

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 9129 OF 2014****M/s.Vaishali Builders & Ors.****..... Petitioners****VERSUS****Vaishali Tower Co-operative Housing
Society Ltd. & Ors.****..... Respondents****ALONGWITH****WRIT PETITION NO. 10949 OF 2014****Harishchandra A. Pandit****..... Petitioner****VERSUS****The Chairman/Secretary,
Vaishali Tower Co-operative Housing
Society Ltd. & Ors.****..... Respondents**

Ms.Lakshmi Murali for the Petitioners in Writ Petition No. 9129 of 2014.

Mr.Priyank Kapadia, i/b. Mr.Prashant Nakati for the Respondent nos. 1 to 4 in both the writ petitions.

Mr.Vaibhav Patankar for the Petitioner in Writ Petition No. 10949 of 2014.

CORAM : R.D. DHANUKA, J.**DATE : 31st JULY, 2018****P.C.**

By both these petitions, the petitioners have impugned the order dated 7th August, 2014 passed by the competent authority in favour of the respondent no.1 society granting order of deemed conveyance In favour of the 1st respondent.

2. The petitioner in Writ Petition No.9129 of 2014 has challenged

the impugned order on the ground that the petitioners are entitled to the balance FSI and also to carry out the construction of the structure on the plot in question. The petitioners in Writ Petition No.10949 of 2014 has challenged the impugned order on the ground that the petitioners had not granted any right of construction to the petitioners in Writ Petition No.9129 of 2014 and had already terminated the lease agreement entered into between the petitioners with the petitioners in Writ Petition No.9129 of 2014.

3. In *catena* of decisions, this court has taken a view that the issue of title in respect of the property is not adjudicated upon in the proceedings filed under section 11 of the Maharashtra Ownership Flats Act by the competent authority under section 11 of the said Act. The remedy of both the petitioners would be to file a civil suit inter alia praying for adjudication of their respective alleged rights in the suit property or for claiming the benefit of additional FSI.

4. Learned counsel appearing for the petitioners in Writ Petition No.9129 of 2014 has agreed to file a civil suit within six weeks from today. The remedy of the petitioners in Writ Petition No.10949 of 2014 also would be by way of a civil suit. If both these petitioners file a civil suit, the issue of adjudication of title can be gone into those suits by a civil court independently.

5. Insofar as the use of the balance FSI, if any, left on the plot is concerned, the respondent no.1 society shall not utilize the said FSI, if any, for a period of eight weeks from today.

6. The petitioners as well as the respondent no.1 would be at liberty to apply for interim relief in the suit proposed to be filed by the petitioners in Writ Petition No.9129 of 2014 and if a suit is filed by the petitioners in Writ Petition No.10949 of 2014. If any application for interim relief is made by the petitioners in those suits, a civil court shall decide the said application on its own merits without being influenced by the fact that this court had granted *ad-interim* relief in these writ petitions.

7. *Ad-interim* relief granted by this court is partly modified insofar as utilization of the FSI is concerned. It is made clear that the *ad-interim* relief granted by this court insofar as stay of the impugned order passed by the competent authority is concerned, is vacated.

8. Application made by the learned counsel for the petitioners in Writ Petition No.10494 of 2014 for continuation of the *ad-interim* relief granted by this court insofar as execution of the deemed conveyance is concerned, is rejected.

9. The parties to act on the authenticated copy of this order.

10. Both the writ petitions are disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]