

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 12079 OF 2017****Rev.Father Joseph Praxedes Pereira****..... Petitioner****VERSUS****I-20 Mahavir Nagar Co-operative****Housing Society Limited & Anr.****..... Respondents**

Mr.Pradeep R.Tiwari for the Petitioner.

Mr.Anilkumar K.Patil for the Respondent no.1.

Ms.K.N.Solunke, A.G.P. for the State – Respondent no.2.

CORAM : R.D. DHANUKA, J.**DATE : 2nd APRIL, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 28th February, 2017 granting an order of deemed conveyance in favour of the respondent no.1. It is the case of the petitioner that one Mr.J.S.Pereira who was the owner of the property at the relevant time had conveyed the property in question to one Salsette Catholic CHS Ltd. The petitioner and the respondent nos. 2 to 9 are the legal heirs of the said Mr.J.S.Pereira.

2. It is the case of the petitioner that the said Salsette Catholic CHS Ltd. has sold the balance land to M/s.Ajanta Traders.

3. In the year 1970, a portion of the balance property out of the total Salsette Catholic CHS Ltd. was alleged to have been conveyed to

the said Mr.J.S.Pereira. It is the case of the petitioner that on 14th June, 1980, the said agreement was however terminated by the petitioner and his family members.

4. Learned counsel for the petitioner submits that since the agreement with M/s.Ajanta Traders was terminated, M/s.Ajanta Traders could not have entered into any agreement with the so called promoter.

5. It is submitted by the learned counsel for the petitioner that the agreement entered into between the promoter and the predecessor in title was not in accordance with the section 4 of the Maharashtra Ownership Flats Act, 1963. Though this objection was raised by the petitioner before the competent authority, the same has not been considered. The entire order is thus erroneous.

6. Mr.Patil, learned counsel for the society on the other hand invited my attention to the agreement in question on the basis of which the application for deemed conveyance was made under section 11 of MOFA and would submit that when the said agreement was entered into, there was no format under section 4 prescribed by the then owners. The society was subsequently formed and thus a Deed of Conveyance was required to be executed in favour of the society. He invited my attention to the impugned order passed by the competent authority and would submit that the issue raised by the petitioner has been specifically dealt with in the impugned order. He also strongly placed reliance on the judgment of the Division Bench of this court

delivered on 6th April, 2016 in Writ Petition No.3129 of 2016 in case of ***Shimmering Heights CHS Ltd. & Ors vs. State of Maharashtra & Ors.*** and would submit that these contentious issues which are now raised by the petitioner could not have been gone into by the competent authority under section 11 and the remedy of the petitioner would be of filing a substantive civil suit in the civil court.

7. A perusal of the objections raised by the petitioner before the competent authority and the explanation given by the respondent no.1 society and the impugned order clearly indicates that the competent authority has dealt with various issues in great detail including the issue of jurisdiction raised by the petitioner. The other contentious issues about the validity of the termination of the agreement between the erstwhile owners and the promoters even otherwise could not have been gone into by the competent authority under section 11 of the MOFA.

8. The Division Bench of this court in the said judgment delivered on 6th April, 2016 in case of ***Shimmering Heights CHS Ltd.*** (supra) has held that the order passed by the authority granting deemed conveyance does not decide any issue of right, title and interest in the immovable property. If the petitioners apprehend that what is claimed is more than the entitlement of the concerned applicant and in whose favour deemed conveyance is granted, then, the petitioners can approach a competent civil court and establish their right, title and interest in the immovable property. The judgment of this court delivered by the Division Bench applies to the facts of this case. In my

view the remedy of the petitioner would be by way of filing substantial suit for adjudication of the title and the other issues in respect of the suit property and not by way of writ petition to adjudicate upon the contentious issues. I, therefore, pass the following order :-

- (a) Writ petition is dismissed.
- (b) The petitioner is at liberty to file a civil suit for adjudication of the title in respect of the suit property. If any such suit is filed, the civil court can independently decide the issue of title in respect of the property in question.
- (c) It is made clear that in the impugned order the authority has not adjudicated upon the issue of title in respect of the suit property.
- (d) There shall be no order as to costs.

[R.D. DHANUKA, J.]