IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10969 OF 2012

Element S.Sahakari,
Gruhrachana Sanstha Maryadit, Pune .. Petitioner
Vs.
Tushar Kasturi Developers & Ors. .. Respondents

Mr.C.P. Deogirikar for the petitioner.
Mr.Siddharth Wakankar for the respondent nos.1, 2A and 3 to 6.
Mr.S.D. Rayrikar, AGP for the respondent nos.7 & 8.

CORAM : R.D. DHANUKA, J.
DATE : 30th July 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order of deemed conveyance dated 13th July 2012 in so far as the condition nos.4 and 5 in the operative order are imposed against the petitioner is concerned. Both the parties will have to prove their rights in respect of the area mentioned in condition nos.4 and 5 by filing appropriate proceedings before the Civil Court.

2. In these circumstances, I am of the view that since the developer has not impugned the order dated 13th July 2012, the petitioner would be entitled to the execution of the directions issued in paragraphs 1, 2 and 3 of the operative part of the order dated 13th July 2012 without prejudice to the rights and contentions of the petitioner.

3. In so far as the condition nos.4 and 5 of the impugned order is concerned, both the parties would be at liberty to file appropriate civil suits for adjudication of their rival claims in respect of the area mentioned in condition no.4 of the impugned order. It is made clear that this Court has not expressed any views in so far as the merit of the condition nos.4 and 5 mentioned in the impugned order dated 13th July 2012 is concerned. Civil suits shall be filed within four weeks from today. For a period of 8 weeks, ad-interim relief granted by this Court on 26th November 2012 restraining the developer for using or dealing with the said additional FSI to continue. Both the parties would be at liberty to seek appropriate interim reliefs in their respective suits. If any application is filed for interim relief by any of the parties, the same shall be decided on its own merit. Writ petition is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.