

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

WRIT PETITION NO. 4683 OF 2014

Mr.Subhash Ramchandra Navare & Anr.	..Petitioners
V/s.	
Mr.Premji Meghji Rambia & Ors.	..Respondents

Mr.K.K. Malpathak for the Petitioners.

Mr.Ajay Panicker a/w Mr.Amit Kakri i/b Ajay Law Associate for
Respondent Nos.1 to 3.

Mr.Drupad S. Patil for Respondent No.5.

Mr.S.D. Rayrikar, AGP for Respondent No.6-State.

CORAM : C.V. BHADANG, J.

DATE : 06th FEBRUARY 2020

PC.

1. The challenge in this petition is to the order dated 04th March 2014, passed by the respondent No.6 Competent Authority in Application No.217 of 2013, granting a unilateral deemed conveyance in favour of the respondent No.5. That order is passed under Section 11(3) of the The Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 (“**MOFA**” for short).

2. I have heard the learned counsel for the parties and perused record.

3. It is submitted by the learned counsel for the petitioners that the petitioners had entered into an agreement in the year 1979 with the developer i.e. respondent Nos.1 to 3. One of the conditions of the said agreement with the developer, was that the developer shall transfer 7 flats in respect of the specified area in favour of the petitioners/owners. It is contended that the developers had failed to honour the said covenant. Secondly, it is submitted that the Competent Authority ought not to have directed the execution of the deemed conveyance as there is a genuine dispute between the petitioners/owners with the developers about transfer of the 7 flats. It is submitted that such a dispute cannot be gone into in a summary enquiry under Section 11(3) read with the Rules framed under the said Act. In the submission of the learned counsel for the petitioners this is a fit case, where the matter should be remitted back to the Competent Authority, for deciding the application afresh in accordance with law. The learned counsel for the petitioner pointed out that the developer did not file any reply and did not take any stand before the Competent Authority. However, in the present petition they are supporting the society.

4. The learned counsel for respondent No.5 states that the society is registered in the year 1993 and the final occupation certificate is granted in the year 1998. It is submitted that it is only after the society applied for obtaining a deemed conveyance on 23rd May 2013 that the petitioners filed a suit against the developers as well as the society on 20th September 2013, seeking specific performance of the agreement of the year 1979.

5. On behalf of the petitioner reliance is placed on the decision of this Court in the case of ***Mazda Construction Company V/s. Sultanbad Darshan CHS Ltd¹, M/s. Angelina Randolph Pareria V/s. Suyog Estate Premises Co-operative Society Ltd.² and decision in the case of M/s. Shree Chintamani Builders V/s. State of Maharashtra & Ors³*** and several others in order to submit that the consistently, this Court has held that order granting deemed conveyance under Section 11(3) of the Act does not conclude any right, title and interest of the parties and a parties aggrieved can always resort to appropriate remedy before the Competent Court which in fact the petitioners have taken recourse to.

1 Writ Petition No.3912 of 2012 decided on 31.08.2012

2 Writ Petition No.4373 of 2017 decided on 11.04.2018

3 2016 SCC Online Bom 9343

6. The learned counsel for the respondent Nos.1 to 3 who are the developers also supported the impugned order on similar ground. It is submitted that the petitioner did not take any steps for specific performance of the agreement of the year 1979 till the year 2013 when the suit is filed.

7. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. The relevant dates are not in dispute. The claim of the petitioner is based on an agreement with the developers which agreement is dated 10th December 1979. According to the petitioner under the said agreement the developers were an obliged to give 7 flats of the specified area to the petitioners. On the contrary it is contended on behalf of the developers, that there was another agreement executed on the same date, where under, the developer had agreed to give two flats to the owners which flats have already been delivered to the petitioners. I find that it is neither necessary nor appropriate to go into the said dispute, inasmuch as a substantive suit filed by the petitioners being suit No.841 of 2013 against the developers in which the society is defendant No.11 to the proceeding. That is a suit claiming specific performance of the agreement dated 10th December 1979 and

therefore all such issues being *sub judice* before the competent Court cannot be examined in the present petition. It is now well settled, as has been held by this Court, in a long line of the decision including case of the ***Mazda Construction Company & Ors (Supra)*** and ***M/s. Shree Chintamni Builders V/s. State of Maharashtra & Ors. (Supra)*** that the order directing execution of deemed conveyance does not conclude the right, title and interest of the parties and a party aggrieved can always take recourse to the remedy before Civil Court. As has been rightly submitted by the learned counsel for respondent No.5 the petitioners have already availed of the said remedy, which is pending before the Competent Court. In my considered view looking to the scope of the enquiry under Section 11(3) of the said Act, issues as to the specific performance of the agreement of the year 1979 cannot be gone into by the Competent Authority. Needless to mention that the execution of the deemed conveyance on the basis of the certificate granted by the competent authority will be subject to the outcome of the civil suit. With this the petition is dismissed, with no order as to costs.

8. At this stage the learned counsel for the petitioner states that the Competent Authority may be directed not to execute and register the conveyance for a period of six weeks which prayer is

opposed on behalf of the respondents. Considering the overall circumstances and the fact that the present petition was pending from 2014 and in order to give a fair opportunity to the petitioner, it is directed that the Competent Authority shall not execute and register the deemed conveyance for a period of six weeks from today.

C.V. BHADANG, J.

**Nilam
Kamble** Digitally signed
by Nilam Kamble
Date: 2020.02.07
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