

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 2233 OF 2016****Eden Garden Sahakari Gruharachna****Sanstha Maryadit****..... Petitioner****VERSUS****Mahavir Builders & Ors.****..... Respondents**

Mr.Telesh Dande, a/w. Mr.Bharat Gadhavi, Mr.Vishal Navale, i/b.
Telesh Dande & Associate for the Petitioner.

Mr.Tejas Deshpande, a/w. Mr.Nilesh Masurkar, Mr.Dinesh Maruskar
for the Respondent no.1.

CORAM : R.D. DHANUKA, J.**DATE : 6th JUNE, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the part of the impugned order dated 15th December,2014 and more particularly the order of the deemed conveyance subject to the condition no.5 mentioned in the impugned order.

2. Learned counsel for the petitioner submits that while deciding an application for deemed conveyance under section 11 of the MOFA, the learned competent authority could not have made any observation about the alleged balance FSI claimed by the developer in the impugned order and thus could not have passed an order of deemed conveyance subject to the alleged balance FSI claimed by the developer.

3. Learned counsel appearing for the developer on the other hand submits that his client has claim over the balance FSI which his client wants to utilize on the same plot being developed by his client.

4. In my view, the learned competent authority could not have made any order of deemed conveyance making it subject to any condition of alleged balance FSI claimed by the developer nor could pass any order of balance FSI if any in favour of the society. I am thus inclined to set aside the said condition imposed by the competent authority in the impugned order, keeping all the contentions of both parties in respect of the alleged balance FSI open which can be decided in an appropriate proceedings.

5. Since the developer has not disputed the right of the petitioner to deemed conveyance in respect of the property in question and had only disputed their alleged rights in respect of the alleged balance FSI, the impugned order is upheld by deleting the condition imposed by the competent authority keeping all the contentions open as directed aforesaid.

6. Writ petition is disposed of in the aforesaid terms. No order as to costs.

7. It is made clear that this court has not expressed any views as to whether the petitioner or the developer would be entitled to balance FSI if any, in respect of the plots in question and the said issue is kept open.

[R.D. DHANUKA, J.]