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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1689 OF 2015

S.Balan Shanmuygam Balkrishnan
Chettiar (since deceased) through LRs. ..Petitioners.

V/s.

D.S.K.Vasant Vaidhyav Co-operative
Housing Society Ltd. ..Respondent.

Mr.R.D.Soni with V.R.Kasle i/b. Ram & Co. for the petitioner.

Mr.Prashant Naik i/b. Sandeep Wagmare for respondent No.1.

None for respondent Nos.2 & 3.

Mr.C.D.Mali, AGP for respondent Nos.4 & 5.

CORAM : NITIN W.SAMBRE, J.

DATE : AUGUST 7, 2019

P.C. :-

Leave to amend. Amendment to be carried out forthwith.

2. Heard respective counsel.

3. The case of the petitioner is, he was respondent No.4 before the District Deputy Registrar, who was the competent authority to issue conveyance certificate in favour of the Co-operative Housing Society. According to him, at the behest of respondent, Civil Suit was pending adjudication

Corrected pursuant to the speaking to the minutes of the order dated 18/10/2019.

against the owner for specific performance. In addition, the fact that the area which was sold to the petitioner has not been considered while granting deemed conveyance certificate is also sought to be canvassed.

4. Learned counsel also submits that the least that was expected of the authority while granting deemed conveyance certificate is to analyse the area owned by the petitioner or intention of the landlord while the parting of the specific piece of land for purpose of development in favour of the respondent co-operative society and also the area reflected in various conveyance deeds executed in favour of the petitioner. He would urge that even if presuming that suit preferred by the respondent-society was withdrawn on March 11, 2015, the authority ought not to have gone into the matter of grant of deemed conveyance when there appears disputed questions.

5. Learned counsel for the respondents while countering the aforesaid submissions, would urge that the impugned order is dated December 18, 2014 whereas the respondent-society has withdrawn the suit initiated by them against the vendors on March 11, 2015. It is further claimed that the petitioner has purchased the property, set up the

claim as against the respondent-society subsequent to that of vesting of title / property in favour of members of the respondent-society. According to him, unless the parties are given an opportunity to lead oral and documentary evidence, it cannot be ascertained as to exactly to which property the petitioner is entitled for. He sought dismissal on account of involvement of the disputed questions of fact.

6. Considered rival submissions.

7. The order impugned dated December 18, 2014 has considered the sale deed executed in favour of the petitioner. So also, the documents which is executed in favour of the respondent-society particularly as regards the title of the original owner, who has created rights by different conveyance in favour of the petitioner and the respondent. The authority thereafter proceeded to analyse the area mentioned in the sale deed annexed to each of the conveyance deed and proceeded to pass an order granting deemed conveyance.

8. If the contentions of learned counsel for the petitioner as regards the grant of deemed conveyance of the property by way of two transfer deeds, one in his favour way back in 2014 if appreciated, the fact remains that the dispute

raised in this petition is only to the extent of transfer of undivided right in the open space, over which the petitioner is also claiming title too.

9. Whether the petitioner or respondent-society is entitled for undivided share in the open space is an issue, which in my opinion cannot be gone into in writ jurisdiction.

10. The issue is restricted in the petition to the extent of entitlement of the petitioner of having absolute right to developing the open space over which the respondents are granted right of enjoyment as having undivided share. The claim of the petitioners of absolute right over the open space which can be resolved only by giving opportunity of leading evidence to the respective parties before the competent Civil Court.

11. In the aforesaid background, this Court, having regard to the conveyance deed executed between the respective parties in the schedule appended and the observations made in the said deemed conveyance order dated December 18, 2014, desists itself from examining the entitlement of the petitioner to the extent of open space referred to in clause (5) of the impugned order.

12. Keeping the option open to the petitioner to

establish its right to the said open space by taking recourse to the appropriate civil proceedings before the competent Civil court, this Court deems it appropriate to dismiss the petition. The petition is accordingly dismissed.

(NITIN W.SAMBRE, J.)