

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 31966 OF 2018

M/s. Mahanagar Housing Partnership Firm
And others

...Petitioners

Versus

District Deputy Registrar Of Co-operative
Societies (Pune City), Pune
and others

...Respondents

....

Mr. Venkatesh A. Shastry, Advocate for the Petitioners.
Mr. S.D. Rayrikar, A.G.P. for Respondent No.1-State.

....

CORAM : R. G. KETKAR, J.

DATE : 06th DECEMBER, 2018

P.C.

1. Heard Mr.Venkatesh Shastry, learned counsel for the petitioners and Mr.S.D. Rayrikar, learned A.G.P. for respondent No.1-State, at length.

2. This Petition takes exception to the order dated 28.12.2017 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune City, Pune (for short, 'Competent Authority') as also the certificate of unilateral deemed conveyance dated 28.12.2017 issued by the Competent Authority. By order dated 28.12.2017, in exercise of the powers conferred by Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of

Construction, Sale, Management and Transfer) Act, 1963 (for short, 'MOFA') read with Rule 9 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management And Transfer) Rules, 1964 (for short, 'Rules'), the Competent Authority **has** held that respondent No.2 is entitled to unilateral deemed conveyance in respect of the proportionate area of 14563.41 square meters and built-up area of 16863.50 square meters.

3. In support of this petition, Mr. Shastry submitted that unfortunately before the Competent Authority the relevant developments were not brought to the notice of the Competent Authority. In particular, Zoning demarcation as also development plan sanctioned in the year 2007 for Pune Municipal Corporation was not brought to the notice of the Competent Authority. In the development plan of 2007, the development road of 12 feet is passing through the property in question. That apart the area of 1268 square meters reserved for cemetery is now extended. He, therefore, submitted that the impugned order may be set aside and the matter may be remitted to the Competent Authority for deciding it afresh.

4. Mr. Shastry has also invited my attention to paragraph-5 of the petition. In paragraph-5 of the Petition it is asserted that FSI of

21577.00 square meters is proposed to be consumed for the construction of twelve buildings, namely, A, B, C, D, E, F, G, H, I, J, K and L. Out of these twelve buildings, the petitioner has constructed seven buildings and remaining five buildings are not yet constructed. As per the existing sanctioned plan an area admeasuring 5115 square meters is not consumed as well. He further submitted that the petitioner has handed over possession of the land covered by the development plan road as also the cemetery sanctioned in the year 2007 and, therefore, the petitioner is entitled to consume T.D.R. Generated on this account. He has taken me through the statements in paragraph-5 of the petition showing that the area of the plot is 19,100 square meters, the net area of the plot is 14,648.54 square meters and the total permissible FSI with TDR is 21,577.45 square meters which position was existing prior to the sanctioning of the development plan of 2007.

5. He also invited my attention to clause-5 of the Article of Agreement dated 14.11.2006 which permits the petitioner to consume the residual FSI as also present or future available T.D.R. which may be generated and said condition is essence of the contract. In short, he submitted that the petitioner is entitled to consume the balance FSI as also TDR generated on account of surrendering the possession of the

area of D.P. Road and cemetery under reservation of 2007 development plan. As against this, the Competent Authority has declared that respondent No.2 society is entitled to unilateral deemed conveyance of area of 14,563.41 square meters. He also invited my attention to paragraph-6 of the impugned order where the petitioner expressed willingness to transfer the area admeasuring 10,338 square meters covering buildings D, E, F, G, H, K and L. However, respondent No.2 society did not respond to the offer made by the petitioner.

6. Mr. Shastry also invited my attention to the notice dated 24.12.2015 issued on behalf of the petitioner and in particular paragraph-3 thereof where the petitioner called upon respondent No.2 to furnish the copies of the agreements, Index-II, registration receipts of each flat and shop and the society registration certificates. As there was failure on the part of the society in supplying this information the petitioner cannot be held responsible. The competent authority was, therefore, not justified in observing that the petitioner did not execute the deemed conveyance within a period of four months stipulated under section 11 of the MOFA and Rule 9 of the Rules.

7. On the other hand, Mr.Rayrikar supported the impugned order and submitted that no case is made out for interfering with the

impugned order.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The issue raised in the present petition about consumption of the balance FSI, TDR etc. has also been gone into in the following decisions :

- [1] Angeline Reni Periera Vs. M/s. Pearl Heaven Co-operative Housing Society Ltd., Writ Petition No.5083 of 2012 decided on 15th October, 2012 by this Court (Coram: S.C. Dharmadhikari, J.).
- [2] Shree Chintamani Builders Vs. State of Maharashtra, 2016 SCC Online Bom. 9343.
- [3] Shimmering Heights CHS Ltd Vs. State of Maharashtra, Writ Petition No.3129 of 2016 decided on 6th April, 2016 by this Court (Coram: S.C. Dharmadhikari, J & G.S. Kulkarni, JJ.)
- [4] Angeline Randolph Pereira Vs. Suyog Estate Premises Co-operative Society Ltd, W.P. No.4373 of 2017 decided on 11th April, 2018 by this Court (Coram:R.D. Dhanuka, J.).

9. In the case of **Mazda Construction Company Vs. Sultanbad Darshan CHS Ltd, Writ Petition No.3912 of 2012**, it is held that issue

of title in respect of the property cannot be gone into by the Competent Authority under the provisions of the MOFA and the same can be decided only by the Civil Court. In paragraph 17 of **Angelina Randolph Pereira's case** (supra), it is held that contentions regarding title in respect of property in question or adjudication in respect of the property in question or adjudication in respect of entitlement of the exact quantification of FSI on the plots in question cannot be gone into the proceedings under section 11 of the MOFA. The Competent Authority cannot decide validity of the agreements between the parties. The order granting Deemed Conveyance does not conclude issue of right, title, interest in the immovable property. The petitioners can still file substantive suit of title claiming the appropriate reliefs. Merely because order of Deemed Conveyance is passed and certificate of title is issued by the Competent Authority under section 11, the petitioners are not precluded from seeking adjudication of their right in respect of the suit property by filing suit. All such contentions can be gone into in a properly instituted suit.

10. In view of the consistent view taken by this Court in the aforesaid decisions, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India.

It is made clear that if any suit is filed by the petitioners for adjudication of title in respect of the suit property, the same can be decided without being influenced by the order of Deemed Conveyance passed by the Competent Authority and certificate of title issued by the Competent Authority in favour of the second respondent. Subject to this clarification, Petition fails and the same is dismissed with no order as to costs.

11. At this stage, Mr. Shatry states that within eight weeks from today the petitioners will institute the substantive suit and for a period of eight weeks the impugned order may be stayed. It is not possible to accept this request. It will be open to the petitioner to institute suit and obtain appropriate relief in the said suit. Order accordingly.

(R. G. KETKAR, J.)