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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.14254 OF 2018

Ekdant Housing	...Petitioner
V/s.	
Anmol Residency CHS Ltd.	...Respondent

Mr.S.M. Oak i/b Mr.Sagar Joshi for the Petitioner.

Mr.R.S. Apte, Senior Counsel i/b Mr.Vaibhav Patankar for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 25TH JUNE, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 15th February, 2018 passed by the learned Competent Authority and the District Deputy Registrar, Co-operative Societies, Thane allowing the Application No.109 of 2017 filed by the respondent society.

2. The petitioner has impugned the order mainly on two grounds i.e. (i) the occupants of the building standing on the plot in respect of which the order of deemed conveyance is granted had given an undertaking notarized on 9th April, 2013 in favour of the Deputy Chief Engineer, Town Development Department, Thane Municipal Corporation, Thane to the effect that the occupants have no

objection for granting occupation certificate to their building even though the certain number of the required parking will be given to the members after full development of the lay out with the construction of the newly proposed building. It is also recorded in the said undertaking that the petitioner herein had also committed its members to give required parking and fully developed recreation ground in their building as well as the proposed building to be constructed after full development of the lay out and (ii) there is a common lay out in respect of the entire building on which another building is also proposed to be constructed by the petitioner. The construction of the said building has not been commenced. If the impugned order passed by the Competent Authority is not set aside, the respondent society may apply for sub-division of the plot in future and as a result thereof, the petitioner would not be able to carry out any construction on the remaining portion of the land. It is submitted that if the members of the respondent society do not seek any parking space which the petitioner had agreed to provide from the parking to be constructed in the adjoining building proposed to be constructed, the Municipal Corporation may not issue occupation certificate in respect of both the buildings.

3. Mr.Apte, learned senior counsel appearing for the respondent society on the other hand submits that the Competent

Authority has passed an order of deemed conveyance in favour of the respondent society in respect of the area mentioned in the agreement entered into between the parties and submitted the sanctioned plan. The construction of the building in respect of which the deemed conveyance is granted is fully complete. The agreement entered into between the parties does not make any specific provision for specific portion of the plot earmarked for parking.

4. Learned senior counsel for the respondent society on instructions states that the members of the respondent society are not interested in any parking area allotment from the building proposed to be constructed by the petitioner on the balance portion of the plot. He further states on instructions that the respondent society has no objection if the petitioner carries out construction on the balance portion of the land.

5. Learned senior counsel for the respondent on instructions states that as and when the respondent applies for sub-division of the land on the basis of the impugned order passed by the Competent Authority, the petitioner may be granted liberty to oppose the said application for sub-division of the plot and appropriate authority may consider the said application on its own merits. The statements made by Mr.Apte, learned senior counsel for the respondent are accepted.

6. In view of the statement made by the respondent, the

petitioner would be at liberty to apply for modification of the plan, if any, to the Corporation for construction of another building on the balance portion of the land in accordance with law.

7. If any application is made by the respondent society for sub-division of the plot on the basis of the order of deemed conveyance passed by the Competent Authority, the petitioner would be at liberty to raise an objection to the said application filed by the respondent. If any objections are raised, the concerned authority shall consider the said objections before passing any order of sub-division in favour of the respondent society and in accordance with law.

8. In view of the aforesaid reasons, I am not inclined to interfere with the impugned order passed by the competent authority. The writ petition is dismissed with aforesaid clarifications. There shall be no order as to costs.

(R.D. DHANUKA, J.)