

Mr. Sanjay Haritwal i/by Mr. Kenny Thakkar, for Petitioner.
Ms. Uma Palsule Desai, AGP, for Respondent No.1.
Mr. Bipin Joshi, for Respondent No.2.
Mr. Ajit Kengale, for Respondent Nos.3 to 5.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.
DATE: 30th SEPTEMBER, 2019**

P.C.:

1. Heard the learned Advocates for the parties for final disposal of the petition.
2. The petitioner has challenged the order dated ____/____/2017 passed by the District Deputy Registrar, Co-operative Societies (2), Eastern Suburbs, Mumbai and Competent Authority under Section 5A of the Maharashtra Ownership of Flats Act, 1963 ("the Act" for short). By such order, the authority directed the deemed conveyance of a plot of land No.128/1J, City Survey No.857A/1/2 of Mulund (E), Mumbai – 400 081.
3. The land in question belonged to the father of the petitioner as well as respondent Nos.3 to 5. The plot of land was subjected to construction of the housing scheme on which the respondent No.2 housing society is situated. Since the conveyance deed was not executed, the proceedings under the said Act were

instituted. In the meantime, the original owner expired. The petitioner and the respondent Nos.3 to 5 are the successors in title of the deceased owner. In the present petition, the petitioner has confined his challenge only to the correct area of land to be conveyed under the said order. In other words, the petitioner has not raised any objection with respect to any other aspects of the impugned order. In that view of the matter, we have focused our attention only on the question of area of land that would be conveyed in favour of respondent No.2 society by virtue of the impugned order.

4. This controversy arises in following background. The impugned order records the request of the society for deemed conveyance of the land in question pursuant to an agreement dated 3rd June, 1977. Counsel for the petitioner would point out that this agreement itself referred to the area of land being 820 sq.yards. He further pointed out that the title clearance certificate dated 4th January, 1977 also referred to the area of the land in question as 820 sq. yards equivalent to 685.60 sq. meters. While these documents suggested different area of the land in question, the society had claimed conveyance of land admeasuring 877 sq. meters. This is clearly recorded in the impugned order. The impugned order also records the objection of the present petitioner that the area of the land is not 877 sq. meters but 820 sq. yards which is equivalent to 685.60 sq. meters.

5. The competent authority in the impugned order refers to this controversy at

considerable length. He also referred to the rival stands on this aspect. However, in the reasoning portion of the order, he has not assigned any reasons why he accepts the stand of the society in this respect and rejects that of the petitioner. In fact, there is no conclusion of the rejection of the stand of the petitioner and acceptance of that of the society. To demonstrate this, we may reproduce the relevant portion of this order :

“23. I proceed to pass the order taking into consideration the prayers and the application made by the applicant society on the basis of observations as above and the documents submitted, written statements given, oral arguments made by the applicant and opponent.

24. The Applicant society is entitled to have a certificate issued by this Competent Authority that the Applicant society is entitled to have a unilateral deemed conveyance in respect of the said suit premises under Section 11 of the Act. Hence, this Competent Authority is pleased to issue a certificate of entitlement of unilateral conveyance of Plot of land bearing Plot No.128/1J, City Survey No.857/A/1/2 admeasuring 877 sq. meters along with the buildings standing thereon known as “Moti Sagar CHS Ltd.” along with right of way and access to the adjacent land bearing Survey no.128/5 remaining with its owner, in favour of the Applicant and entitled to get the unilateral conveyance deed prepared and executed, as deemed conveyance and get it registered as provided under the Act.

25. This Competent Authority has made the enquiry as deemed necessary and has verified the authenticity of the documents submitted and has given the promoter reasonable opportunity of being heard.

26. Hence, I pass the following order as per Rule 13(5) (c) and grant

the certificate as provided under Section 11(4) of the Act.

Order and Certificate

In exercise of powers conferred on me under section 5A of Maharashtra Ownership of Flats Act, 1963, I Dr. P.S.Sonawane, District Deputy Registrar, Co-operative Societies (2), Eastern Suburbs, Mumbai and Competent Authority under Section 5A of Maharashtra Ownership of Flats Act, 1963.

Certify U/s. 11(3) of Maharashtra Ownership of Flats Act, 1963 (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 that the Applicant "Moti Sagar Co-operative Housing Society Ltd." housing Society registered under the Maharashtra Co-op. Societies Act, 1960, bearing Registration No.BOM/W-T/HSG/(TC)/1262 of 1985 dated 23rd April, 1985 having their registered address at C.T.S.No.857A ½, Sane Guruji Nagar, Mulund (East), Mumbai – 400 081, it is entitled to have a unilateral conveyance of plot of land bearing Plot No.128/1J, City Survey No.857/A/1/2 admeasuring 877 sq. meters along with the buildings standing thereon situated at Mulund (E), Mumbai – 400 081 along with right of way and access to the adjacent land bearing Survey No.128/5 remaining with its owner, is a fit case to get a Unilateral Conveyance Deed prepared and executed as Deemed Conveyance and get it registered as provided under the Act subject to compliance of the Bombay Stamp Act, 1958 and the Registration Act, 1908 and other applicable laws. Accordingly, I hereby instruct the Applicant society to prepare a Conveyance Deed including plan copy showing right to access as above to be executed as Unilateral Deemed Conveyance of land bearing Plot No.128/1J, City Survey No.857A/1/2 admeasuring 877 sq. meters along with the buildings

standing thereon situated at Mulund (E), Mumbai – 400 081 i.e. the said property in favour of the Applicant Society.

2. I hereby direct the Sub Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908 to register this Certificate issued by me along with the Instrument of Conveyance as Unilateral Conveyance executed by me on behalf of owners/Promoters as per the powers conferred upon me as I have been exempted under the Act to appear before the registration authority and after complying with the provisions of the law register such conveyance as Deemed Conveyance.

3. The Applicant is directed to submit the Certified Copy of Conveyance Deed , an unilateral instrument of conveyance as Deemed Conveyance registered by the sub-registrar or the Registration officer appointed under the Registration Act, 1908 along with the certified copy of Index II within two months of such registration as required under Rule 9(2).

4. The Sub-Registrar shall take further steps/action under the Bombay Stamp Act, 1958, The Registration Act, 1907 and the Transfer of Property Act, 1882.

5. However, this order is issued on the basis of documents and information submitted by the Applicant Society and in the belief that there are no disputes regarding the title of the said land and subject to the following conditions :

(i) The information / documents furnished by the Applicant are correct and genuine.

(ii) That if the above documents produced by the Applicant are found hereinafter to be incorrect and not genuine, the Applicant will be liable to

face the consequences in accordance with law.

(iii) No order as to cost.”

6. Thus, without assigning any reasons, infact without coming to specific conclusion in this respect, the said authority has passed the impugned order directing conveyance of the titles of the land in question and also referred to its measurement of 877 sq. meters. This effectively rejects the objection of the petitioner to the correct area of the land being not 877 sq.meters but 685.60 sq. meters.

7. The learned counsel for the society vehemently contended that the disputes as regards the correct measurement of the land in question was not the subject matter which the competent authority could have dealt with. Such issue can be dealt with only by the competent civil court. If the petitioner has any grievance about the correct area, he must approach the civil court. In this context, he relied on a decision of the Single Judge of this Court in the case of Angeline Randolph Pereira and Ors. V/s. Suyog Industrial Estate Premises Co-operative Society Limited and Ors., dated 11th April, 2018, in which the learned Judge had made the following observations :

“17.Admittedly, in this case, the petitioners have not filed any suit inter alia praying for adjudication of their title in respect of any part of the property. The petitioners have also not challenged the entitlement of the developers to execute a deed of conveyance in respect of the entire property on the ground that the developers could not have even otherwise executed deed of conveyance in respect of the entire area of plot. The respondent no.1, on the

other hand, has disputed the validity of the agreements entered into between the petitioners and the developers on various grounds. In my view, the contentions issues regarding title in respect of the property in question or adjudication in respect of entitlement of the exact quantification of FSI on the plots in question even otherwise cannot be gone into in the proceedings under Section 11 of the MOFA by the competent authority. The competent authority could not have decided the validity of the agreements entered into between the petitioners and the developers and at the same time could not have also gone into the issue as to whether the promoters had committed any breach of not executing a deed of conveyance in respect of the entire property or not.

18. Division bench of this Court in the case of M/s.Shree Chintamani Builders Vs.State of Maharashtra & Ors. (supra) to which the Hon'ble Judge of this Court who was party to the case of Mazda Construction Company & Ors. (supra) was a party clarified the judgment delivered by the learned Single Judge in the case of Mazda Construction Company & Ors. (supra) that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property and to such an extent as is apprehended by the petitioner. In that matter, it is also clarified that it was not as if such an order is passed that the petitioners have no remedy to question the act of the society on the strength of such deemed conveyance. The petitioner can still bring a substantive suit on title and point out therein that as far as the dispute plot is concerned, the reservation was shifted. It is held that all such assertions and by pointing out the relevant documents and records so also by leading oral evidence can be substantiated by the petitioner in the substantive suit.

19. It is held that in the writ jurisdiction and in the garb of examining the legality and correctness so also validity of deemed conveyance, Court cannot examine these issues. Division Bench of this Court clarified in the said judgment that the order of deemed conveyance shall not preclude or prevent the petitioner from filing a suit and claiming therein appropriate reliefs. In my view, the judgment delivered by the learned Single Judge of this Court in the case of Mazda Construction Company & Ors.(supra) and the judgment of this Court in the case of M/s.Shree Chintamani Builders Vs.State of Maharashtra & Ors. (supra) would squarely apply to the facts of this case. I am respectfully bound by the said judgment.

20. In this case also various contentions issues as referred to aforesaid could not have been gone into in the proceedings under Section 11 of the MOFA by the competent authority. Merely because an order of deemed conveyance is passed in favour of the respondent no.1 and the certificate of title is issued by the competent authority under Section 11 of the MOFA in favour of the respondent no.1, the petitioners are not precluded from seeking adjudication of their alleged title in respect of the suit property by filing of an appropriate civil suit. All such contentions raised by the petitioners regarding adjudication of title in the property in question can be adjudicated upon in a substantive suit.”

8. With respect to the observations of the learned Single Judge in the said judgment, we have no quarrel. However, the facts of the present case are vastly different. Both sides had raised the dispute about the correct measurement of the land in question before the authority. If the competent authority, as contended by the

counsel for the society, was of the opinion that this dispute was outside of his purview, he ought to have so stated. He instead accepted the stand of the society and directed conveyance of the plot in question by specifying the area of the land and that is where the petitioner correctly feels aggrieved. Had the authority merely ordered conveyance of the land in question, leaving the issue of its correct measurement open to the parties to sort out before the civil court, we would perhaps have not interfered. The said authority however, entertained the dispute, recorded the rival stands and accepted one over the other without any reasoning or arriving at any conclusions. This was clearly impermissible in law.

9. Under the circumstances to the limited extent where the competent authority has mentioned the area of the plot under deemed conveyance, the same is set aside. The rest of the order on merits is preserved. We leave it open to the petitioner to file a civil suit for determination of correct area of the land in question. We are informed that in the meantime, the registered document has already been brought into existence, which also indicates the area of the land under conveyance as 877 sq. meters. For the present, we do not disturb the registered document in favour of Respondent No.2, however, making it clear that the same would be subject to the outcome of the civil suit which the petitioner may institute.

10. The Writ Petition is accordingly disposed of.

(S.J.KATHAWALLA,J.)

(AKIL KURESHI,J.)