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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 435 OF 2020

Jacob Eapen Varghese & Anr. ... Petitioners
Vs.
Karishma Apartment Co-op. Housing
Society Ltd. & Ors. ... Respondents

Mr. Pradeep J. Thorat a/w K. G. Mhatre, Neha R Dave i/b Mhatre & Associates, for the Petitioners.

Mr. Vishal Kanade with Vivek Patil, Nilesh Parmar i/b Vivek Patil & Associates, for Respondent No. 1.

Mr. Bharat R. Zaveri, for Respondent No. 2.

Mr. Dipen Furia i/b M/s. Shah & Furia Associates, for Respondent No.3.

Mr. A. P. Vanarse, AGP for the Respondent-State.

CORAM : C. V. BHADANG, J.

DATE : JANUARY 20, 2020

PC :

1. Heard learned counsel appearing for the respective parties. The challenge in this petition is to the order dated 29th August, 2019 passed by the Competent Authority & District Deputy Registrar, Co-operative Societies, granting deemed conveyance in favour of the first Respondent.

2. It transpired during the course of the arguments that the Petitioners are only aggrieved by the grant of deemed conveyance, insofar as it purports to grant the said conveyance in respect of an undivided share to the extent of 924.73 sq. mtrs. It is a matter of record that owners as well as the builder / promoter as also in the Respondent

No. 3 Society have no objection for grant of the said deemed conveyance, as per the reply filed before the competent Court.

3. It is also a matter of record that the Petitioners are claiming tenancy rights over a part of the property, including the (Recreation Ground) RG. *Prima facie*, at this stage, there is no document produced to show existence of such tenancy rights as against the owner. That apart, Respondent No. 2 owner has filed a civil suit bearing Civil Suit No. 3059 of 2010 against the Petitioners, which is pending before the City Civil Court, *inter alia* for an order directing the Petitioners to hand over peaceful possession of the suit property, admeasuring 2360.90 sq. mtrs., as shown in the plan, annexed to the plaint. It is also a matter of record that the Petitioners have not approached the Civil Court for vindicating their alleged tenancy rights. Even after the grant of / execution of deemed conveyance, the first Respondent Society at the highest can enter into shoes of the owner and in that view of the matter, the impugned order allowing the application for deemed conveyance, filed by the first Respondent Society, cannot affect rights of the Petitioners, if there be any. In that view of the matter, I decline to entertain the petition, which is accordingly dismissed. In the circumstances, there shall be no order as to costs.

4. Needless to mention that the order of deemed conveyance shall be subject to the order of the competent civil court.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath

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P.
Halemath**

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Vinayak P.
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