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

**WRIT PETITION NO. 8870 OF 2015**

Hariganga Co-Op. Hsg. Soc. Ltd. ....Petitioner  
through Member of the Society

V/s.

M/s. Mahanagar Construction through ....Respondents  
Builders and others

**WITH  
CIVIL APPLICATION NO. 1463 OF 2018  
IN  
WRIT PETITION NO. 8870 OF 2015**

Ashwin Narayan Chavan ....Applicant

IN THE MATTER BETWEEN

Hariganga Co-Op. Hsg. Soc. Ltd. ....Petitioner  
through Member of the Society

V/s.

M/s. Mahanagar Construction through ....Respondents  
Builders and others

Mr. P. S. Dani Senior Advocate i/b Mr. T. D. Deshmukh for the  
Petitioner

Mr. S. H. Kankal AGP for the State

Mr. P. K. Dhakephalkar Senior Advocate i/b Mr. Jaydeep Deo for  
respondent nos. 1A, 1C, 2B, 2C.

None for applicant in Civil Application

**CORAM : NITIN W. SAMBRE, J.**

**DATE : JULY 19, 2019.**

**P.C.**

Petitioner-society has questioned the order of Deemed Conveyance passed in exercise of powers under Section 11 of the Maharashtra Ownership of flats (Regulation of the promotion of construction, sale, management & transfer) Act, 1963 (Hereinafter referred to as 'the Act' for the sake of brevity) on 24/04/2015 by respondent-District Deputy Registrar. The contention is, the Statute empowers the Authority either to grant or not to grant Deemed Conveyance prayer. According to him, order cannot be conditional one like the one passed in proceeding in question. He would invite attention of the Court to order of Deemed Conveyance which is made subject to condition nos. 2 & 4 therein. The learned counsel submits that even though the Deemed Conveyance is ordered, respondent-developer is permitted to carry out development activities *qua* phase 3 & 4 which is allegedly claimed to be with intimation and permission of the petitioner. As such, submissions are, the

observations are without any basis and that being so, condition nos. 2 & 4 in the order impugned are liable to be quashed and set aside.

2 Shri. Dhakephalkar, the learned senior counsel appearing for respondent nos. 1 & 2 would invite attention of this Court to pendency of Suit for injunction at the behest of respondents against the petitioner being R.C.S. No. 1358 of 2018 in which the petitioner is one of the defendant. According to him, condition no. 4 incorporated in the order of grant of Deemed Conveyance is based on certain facts as are reflected therein. According to him, if the submissions of the petitioner are appreciated, there are disputed question of facts, which this Court should not go into and in view of settled position of law, in the matter of **Mazda Construction Company & Ors Vs. Sultanabad Darshan CHS Ltd. & Ors [2013 (2) ALL MR 278]**, petitioner be relegated to Civil proceedings.

3 Appreciated the submissions.

4 It is not in dispute that the order of grant of Deemed

Conveyance which is the subject matter of challenge is conditional as said Deemed Conveyance is subject to condition nos. 2 & 4 incorporated in the said order. By condition no. 4, respondent nos. 1 & 2 are permitted to go ahead with their development activities in the very property of which Deemed Conveyance is ordered. The fact that the petitioner claimed that respondent nos. 1 & 2 cannot go ahead with such development activity in view of deemed conveyance and claim of respondent nos. 1 & 2 that they have every authority to go ahead with development activity, cannot be appreciated and gone into by this Court, particularly when the dispute as regards right of each of the party over the property in question is sought to be agitated.

5     Considering the position of law as is laid down in the matter of **Mazda Construction** [cited supra], in my opinion, it will be appropriate to relegate the petitioner to Civil Court without going into the disputed question of facts which are raised in the petition.

6     As such, petition stands disposed of.

7 Liberty to take recourse to the civil proceedings including that of in R.C.S. No. 1358 of 2018 initiated at the behest of respondents.

8 Needless to clarify that, if the petitioner brings its action before the Civil Court, the same be adjudicated into, without being influenced by the incorporation of the condition in the order of Deemed Conveyance and the pendency of R.C.S. No. 1358 of 2018 at the behest of respondent nos. 1 & 2.

9 Order of status-quo shall continue to operate for a period of 6 weeks from today. Order of status-quo will not come in the way of Trial Court in deciding rival claims of the parties for grant of any interim orders.

10 As a consequence of disposal of the petition, pending Civil Application also stands disposed of.

**[NITIN W. SAMBRE, J.]**