

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 14300 OF 2016

M/s. Sai Naman Developers

...Petitioner

Versus

The Chariman / Secretary, Bholenath Kripa
CHS Ltd. and others

...Respondents

....

Mr. Sachin P. Shetye, Advocate for the Petitioner.

Mr. S.S. Bijlani I/b. Manish Rai, Advocate for Respondent No.1.

Mr. Himanshu B. Takke, Advocate for Respondents No.2 to 7.

Mr. S.H. Kankal, AGP, for Respondent No.10-State.

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CORAM : R. G. KETKAR, J.

DATE : 27th NOVEMBER, 2018

P.C.

1. Heard Mr.Sachin P. Shetye, learned counsel for the petitioner, Mr. S.S. Bijlani, learned counsel for respondent No.1, Mr. Himanshu B. Takke, learned counsel for respondents No.2 to 7 and Mr. S.H. Kankal, learned A.G.P. for respondent No.10-State, at length.

2. This Petition takes exception to the order dated 30.10.2013 passed by the Competent Authority/Joint Registrar, Co-operative Societies, CIDCO (for short, 'Competent Authority') in Deemed Conveyance Application No.202/2013 as also the certificate dated 30.10.2013 issued by the Competent Authority. It is not in dispute that in pursuance of the impugned order, the Deed of Unilateral Conveyance was executed on 16.11.2013 in favour of the first respondent.

3. Mr. Shetye contended that the impugned order was passed behind the back of the petitioner. The petitioner had purchased the lease hold rights of plot No.390 at Koparkhairane, Navi Mumbai from respondents No.2 to 7 herein by a registered conveyance deed dated 25.2.2013. The petitioner was not impleaded in the proceedings. In short, he submitted that the order dated 30.10.2013 was obtained by practicing fraud.

4. In view of decision of this Court in **Angeline Randolph Pereira and others V. Suyog Industrial Estate Premises Co-operative Society Ltd. and others**, 2018(3) ABR 825, and in particular paragraphs-18 and 19 thereof, this Court cannot examine the legality, correctness and validity of the deemed conveyance. That apart, the petitioner has also contended that the impugned order was obtained by practicing fraud.

5. Mr. Shetye, therefore, submits that the petitioner will file substantive suit challenging the impugned order and certificate as also for cancellation of the Deed of Unilateral Conveyance dated 16.11.2013 or file counter claim in the suit filed by respondent No.1, if it is permissible in law.

6. Mr. Shetye submits that the petition is instituted on 14.10.2016 and, therefore, the time spent by the petitioner in

prosecuting this petition till today may be excluded while considering the issue of limitation.

7. Mr.Bijlani submitted that in fact respondent No.1 herein has instituted suit and the petitioner herein has filed written statement. The petitioner could have very well set up counter-claim in that suit. It is not necessary for me to express any opinion on this contention.

8. In view thereof, the petition is disposed of reserving liberty to the petitioner to institute substantive suit challenging the impugned order and certificate as also for cancellation of the Deed of Unilateral Conveyance dated 16.11.2013 or file counter claim in the suit filed by respondent No.1, if it is permissible in law. 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 in this Court bonafide, if the petitioner files the suit or sets up counter-claim in the suit of respondent No.1 within six weeks from today, the time spent by the petitioner in prosecuting this petition from 14.10.2016 till date shall be excluded while considering the issue of limitation. Order accordingly.

(R. G. KETKAR, J.)