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

WRIT PETITION NO. 9061 OF 2011

Mrs. Tara Paresh Jain and anotherPetitioners

V/s.

Vimal Apartments Co-Operative HousingRespondents
Society Ltd.

**WITH
CIVIL APPLICATION NO. 1233 OF 2013**

Vimal Apartments Co-Operative HousingApplicant
Society Ltd.

IN THE MATTER BETWEEN

Mrs. Tara Paresh Jain and anotherPetitioners

V/s.

Vimal Apartments Co-Operative HousingRespondents
Society Ltd.

Mr. M. S. Bhandari i/b Pranjali Bhandari for petitioner in Writ
Petition and respondent in Civil Application

Mr. Raj Patel a/w Nupur Awasthi i/b M/s. Consulta Juris for the
Respondent in Writ Petition and applicant in Civil Application

CORAM : NITIN W. SAMBRE, J.

DATE : AUGUST 1, 2019.

P.C.

Heard respective counsel.

2 The respondent-society came to be registered on 30/08/1985, consisting of its members who applied for grant of Deemed Conveyance pursuant to provisions of 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).

3 The said application came to be allowed by the order impugned passed on 25/05/2011. As such, this petition.

4 The claim of the petitioners is, New India Builders was a proprietary concern of one Mr. Paresh Jain who expired sometime in 2000 and thereafter, petitioners being legal heirs are looking after the estate of said deceased. According to the petitioner, in the proceedings which are taken out for grant of Deemed Conveyance, the very requirement before the Authority as contemplated under

Sub-Sections (1) (2) & (3) of Section 11 of the Act was not satisfied. The learned counsel for the petitioner would urge that respondent-society, while making prayer for grant of Deemed Conveyance has not enclosed copy of Agreement between original land owner/developer and its members. The learned counsel would urge that such document is also not available with the petitioner and in fact, it was the duty of the members of the respondent-society to produce the alleged agreement between developer who was also a land owner and the prospective purchasers who were/are members of the society. The learned counsel would invite attention of this Court to the reply filed by the petitioner before the Registrar who has ordered Deemed Conveyance so as to demonstrate that requirement in prescribed form under Section 11 of the Act was never complied with. According to him, as the respondents have failed to produce relevant documents, it is difficult for the petitioner to come out with a specific case as to whether members of the respondent-society are its owners or allottees and whether the structure in which they are residing was legally sanctioned.

5 As such, in the aforesaid background, the submission is, the order impugned is not in tune with the requirement under Section 11 of the Act and is liable to be quashed and set aside.

6 The learned counsel for respondent while inviting attention of this Court to observations made in the order impugned, would urge that, the fact that the society which is categorised as Co-operative Housing Society was registered way back on 30/08/1985 is not an issue under challenge. According to him, the documents which were produced by the respondent-society in support of plea for grant of Deemed Conveyance were duly looked into in the aforesaid background and having satisfied itself, has granted Deemed Conveyance. He would then urge that the order passed by the Authority is well reasoned and that being so, Writ Petition is liable to be dismissed.

7 Considered rival submissions.

8 The contention of the petitioner in the backdrop of requirement

as contemplated under Section 11 of the Act if appreciated, the petitioner is resting its case in the capacity of legal heir or original developer/landlord based on a issue of discharge of burden by the respondent-society or its members of establishing that they are lawfully occupants of the tenement/flats in question.

9 As far as pleadings of the petitioner in the petition is concerned, the petitioner has not come out with a specific case that members of the society were never lawfully granted possession of the property in question of which the Deemed Conveyance is ordered or such members are illegally granted membership of the Co-operative Housing Society.

10 The contention of the petitioner *qua* the status of the members of the respondent-society, particularly as regards lawful agreement entered into between developer and such members if looked into, all that the petitioner wants in this petition is, directions to member of the respondent-society to produce all their title documents for the satisfaction of the petitioner. This Court cannot be oblivious to the

fact that society was registered on 30/08/1985 in the category of Housing Society and the occupants are enjoying membership since then uninterruptedly.

11 Hence, contention of the petition for direction to society members of production of documents cannot be appreciated in a writ jurisdiction under Article 227 of the Constitution of India, having regard to scope of appreciation. The petitioner is duty bound in law to establish his locus and then to question the proceedings for grant of Deemed Conveyance.

12 If it is claim of the petitioner that respondents were not lawfully entitled to enter into premises, and as such were not entitled to claim benefit under Section 11 of the Act, the least that was expected of the petitioner is; (a) to question the very registration of the society over the property in question of which they are claiming ownership; (b) that they also owe an explanation as to how the members of the respondent-society are permitted to develop and occupy the property for more than 30 years. This Court cannot be

oblivious to the fact that members of respondent Co-operative Housing Society are occupying the premises in question for last more than 30 years.

13 In the aforesaid background, what can be noticed is, writ petition involves disputed question of facts.

14 As disputed questions are involved, this Court, in the light of the Judgment in the matter of **Mazda Construction Company and Ors Vs. Sultanabad Darshan CHS Ltd. And others** passed in Writ Petition No. 3912 of 2012 decided on 31/08/2012, has given an option to the petitioner whether they intend to take out Civil Suit questioning the order of grant of Deemed Conveyance, which the learned counsel for the petitioner refused.

15 In the aforesaid background, no case for interference is made out. Petition fails, stands dismissed.

16 As a consequence of dismissal of the petition, Civil Application also stands disposed of.

17 At this stage, the learned counsel for the petitioner submits that the interim relief which is operating for quite a long time be continued for a period of 6 weeks which prayer is objected by the learned counsel for respondent-society as according to her, petitioner has no title in the property and the building which members of respondent-society are occupying is in bad shape.

18 Having regard to the fact that interim relief is in operation for quite a long time, I am inclined to continue the same. Interim relief shall continue for a period of 4 weeks from today.

[NITIN W. SAMBRE, J.]