

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8308 OF 2015

M/s.Kamdheni Enterprises

..... Petitioner

VERSUS

Manish Sea Croft Co-op.Hsg.Soc.Ltd. & Ors. Respondents

Mr.Kirit Mody, a/w. Ms.Aruna Mehta, Mr.Rajesh Chainani, i/b.
S.Pathak & Co. for the Petitioner.

Mr.Bharat R.Zaveri for the Respondent no.1.

Mr.S.H.Kankal, A.G.P. for the State - Respondent nos. 5 and 7.

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 order dated 2nd April, 2013 passed by the respondent no.5 passing an order of deemed conveyance in favour of the respondent no.1 society in respect of various plots mentioned in the impugned order.

2. Mr.Mody, learned counsel for the petitioner on instruction states that the limited grievance of the petitioner in this petition is that there is no order of access provided to the plot bearing survey no.1125 from plot bearing nos. CTS NO.C/1122 B and C/1122 C which two plots are subject matter of the order of deemed conveyance. He submits that the learned authority has misunderstood the statement made by the learned counsel for the petitioner on page 35 of the impugned order (internal page 11) that there was access road from plot bearing no.CTS

No.C/1122 B and C/1122 C from plot CTS No. C/1125. He submits that instead of recording the submission of the petitioner that there was access to plot C/1125 from plot bearing CTS No.C/1122 B and C/1122 C, the learned competent authority has recorded the statement contrary to the statement made. Statement is accepted.

3. In my view, under section 11 of MOFA, the competent authority could not have decided the issues raised by the petitioner herein whether the petitioner was entitled to any right or access to plot bearing CTS No.C/1125 from plot bearing CTS No.C/1122 B and C/1122 C. I am thus not inclined to modify any part of the order passed by the competent authority in this petition insofar as the issue of access raised by the learned counsel for the petitioner in this petition is concerned or otherwise.

4. However, it is made clear that if any other proceedings are filed by the petitioner claiming right of the access to plot bearing CTS No.C/1125 from bearing CTS no. C/1122 B and C/1122 C, the same can be independently decided on its own merits.

5. This court has not expressed any view whether the petitioner is entitled to any right of access and the issue is kept open.

6. Since the other part of the impugned order is not pressed by the petitioner during the course of the argument, this court need not go into the other part of the order passed by the competent authority.

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

[R.D. DHANUKA, J.]