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

**CIVIL WRIT PETITION NO.8144 OF 2019**

- |    |                                     |   |                               |
|----|-------------------------------------|---|-------------------------------|
| 1. | Sterling Court ABC Wing CHS LTD     | ] |                               |
|    | Having its address at Survey No.17, | ] |                               |
|    | Hissa No.02 CTS No.55/5A            | ] |                               |
|    | Village Kondivita Orkay Mill Lane,  | ] |                               |
|    | Andheri (East), Mumbai 400 093      | ] |                               |
| 2. | Sterling Court E Wing CHS LTD       | ] |                               |
|    | Having its address at Survey No.17, | ] |                               |
|    | Hissa No.02 CTS No.55/5A            | ] |                               |
|    | Village Kondivita Orkay Mill Lane,  | ] |                               |
|    | Andheri (East), Mumbai 400 093      | ] |                               |
| 3. | Sterling Court F Wing CHS LTD       | ] |                               |
|    | Having its address at Survey No.17, | ] |                               |
|    | Hissa No.02 CTS No.55/5A            | ] |                               |
|    | Village Kondivita Orkay Mill Lane,  | ] |                               |
|    | Andheri (East), Mumbai 400 093      | ] | <b><u>... Petitioners</u></b> |

**-: Versus :-**

- |    |                                        |   |
|----|----------------------------------------|---|
| 1. | State of Maharashtra                   | ] |
|    | Through its Government Pleaders,       | ] |
|    | Original Side, High Court, Bombay      | ] |
| 2. | District Deputy Registrar Co-Operative | ] |
|    | Societies, Mumbai (3)                  | ] |
|    | MHADA Building,                        | ] |
|    | Ground Floor, Room No. 69,             | ] |
|    | Bandra (East), Mumbai 400 051          | ] |
| 3. | Maheshwari Nagar Federation of Five    | ] |
|    | Co-Operative Housing Societies LTD.    | ] |
|    | Maheshwari Nagar, Orkay Mill Lane,     | ] |
|    | Kondivita MIDC, Andheri (East),        | ] |
|    | Mumbai 400 093                         | ] |
| 4. | Apraulic Constructions Investment      | ] |

- |    |                                             |   |                               |
|----|---------------------------------------------|---|-------------------------------|
|    | Finances Limited                            | ] |                               |
|    | Maheshwari Nagar, Orkay Mill Lane,          | ] |                               |
|    | Kondivita MIDC, Andheri (East)              | ] |                               |
|    | Mumbai 400 093                              | ] |                               |
| 5. | M/s. Kabra Estate and Investment Consultant | ] |                               |
|    | a partnership firm having its office at     | ] |                               |
|    | Mustafa Building, Sir P.M. Road, Fort,      | ] |                               |
|    | Mumbai 400 001                              | ] |                               |
| 6. | M/s. Metropolitan Builders                  | ] |                               |
|    | a sole proprietary firm of Mr.Pramod        | ] |                               |
|    | Dhabaira, having office at Nanabhai         | ] |                               |
|    | Mansion, Sir P.M. Road, Fort,               | ] |                               |
|    | Mumbai 400 001                              | ] |                               |
| 7. | Municipal Corporation of Greater Mumbai     | ] |                               |
|    | a body incorporated under the provisions of | ] |                               |
|    | Mumbai Municipal Corporation Act, 1888,     | ] |                               |
|    | having its office at Mahapalika Bhavan,     | ] |                               |
|    | Mahapalika Marg,                            | ] |                               |
|    | Mumbai 400 001                              | ] | <b><u>... Respondents</u></b> |

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Mr. Aseem Naphade a/w Deepak Singh and Darshil Shah i/b Solicis Lex for the Petitioners.

Ms. Geeta Sonawane, AGP for State/Respondent Nos.1 and 2.

Mr. S.R. Tejpal a/w Dushyant Tejpal i/b M/s Tejpal & Co for Respondent No.3.

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**CORAM : A.S.GADKARI, J.**

**DATE : 6<sup>th</sup> September 2019**

**P.C.:**

1] By the present petition under Article 227 of the Constitution of India, the petitioners have taken exception to the Order dated 9<sup>th</sup> December 2015 passed in Application No.51 of 2015 passed by the respondent No.2 under section

11(3) of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale and Transfer) Act, 1963 (for short “the said Act), allowing the Application filed by the respondent No.3 for Deemed Conveyance of the immovable property mentioned therein and directing the Sub-Registrar to register the Deemed Conveyance.

2] Heard Mr. Naphade, learned counsel for the Petitioners, Mr.Tejpgal, learned counsel for the respondent No.3 and Ms.Sonawane, learned AGP for respondent Nos.1 and 2. Perused record annexed to the petition.

3] The record indicates that, the buildings of the petitioner No.1 and respondent No.3 were constructed by respondent No.4. The respondent No.5 constructed the building of petitioner No.2. The respondent No.6 constructed the building of petitioner No.3. The buildings of the petitioners and respondent No.3 are situated on a piece or parcel of land bearing CTS No.55/1 to 55/11 admeasuring about 30,513 sq.meters. The respondent No.3 is federation of five societies having seven buildings constructed on CTS No.55/5A. The buildings of respondent No.3-Society were constructed somewhere in the year 1999/2000 on the basis of plan sanctioned in the year 1999. It further appears from the record that, the petitioner’s Society was subsequently developed by the respondent Nos.4, 5 and 6 in due course of time in pursuance of plan sanctioned by the respondent No.7.

4] As the respondent No.4 did not perform its part of legal obligation i.e. to form a Society and to convey the necessary land beneath its buildings in favour of the respondent No.3, the respondent No.3 filed an Application No.51 of 2015 before the respondent No.2 as contemplated under section 11(3) of the said Act. A notice of the said proceedings was issued to the petitioners. The respondent No.2 after perusing the material available before it and after hearing the parties to the said Application, has allowed the Application by its impugned Judgment and Order dated 9<sup>th</sup> December 2015.

5] Mr.Naphade, the learned counsel for the petitioners submitted that, in pursuance of plans sanctioned by the Corporation, certain deductions ought to have been taken into consideration by the respondent No.2 before arriving at the conclusion that, the respondent No.3 is entitled for Deemed Conveyance for the area of 13019.93 sq.mtrs. He submitted that, while conducting the proceedings under section 11(3) of the said Act, the respondent No.2 was required to conduct a detailed enquiry into the rival contentions of the parties before arriving at a conclusion. He submitted that, if the Deemed Conveyance for the area of 13019.93 sq.mtrs is granted in favour of the respondent No.3, it will cause prejudice to the petitioners, as the area of the petitioners will get affected by the same. That the respondent No.2 by simply relying on a certificate issued by the Architect of the respondent No.3, proceeded to reach to its conclusion, thereby allowing the Application filed by the

respondent No.3. He therefore prayed that the impugned Order may be quashed and set aside by allowing the present petition.

6] Learned counsel for the respondent No.3 and the learned AGP opposed the present petition and supported the impugned Order dated 9<sup>th</sup> December 2015 passed in Application No.51 of 2015 filed by the respondent No.3.

7] Perusal of the record would indicate that, the petitioners have annexed a chart to the petition at page No.63 elaborating relevant area consumed by the petitioners and the respondent No.3. The chart also discloses the deductions which were taken into consideration by the respondent No.7 Corporation while sanctioning their respective plans.

It is to be noted here that, the total area of plot was 30,513 sq.meters on which the petitioners and respondent No.3 Societies have been constructed. The respondent No.2 has granted Deemed Conveyance in favour of the respondent No.3 Society for an area of 13019.93 sq.mtrs. The petitioners claimed total area of plot beneath its buildings to be 14019.93 sq.meters. It further appears that, the actual area of land beneath the buildings of petitioner's society is 13878.69 sq. meters. That, total area consumed by the petitioners and the respondent No.2 is about 26828.62 sq.meters. The rest of the area from 30,513 sq.meters is consumed towards necessary deductions and common amenities, recreation ground and other requirements as per law.

In view thereof, I do not find substance in the contentions raised by the learned counsel for the petitioners that, if the Deemed Conveyance for the area of 13019.93 sq.mtrs is granted in favour of the respondent No.3, it will cause prejudice to the petitioners Society.

**8]** As far as the contention of the petitioners that, the respondent No.2 did not conduct enquiry in the matter is concerned, it is to be noted here that, in pursuance of notice issued by the respondent No.2, the petitioner's participated in the said proceedings and have produced necessary and relevant documents in support of its contentions. According to this Court, reasonable and fair opportunity of being heard was granted by the respondent No.2 to the petitioner's in that behalf. It is not the case of the petitioners that, they were not at all heard in the matter or they were prevented from bringing on record necessary and relevant documents on which they intended to place reliance. The record reveals that, the respondent No.2 has properly evaluated material placed before it by the respective parties while arriving at the conclusion that the respondent No.3 is entitled for Deemed Conveyance for the area of 13019.93 sq. meters. That the respondent No.2 after scrutinizing the material made available before it and after hearing the parties to the said Application No.51 of 2015 has passed the impugned Order dated 9<sup>th</sup> December 2015.

**9]** In view of the above and after perusing the entire material available on record, this Court is of the considered view that the respondent No.2 has not

committed any error either in law or on facts while passing the impugned Order dated 9<sup>th</sup> December 2015.

Writ Petition being de hors of merits, is accordingly dismissed.

**(A.S.GADKARI, J.)**