

Bhogale

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

WRIT PETITION NO. 3656 OF 2020

Ramchandra Anantrao Satam & anr. .. Petitioners
vs.

State of Maharashtra & anr. .. Respondents

Mr. Omkar M. Kulkarni for the Petitioners.

Mr. Abhishek Bhat I/b. S.K. Legal Associates for Respondent No.2.

Mr. S.H. Kankal, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 9, 2021

P.C.:-

Heard learned counsel for the parties.

2. The order challenged in this Petition filed under Articles 226 and 227 of the Constitution of India is dated 06.01.2020 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Sindhudurg. The Petitioner is a Society. An application was made under Section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 ("the MOFA" for short) for deemed conveyance in respect of an area admeasuring 1605 sq.mtrs. The application is rejected by the Competent Authority

on the ground that an area of 340 sq.mtrs. was under acquisition for national highway and award to that effect has already been passed. In the opinion of the Competent Authority the Applicant thereby has to make a fresh application for deemed conveyance by excluding an area of 340 sq. mtrs.

3. Learned counsel for the Respondent No.2 says that the Respondent No.2 has no objection for conveying the land to the extent of 1265 sq. mtrs. in favour of the Petitioner-Society. He says that they are disputing the claim of the Petitioner in so far as an area of 340 sq.mtrs. is concerned. According to him land reference for compensation is already pending before the Court of Civil Judge Senior Division at Oras being proceedings number Land Reference No.53 of 2018.

4. Having gone through the impugned order and having heard learned counsel for the parties, in my opinion, the impugned order passed by the Competent Authority deserves to be set aside. On the basis of the agreement the Petitioner-Society is entitled to the conveyance of 1605 sq.mtrs. The Competent Authority was not justified in refusing to grant conveyance in respect of an area of 1605 sq.mtrs. which forms the basis of

agreement between the flat purchasers and the developer. Accordingly, the present Petition deserves to be allowed.

5. The Application made by the Petitioner-Society at page 21 is allowed in terms of prayer clause 9(क). The Competent Authority to effect necessary compliance.

6. This Court in the case of **M/s. Shree Chintamani Builders Vs. State of Maharashtra and Ors.**¹ relying upon the decision in the case of **Mazda Constitution Company vs. Sultanabad Darshan CHS. Ltd. and Ors.**² has clarified that order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property. It is not as if such an order is passed that the parties 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.

7. It is the case of the Petitioner-Society that they are in possession of the area of 340 sq. mtrs. which is the subject matter of acquisition over which the Respondent No.2 has some dispute. If that is so it is always open for the parties to resort to

1 Writ Petition No.2839 of 2013

2 2013(2) ALL M.R. 278

the appropriate proceedings including before the Reference Court seeking appropriate reliefs as is permissible in law. It is made clear that the deemed conveyance in favour of the Society will not confer the title on the Society in respect of the 340 sq. mtrs. which is disputed by the Respondent No.2. All questions in that regard are kept open. The entitlement of the parties to the compensation will be decided by the Land Reference Court if permissible or by other appropriate forum.

8. Writ Petition is disposed of.

(M.S.KARNIK, J.)

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