

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3135 OF 2018

Akshata Co-operative Hsg. Soc. Ltd.	...	Petitioner
V/s.		
The Competent Authority or		
District Sub-Registrar, Co-Op. Soc. & Ors.	...	Respondents

Mr.Sandesh Deshpande for Petitioner.
Mr.S.D. Rayrikar, AGP for the State.
Mr.Rajesh Datar for Respondent No.4A.

CORAM : A.S. GADKARI, J.

DATE : 9th July 2019.

P.C. :

1] The learned counsel for the petitioner submitted that, the application for deemed conveyance as contemplated under Section 11(3) of *the Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963* has been rejected by the Competent Authority predominantly on the ground that there is no specific mention of area of land in their application. In the impugned Order dated 29th January 2016 the Competent Authority has

observed that the Applicants in their application have stated the area of land as 1500 square yards or 1500 square meters. That there is variance in the area mentioned in the agreement for sale and other documents on record.

2] The learned counsel for the petitioner, on instructions, submitted that, the petitioner-Society is ready and willing to accept even lesser area of land i.e. 1500 square yards instead of 1500 square meters. *Prima-facie*, it appears that, there is no evidence available on record at this stage even to accept the said contention. Even otherwise judicial propriety demands that the petitioner shall establish its case before the Competent Authority at the first instance. The scope and jurisdiction of this Court under Article 227 of the Constitution of India is well enumerated by a catena of judgments of the Hon'ble Supreme Court. However, in view of the statement made by the learned counsel for the petitioner-Society, the petitioner is relegated for establishing its claim afresh to the Competent Authority.

3] In view of the above, the Order dated 29th January 2016 is set-aside and the Application No.12303 of 2016 filed by the petitioner-Society under Section 11(3) of the M.O.F.A. Act is restored to the file of

the Competent Authority i.e. Respondent No.1-District Sub-Registrar, Co-operative Societies, Thane. The Respondent No.1 shall decide the said application in view of the statement made by the petitioner as recorded hereinabove after examining its legality and on its own merits. It is needless to mention that, the contentions of all the concerned are expressly kept open.

4] It is to be noted here that, this Court has not examined the merits of the said statement made by the petitioner and it is for the respondent No.1 to consider it afresh.

5] Petition is partly allowed in the aforesaid terms.

[A.S. GADKARI, J.]