

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

***WRIT PETITION NO.7841 OF 2016
ALONG WITH
CIVIL APPLICATION NO.1636 OF 2016***

M/s.Apurva Builders .. Petitioner
Vs.
District Sub-Registrar, Co-operative
Societies (3), Mumbai and
Competent Authority & Ors. .. Respondents

Ms.Madhavi Nalluri a/w Mr.Saurabh Thakkar i/by M/s.Malvi
Ranchoddas & Co. for the petitioner.
Mr.S.H. Kankal, AGP for the respondent nos.1 & 2.
Mr.Anilkumar K. Patil a/w Mr.Jitendra Gaikwad for respondent no.3.
Mr.P.S. Dani, Senior Advocate a/w Ms.Jyoti Ghag & Mr.Nitesh Menon
i/by Thakore Jariwala & Associates for the respondent nos.4 & 5.
Mr.Cyrus Ardeshir a/w Mr.Kalpesh Joshi and Ms.Nisha Shah i/by
Kalpesh Joshi & Associates for the respondent nos.7 to 17.

ALONG WITH

WRIT PETITION NO.10980 OF 2016

Renu Asrani & Ors. .. Petitioners
Vs.
District Sub-Registrar, Co-operative
Societies (3), Mumbai and
Competent Authority & Ors. .. Respondents

Mr.Cyrus Ardeshir a/w Mr.Kalpesh Joshi and Ms.Nisha Shah i/by
Kalpesh Joshi & Associates for the petitioners.
Mr.S.D.Rayrikar, AGP for the respondent nos.1 & 2.
Mr.Anilkumar K. Patil a/w Mr.Jitendra Gaikwad for respondent no.3.
Mr.P.S. Dani, Senior Advocate a/w Ms.Jyoti Ghag & Mr.Nitesh Menon
i/by Thakore Jariwala & Associates for the respondent nos.4 & 5.

Ms.Madhavi Nalluri a/w Mr.Saurabh Thakkar i/by M/s.Malvi Ranchoddas & Co. for the respondent no.7.

Ms.Aakashi Mehta i/by Bhav & Co. for the respondent nos.8 & 9.

**ALONG WITH
WRIT PETITION NO.11105 OF 2016**

Viren Narandas Bhatia & Anr.

.. Petitioners

Vs.

District Sub-Registrar, Co-operative
Societies (3), Mumbai and
Competent Authority & Ors.

.. Respondents

Mr.P.S. Dani, Senior Advocate a/w Ms.Jyoti Ghag & Mr.Nitesh Menon
i/by Thakore Jariwala & Associates for the petitioners.

Mr.S.H. Kankal, AGP for the respondent nos.1.

Mr.Anilkumar K. Patil a/w Mr.Jitendra Gaikwad for respondent no.2.

Ms.Madhavi Nalluri a/w Mr.Saurabh Thakkar i/by M/s.Malvi Ranchoddas & Co. for the respondent no.7.

CORAM : R.D. DHANUKA, J.

DATE : 10th August 2018

P.C.:

. Heard learned counsel appearing for the parties. By these three petitions filed under Article 227 of the Constitution of India, the petitioners have impugned the order passed by the competent authority granting an order of Deed of Conveyance in favour of the respondent society.

2. In so far as the Writ Petition Nos.7841 of 2016 and 10980 of 2016 are concerned, there is a dispute in respect of title of the

property in question which was the subject matter of the application filed by the society for deemed conveyance. It is not in dispute that the Deed of Conveyance had already been executed and registered. A certificate under Section 11(5) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management & Transfer) Act, 1963 has already been issued.

3. This Court in the case of ***Angeline Randolph Pereira & Ors. Vs. Suyog Industrial Estate Premises Co-operative Society Ltd. & Ors. reported in 2018 SCC OnLine Bom 687*** has held that the competent authority while deciding the application for deemed conveyance does not decide the title of property in question and the same can be decided only by a Civil Court in appropriate proceedings. I am thus not inclined to interfere with the order of competent authority passing an order of deemed conveyance in favour of the society.

4. In so far as the Writ Petition No.11105 of 2016 is concerned, Mr.Dani, learned senior counsel for the petitioner invited my attention to the consent decree passed by this Court in S.C. Suit No.361 of 1979 and would submit that by the said consent decree, a lease was granted in favour of the petitioners in respect of land admeasuring 615 sq.yds. equivalent to 514 sq.mtrs. or thereabouts whereas there is no reflection of the lease hold rights of the petitioners in the impugned order. He, however, invited my attention to the Deed of Conveyance executed pursuant to the order passed by the competent authority and would submit that in the said document and more particularly in the Schedule, the area was mentioned about 454.40 sq.mtrs. (duly leased by Court). He submits that in the Deed of Conveyance executed pursuant to the order

passed by the competent authority, though there is a reference to the consent decree in favour of the petitioners, the society has reflected the lesser area than the area mentioned in the schedule appended to the consent decree.

5. In view of the dispute in respect of area as mentioned in the schedule referred in the consent decree and in the Deed of Conveyance, in my view, such dispute can be adjudicated upon by a Civil Court. It is made clear that the petitioners in Writ Petition No.11105 of 2016 are required to file a civil suit only in respect of the differential area between 454.40 sq.mtrs. and 514 sq.mtrs.

6. In my view, the principles of law laid down in the judgment of this Court in the case of ***Angeline Randolph Pereira & Ors. Vs. Suyog Industrial Estate Premises Co-operative Society Ltd. & Ors. (supra)*** apply to the facts of this case. I am respectfully bound by the said judgment.

7. It is made clear that if any civil suit is filed by any of these petitioners for adjudication of the title in respect of the property in question, the said suit can be independently decided by a Civil Court without being influenced by the fact that the order of deemed conveyance is passed by the competent authority or the certificate of title is issued by the competent authority in favour of the society. The Civil Court will have to decide the dispute of title in respect of the property in question without being influenced by the observations made in the impugned order passed by the competent authority.

8. All the writ petitions are disposed of in aforesaid terms. In view of disposal of the writ petitions, civil application does not survive and is accordingly disposed of. No order as to costs.

R.D. DHANUKA, J.