Swamy, learned Counsel for the petitioner, Mr. Bhadrashete, learned Counsel for respondents No.1,12,25 and 26 and Mr. Kankal, learned A.G.P, for respondent No.38 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 23rd July, 2015 passed by the Deputy Registrar Co-operative Society (3), Bombay and Competent Authority (for short 'Competent Authority') in Application No.210 of 2014. By that order, in exercise of powers under section 11 (3) of Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (for short 'MOFA'), Competent Authority granted unilateral deemed conveyance in favour of respondent No.1, Hilton Co-operative Housing Society Limited as also issued certificate under section 11 (4) of the MOFA in favour of respondent No.1.

3. In support of this Petition, Mr. Swamy strenuously contended that the Competent Authority had exceeded its powers while giving extra area to respondent No.1/Society. He further submitted that it is impossible to demarcate common area among 40 Societies. He invited my attention to the grounds raised in the Petition and in particular paragraph 6 thereof. He submitted that it is impossible to calculate the physical area computation of each society. It is also impossible to implement "Reverse FSI Computation". It is also physically impossible to sub-divide the overall property and give portion thereof to the individual societies in view of the common facilities and amenities like water pipes, sewerage pipes etc passing through the entire overall property which was developed as per lay out plans common for the overall property as a whole.

4. Mr. Swamy invited my attention to the suit instituted by the petitioner on the Original Side of this Court, *inter alia*, praying for order directing defendant No.1, Oshiwara Land Development Company Private Limited to execute 35 separate Deeds of Conveyance as per the specimen draft in favour of each defendants i.e defendants No.2 to 36 with the plaintiff and defendant No.37, among other prayers. He submitted that if the petitioners are relegated to filing of a suit, it will lead to multiplicity of the proceedings. He submitted that the Petition requires consideration.

5. On the other hand, Mr. Bhadrashete supported the impugned order. He invited my attention to clause 13 of the agreement which provides that unless it is otherwise agreed to by and between the parties the Builders shall, within one year of registration of the Society or Limited Company and the sale and disposal of all the flats and other premises in the building, whichever is later, cause to be transferred to the Society or Limited Company all the right, title and the interest of the original Owner/Builders in the said

land together with the building by obtaining or executing the necessary conveyance of the land underneath the said building and land appurtenant (or to the extent as may be permitted by the Authorities) and transfer of the said building in favour of such society or limited company, as the case may be such conveyance and transfer of building shall be keeping with the terms and provisions of this agreement. He submitted that identical clause forms part of the different agreements executed by the petitioners with the flat purchasers. In view of clause 13 of the agreement, builder was under obligation to execute Conveyance in favour of the society. As the developer has failed to discharge that obligation, respondent No.1 filed proceedings under section 11 of MOFA Act.

6. Mr. Bhadrashete also invited my attention to the order dated 6th December, 2018 passed by this Court in **M/s. Mahanagar Housing Partnership Firm and others Vs. District Deputy Registrar of Co-operative Societies (Pune City) , Pune and others in Writ Petition (ST) No.31966 of 2018** and submitted that remedy available to the petitioners is to approach an appropriate Civil Court and the Competent Authority cannot go into the issues raised by the petitioners in the present Petition. He submitted that no case is made out for interfering with the impugned order.

7. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. This Court in the following cases has consistently taken a view that the alternate remedy is to file a suit.

- [1] Angeline Reni Periera Vs. M/s. Pearl Heaven Co-operative Housing Society Ltd., Writ Petition No.5083 of 2012 decided on 15th October, 2012 by this Court (Coram: S.C. Dharmadhikari, J.).

- [2] Shree Chintamani Builders Vs. State of Maharashtra, 2016 SCC Online Bom. 9343.
- [3] Shimmering Heights CHS Ltd Vs. State of Maharashtra, Writ Petition No.3129 of 2016 decided on 6th April, 2016 by this Court (Coram: S.C. Dharmadhikari, J & G.S. Kulkarni, JJ.)
- [4] Angeline Randolph Pereira Vs. Suyog Estate Premises Co-operative Society Ltd, W.P. No.4373 of 2017 decided on 11th April, 2018 by this Court (Coram:R.D. Dhanuka, J.).

8. In the case of **Mazda Construction Company Vs. Sultanbad Darshan CHS Ltd, Writ Petition No.3912 of 2012**, this Court held that issue of title in respect of the property cannot be gone into by the Competent Authority under the provisions of the MOFA and the same can be decided only by the Civil Court. In paragraph 17 of **Angelina Randolph Pereira's case** (supra), it is held that contentions regarding title in respect of property in question or adjudication in respect of the property in question or adjudication in respect of entitlement of the exact quantification of FSI on the plots in question cannot be gone into the proceedings under section 11 of the MOFA. The Competent Authority cannot decide validity of the agreements between the parties. The order granting Deemed Conveyance does not conclude issue of right, title, interest in the immovable property. The petitioner can still file substantive suit of title claiming the appropriate reliefs. Merely because order of Deemed Conveyance is passed and certificate of title is issued by the Competent Authority under section 11, the petitioner is not precluded from seeking adjudication of its right in respect of the suit property by filing suit. All such contentions can be gone into in a properly instituted suit.

9. In view of the consistent view taken by this Court in the aforesaid decisions, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. It is made clear that if any suit is filed by the petitioner for adjudication of title in respect of the suit property, the same can be decided without being influenced by the order of Deemed Conveyance passed by the Competent Authority and certificate of title issued by the Competent Authority in favour of respondent No.1. The concerned Court will also decide the suit un-influenced by the observations made in this order. Subject to this clarification, the Petition fails and the same is dismissed with no order as to costs.

[R.G. KETKAR, J.]