

Mr. S. S. Kanetkar for Petitioners.
Mr. S. D. Rayrikar, AGP for Respondents No.1 and 2-State.
Mr. N. S. Patil for Respondent No.4.

P.C. :

Heard Mr. Kanetkar, learned Counsel for the petitioners, Mr. Rayrikar, learned AGP for respondents No.1 and 2-State and Mr. Patil, learned Counsel for respondent No.4 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 29.02.2016 passed by the respondent No.2- Competent Authority and District Deputy Registrar, Co-operative Societies, Pune City, Pune (for short 'Competent Authority'). By that order, the Competent Authority disposed of the deemed conveyance application filed by the fourth respondent under Section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short 'MOFA') read with Rule 9 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (for short 'Rules'). Respondent No.2 also issued certificate on 29.02.2016.

3. The petitioners, who were respondents No.3 to 5 before the Competent Authority, filed their written arguments before the Competent Authority. It was contended that in the sanctioned plan, 8

tenements were proposed to be constructed. 3 tenements of first floor, 4 tenements of second floor and 1 shop of ground floor. However, flats No.10-A and 10-B were unauthorizedly constructed. The terrace was encroached unauthorizedly and without obtaining any permission, business is being unauthorizedly carried on. After considering the material on record, by the impugned order, the Competent Authority issued unilateral deemed conveyance as also certificate.

4. In support of this Petition, Mr. Kanetkar submitted that developer entered into Articles of Agreement with the petitioner, who are the owners of City Survey No.129/1A1, Plot No.6, in all admeasuring 5400 sq.ft. In terms of clause (vi), developer agreed to provide one flat, two shops of 1800 sq.ft. built up area and one garage within a period of 1 ½ years from the date on which possession of the property is given to the builders or from the date of passing of the plan, whichever is later. Clause (viii) provided that if the builder is unable to give possession of the ground floor within 1 ½ years then the builders are bound to give a three room accommodation to the owners on the owner's plot till handing over of the ground floor construction. He submitted that till date, respondent No.3 developer has not complied the clauses and has handed over possession of flat admeasuring 1500 sq.ft. In other words, respondent No.3 has not handed over possession of two shops and one garage. He further submitted that though the sanctioned plans provided construction of 8 tenements, respondent No.3 has constructed 10 flats namely, flats No.10-A and 10-B, which are illegal and unauthorized. He also submitted that though respondent No.4 society is registered in the year 1985, till date, no elections are conducted. Proceedings for de-registration of the society are pending. He submitted that these aspects are not considered by the Competent Authority while passing the impugned order.

5. On the other hand, learned Counsel for the respondents supported

the impugned order. He relied on the following decisions;

- [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.).

6. He submitted that this Court has consistently held that the Competent Authority has limited scope while deciding the proposal for unilateral deemed conveyance under Section 11 of MOFA. The Competent Authority cannot decide issue pertaining to consumption of FSI/TDR. The remedy available to the petitioners is to file a substantive suit. Merely because the order of deemed conveyance is passed in favour of the respondent and certificate of title is issued by the Competent Authority under section 11 of the MOFA, the petitioners are not precluded from seeking adjudication of their title in respect of the suit property by filing civil suit. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In the case of **Angelina Reni Periera** (supra), the learned Single Judge has considered several decisions rendered by this Court. In case of **Mazda Construction Company Vs. Sultanbad Darshan CHS Ltd, Writ**

Petition No.3912 of 2012, it is 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 petitioners 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 petitioners are not precluded from seeking adjudication of their right in respect of the suit property by filing suit. The contentions raised by Mr. Kanetkar cannot be investigated and gone into by the Competent Authority. The petitioners will have to approach the appropriate Civil Court for vindicating their grievances. All such contentions can be gone into in a properly instituted suit.

8. In view thereof, 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 petitioners 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 the respondent. Subject to this clarification, Petition fails and the same is dismissed with no order as to costs.

(R. G. KETKAR, J.)