IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8043 OF 2015

M/s. B.U. Bhandari Schemes & Anr. ... **Petitioners**

V/s.

Acolade Co.Op. Hsg. Soc. Ltd. & Anr. ... **Respondents**

Mr. R.S. Apte, Senior Advocate i/b Mayuresh Lagu for the Petitioner.
Mr. Umesh Dinodre for the Respondent No.1.
Mr. S.H. Kankal, AGP for the Respondent/State.

CORAM : R.D. DHANUKA, J.
DATE : 18th JUNE, 2018

P.C.:

. By this petition under Article 227 of the Constitution of India, the Petitioners have impugned the order dated 14.07.2015 passed by the Deputy District Registrar, Co-operative Societies in Deemed Conveyance Application No. D.C.1000923/2014 filed by the Respondent No.1. The impugned order is challenged on the two grounds i.e. i) That the Petitioners would be entitled to additional FSI available on the plot developed by the Petitioner; and ii) the Society will have to bear the liability of the VAT on the flat, purchased from the Petitioners by the flat purchasers. It is not in dispute that the Petitioners themselves had forwarded a draft Deed of Conveyance to the society for execution.

2 Mr. R.S. Apte, learned Senior Counsel appearing for the Petitioners invited

my attention to the findings rendered by the Competent Authority in the impugned order. Insofar as the payment of liability of VAT is concerned, he submits that the flat purchasers had agreed to bear the liability of the payment of VAT. Since the society has applied for conveyance, the society will have to pay the VAT to the Developer.

3 The Petition is opposed by the learned Counsel appearing for the society vehemently. Insofar as the submission in respect of the additional FSI is concerned, my attention is invited to Clause 3 of one of the agreements entered into between the Petitioner and the flat purchaser. In support of the submission that the entitlement of the Petitioner for FSI was only upto the date of formation of the society and not thereafter, he submits that society has already formed on 06.01.2011 and thereafter, additional FSI, if any, would be entitlement of society and not of the Petitioner.

4 Insofar as the submission of learned Senior Counsel in respect of the payment of VAT is concerned, it is submitted that the flats were sold by the Petitioner to individual flat purchasers and thus, the liability if any towards the payment of VAT would be that of the flat purchasers and not of the society. He invited my attention to the correspondence exchanged between the Petitioner and some of the flat purchasers by which the Petitioner raised the demand of payment of VAT upon the flat purchasers. He submits that in the impugned order passed by the Authority, the Authority has not adjudicated the liability of

payment of VAT, if any, against the society but against the members.

5 Learned Senior Counsel for the Petitioner in rejoinder submits that Petitioner has not impugned the direction issued by the Authority for payment of VAT against the members of the society.

6 Insofar the submission of the learned Senior Counsel that the Petitioner is entitled to the additional FSI is concerned, a perusal of the agreement entered into between the Petitioner and the flat purchasers indicates that the entitlement of the Petitioner for FSI due to change in DC Rules or for any other reason was available only up to the date of formation of society and not thereafter. In my view, the learned Counsel for the society is right in his submission that entitlement of FSI would be of the society upon formation of the society and not of the Petitioner.

7 Insofar as the submission of the learned Senior Counsel about the payment of VAT is concerned, it is not in dispute that the Petitioner had entered into individual flat agreements with various flat purchasers. The alleged entitlement of the Petitioner for recovery of the VAT on purchase of the flat, if any, would be of flat purchasers and not of the society. The impugned order passed by the authority also does not indicate that liability is of the society and not of the members.

8 The Petitioner himself had submitted the draft Deed of Conveyance to the society for approval. In my view, there is thus no merit in this petition. The

impugned order passed by the authority records various findings of fact which are not perverse and thus, cannot be interfered by this Court in this petition. Petition is devoid of merit and is accordingly dismissed.

9 It is made clear that the Petitioner would be at liberty to file such proceedings as permitted in law for recovery of VAT against the flat purchasers for the society and if such suit is filed, the same shall be decided on its own merits. No order as to costs.

(R.D. DHANUKA, J.)