

Tandon Co-op. Hsg. Soc. Ltd. ... Petitioner
 versus
 Parvati Tandon CHS Ltd. & Ors. ... Respondents

Ms. Uma Palsule Desai, AGP, for Respondent No.3.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 15th OCTOBER, 2019

The petitioner – a co-operative housing society, is aggrieved by an order dated 16th October, 2017 passed by the competent authority and District Deputy Registrar, Co-operative Societies under Section 5A of Maharashtra Ownership of Flats (Regulation and Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as the “said Act”)

2. The respondent No.1 herein is also a co-operative housing society and had moved the said competent authority for deemed conveyance of lease hold right on land admeasuring 650 sq. meters, which formed part of the larger area of 3016.7 sq.

meters owned by the petitioner society under an application dated 23rd May, 2017.

The relevant portion of this application reads as under :

“ 2. The said society is in possession of a plot of land bearing :

<i>Survey No.</i>	<i>Hissa No.</i>	<i>CTS No.</i>	<i>Area (sq.mtrs)</i>
<i>78-A</i>	<i>2 (p)</i>	<i>112-B</i>	<i>2970.8</i>
<i>Out of above undivided portion area of 650 sq. mtrs. in CTS no. 112-B with a right on the balance land proportionate to FSI utilised on the suit land.</i>			
<i>79</i>		<i>112-B/9</i>	<i>45.00</i>
<i>79-A</i>	<i>3 (p)</i>	<i>112-B/17</i>	<i>45.9</i>
<i>Total</i>			<i>3061.7</i>
<i>Note : the Society is in possession of 650 sq.mtrs. on which the builder constructed 1969.35 sq. mtrs. as against 650 sq. mtrs. The builder utilised TDR of 650 sq.mtrs. Thus FSI for the balance plot has been utilised to construct society building but proportionate area of land is not allotted/apportioned.</i>			
<i>1) Hence claim of the society on balance land.</i>			
<i>2) 6 parking slots nos. 11, 12, 13, 14, 15 & 16 as per plan on balance land.</i>			

lying being and situate at Village Chakala, Taluka Andheri of Mumbai Suburban District

hereinafter referred to as “the Suit Premises”. Hereto annexed and marked as Exhibit No.

“B” is the copy of Property Card.

7. Accordingly, this Competent Authority be pleased to issue a certificate of entitlement of unilateral conveyance of land bearing :

<i>Survey No.</i>	<i>Hissa No.</i>	<i>CTS No.</i>	<i>Area (sq.mtrs)</i>
<i>78-A</i>	<i>2 (p)</i>	<i>112-B</i>	<i>2970.8</i>
<i>Out of above undivided portion area of 650 sq. mtrs. in CTS no. 112-B with a right on the balance land proportionate to FSI utilised on the suit land.</i>			
<i>79</i>		<i>112-B/9</i>	<i>45.00</i>

79-A	3 (p)	112-B/17	45.9
Total			3061.7
<i>Note : the Society is in possession of 650 sq.mtrs. on which the builder constructed 1969.35 sq. mtrs. as against 650 sq. mtrs. The builder utilised TDR of 650 sq.mtrs. Thus FSI for the balance plot has been utilised to construct society building but proportionate area of land is not allotted/apportioned.</i> <i>Hence claim of the society on balance land.</i> <i>2) 6 parking slots nos. 11, 12, 13, 14, 15 & 16 as per plan situated in balance land.</i>			

9. *The Applicant therefore, prays that :*

a. *This Hon'ble Competent Authority be pleased to grant a Certificate that the Applicant is entitled to have an unilateral deemed conveyance of Suit Premises under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of construction, sale, management and transfer) Act, 1963 and to have it registered.*

b. *For costs of the application to be provided.*

c. *For such other reliefs as this Hon'ble competent authority may deem fit."*

3. Before the competent authority, the present petitioner raised no objection with respect to the entitlement of the respondent No.1 herein to have a conveyance of lease hold rights executed in its favour in relation to the said parcel of land admeasuring 650 sq.meters. However, the Petitioner raised a strong opposition to the enlarged prayers of the applicant i.e. respondent No.1 herein which were put up through the note, which for ready reference is reproduced hereunder :

Note : the Society is in possession of 650 sq.mtrs. on which the builder constructed 1969.35 sq. mtrs. as against 650 sq. mtrs. The builder utilised TDR of 650 sq.mtrs. Thus FSI for the balance plot has been utilised to

construct society building but proportionate area of land is not allotted/apportioned.

Hence claim of the society on balance land.

2) 6 parking slots nos. 11, 12, 13, 14, 15 & 16 as per plan situated in balance land.”

4. The competent authority passed the impugned order in which in relation to the objections of the petitioner to the above additional prayers of the respondent No.1, came to the following conclusions :

“9) As regards the objection raised by the Respondent No.2 in the matter of the present application, it is noticed that the Respondent has raised objection that the applicant is entitled to claim lease only in respect of the area adm. 600 sq.ft. Upon perusing the provision of the said flats agreements, objection of the Respondent No.2 is appropriate. The Respondents have also raised objection that the applicant’s claim is wrong (incorrect) in connection the F S I and T D R of the said property. Accordingly, applicant’s claim even in respect of 6 parking slot is also incorrect. Objection raised by the Respondent No.2 in respect of the applicant society’s claim for the land in the proportion of F S I and T D R is also proper. Because, Respondent No.1 has a right to use the F S I and T D R for construction of the said building. However, the Respondent No.1 had lease rights only in respect of the area adm 650 sq. meters. Applicant has made a claim in respect of the parking on the said plot. Competent Authority may take a decision about the land and the building under MOFA. However, the Competent Authority does not have powers

to take a decision about the parking, parking allotment or parking right. Therefore, it is necessary for the applicant to seek a relief about the parking before appropriate authority. However, the municipal corporation has sanctioned the consolidated building plan for the said entire property. Hence, the applicant society shall have undivided rights of use including the Respondent No.2 building in the common use land on the said consolidated property.”

5. We may record that the reference to the respondent No.2 in the above quoted portion of the order is to the present petitioner. Thus, the objection of the petitioner with respect to the additional prayers of the respondent No.1, the competent authority was fully convinced that such objection was valid and that the additional prayers of the respondent No.1 could not have been granted.

6. Despite this, strangely when the competent authority passed his final orders, this is what he provided :

“ ORDER

I, Mahendra Mhaske, Competent Authority and District Deputy Registrar, Co-operative Societies (3), Mumbai in exercise of the powers conferred on me under Section 11 (3) of Maharashtra Ownership Flats (Promotion of construction and regulation of their sale, management and transfer) Act, 1963, hereby admit that the Deemed Application No.34 of 2017 filed by the applicant Parvati Tandon Co-op. Housing Society Ltd., plot No.112-B, Charatsingh Colony, Chakala, Andheri (E), Mumbai – 400 093, having registration number Mum/WKE/HSG/TC/13274/year

2006 registered on the date 28/04/2006, is fit for exparte deemed conveyance and to issue certificate to the effect that it has a right to have the said certificate registered. Accordingly, exparte deemed conveyance certificate is issued herewith.

Moreover, I further order that in pursuance of the exparte deemed conveyance certificate of the applicant society enclosed herewith, a draft of exparte deemed deed of conveyance for the assignment of the property described therein (in the certificate) should be prepared and submitted to this authority.

Moreover, I order the concerned Sub-Registrar or any other appropriate Registration Officer under Registration Act, 1908 (16 of 1908) to make registration of exparte deemed deed of conveyance making assignment, as a deemed conveyance in the name of the applicant, of right, title and interest of the promoters in the property described in the deemed conveyance certificate, after having made the adjudication by the Collector of Stamps in the present matter.

This order is given on this day the date 16/10/2017 under my signature and seal of the office.”

7. Thus, in the final order, the competent authority granted application of the respondent No.1 herein and thereby did not limit the direction for conveyance of the lease hold rights over the land admeasuring 650 sq. meters, but also granted the prayers for additional proportionate FSI and parking area. These directions were clearly in conflict with the competent authority's own observations and conclusions in the order, relevant portion of which is reproduced above. In plain terms, the

competent authority lost sight of the larger prayers made by the respondent No.1 in the application and thereby ended up giving directions for allowing the application in terms of prayer clause which clearly included prayers which he himself was convinced, cannot be granted.

8. In the order, the said authority had also come to the conclusion that the he has no authority to resolve such dispute with respect to which we are fully in agreement. In any case, therefore, the competent authority could not have given further directions as prayed by the respondent No.1 herein.

9. For all such reasons, the impugned order dated 16th October, 2017 passed by the competent authority under the said Act, is set aside to the extent it grants additional benefits of conveyance to the respondent No.1, over and above conveying the lease hold rights as per the agreement the land admeasuring 650 sq.meters. In other words, the order is restricted to convey lease hold rights over land admeasuring 650 sq. meters. Remaining directions stand deleted. The writ petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)