

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8360 OF 2017

Mr. Iqbal Ahmad Manzoor Ahmad Ansari	...Petitioner
<i>Versus</i>	
Samta Co-operative Housing Society Ltd.	
And others.	...Respondents

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Mr. Reyaz Ansary, Advocate for the Petitioner.
Mr. Raju D. Suryawanshi, Advocate for Respondent No.1.
Mr. S.D. Rayrikar, A.G.P., for Respondents No.2 to 4-State.

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CORAM : R. G. KETKAR, J.

DATE : 04th DECEMBER, 2018

P.C.

1. Heard Mr.Reyaz Ansary, learned counsel for the petitioner, Mr. Raju Suryawanshi, learned counsel for respondent No.1 and Mr.S.D. Rayrikar, learned A.G.P. for respondents No.2 to 4-State, at length.

2. This Petition takes exception to the order dated 5.5.2014 passed by the Competent Authority and District Registrar, Co-operative Societies, Thane (for short, 'Competent Authority') as also the certificate dated 5.5.2014 issued by the Competent Authority. By order dated 5.5.2014, the Competent Authority issued unilateral deemed conveyance in favour of the first respondent in exercise of powers under Section 11 of the Maharashtra Ownership of Flats (Regulation of the

Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, 'MOFA'). On the same day, certificate of deemed conveyance was issued by the Competent Authority. Mr. Suryawanshi submitted that on 25.6.2018 deemed conveyance was executed and registered in favour of the first respondent.

3. In the decision of this Court (Coram: S.C. Dharmadhikari, J.) dated 15.10.2012 passed in W.P. No.5083/2012 (**Angeline Reni Periera Vs. M/s. Pearl Heaven Co-operative Housing Society Ltd.**), the learned Single Judge has considered several decisions rendered by this Court. In the case of **Mazda Construction Company Vs. Sultanbad Darshan CHS Ltd.** in W.P. No.3912/2012, 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 Vs. Suyog Estate Premises Co-operative Society Ltd.**, decided by this Court (Coram:R.D. Dhanuka, J.) on 11.4.2018 in W.P. No.4373/2017, 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 his right in respect of the suit property by filing suit. All such contentions can be gone into in a properly instituted suit.

4. As this Court has consistently held that the remedy, if any, is to institute suit, Mr. Ansary seeks permission to withdraw this Petition with liberty to file suit. He submits that the petition was instituted on 13.7.2017. The time spent by the petitioner in prosecuting this Petition from 13.7.2017 till date may be excluded. He assures that within eight weeks from today the petitioner will institute suit claiming declaration of title as also challenging the impugned order and the certificate issued by the Competent Authority.

5. In view thereof, the petition is allowed to be withdrawn with liberty as prayed for and is disposed of as such. Interim order is vacated. Grant of liberty shall not be construed as an expression on merits either way. All contentions of the parties on merits are expressly kept open.

As the petitioner was prosecuting this petition bonafide in this Court, if the petitioner institutes suit within eight weeks from today, the time spent in prosecuting this petition from 13.7.2017 till date shall be excluded while considering issue of limitation. It is made clear that if the petitioner does not institute the suit within eight weeks from today, the issue of limitation is be kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)