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

WRIT PETITION NO. 3309 OF 2018

Shri Popatlal Jyotiba Dangat and ors. Petitioners
Vs.
Shriniwas Greenland County Co.op. Housing
Society Limited and ors. Respondents

Mr.D.V. Sutar i/b Mr.Kaustub K. Kulkarni, for the Petitioners.
Mr.Venkatesh A. Shastry, for Respondent No.1.
Mr.A.P. Vanarase, AGP for the Respondent No.3 – State.

CORAM : M. S.KARNIK, J.

DATE : 11th AUGUST, 2021

P.C. :

. Heard learned Counsel for the Petitioners. By this
Petition filed under Article 227 of the Constitution of India, the
Petitioners- owners of the suit land in question challenged the
order passed by the Competent Authority under the Maharashtra
Ownership Flats (Regulation of the Promotion of Construction,
Sale, Management and Transfer) Act, 1963 (for short 'MOFA')
granting deemed conveyance in favour of Respondent No.1 –
Society. Briefly stated, it is the case of the Petitioners that they
are the owners of the suit property in question. By development
agreement dated 22/05/2008, development rights were granted
by the Petitioners in favour of the Petitioner No. 17 through

registered development agreement. The joint venture agreement dated 22/05/2008 was entered into between the Petitioner No. 17 & Respondent No.2. The lay out and building plan was sanctioned by the Collector of Pune on 16/03/2013. The total area of the plot admeasuring 46255 sq.meters and area under the road is 2520.31 sq.meters thereby net area for development is 43737.69 sq. meters. The commencement certificate in respect of the project was issued on 16/03/2013.

2. The Petitioners completed construction of buildings A to P i.e. total 16 buildings consisting of 4, 5 and 6 flats. The part completion certificate was granted by the Collector, Pune in respect of these buildings on 03/06/2014. Respondent No.1 – Co-operative Society came to be registered in respect of buildings A to P on 08/03/2013. Respondent No.1 filed an application for deemed conveyance under Section 11(3) of the MOFA to the Competent Authority and requested that deemed conveyance of the land to the extent of area admeasuring 27084.58 sq. meter should be granted in favour of the Society. The Competent Authority allowed the application. My attention is invited by learned Counsel for the Petitioners to the flat purchasers agreement dated 13/05/2015. Inviting my attention to the clause 11 of the said agreement, it is pointed out that it is only after the

full occupation certificate for the project is obtained that the title has to be transferred in favour of the Society. Learned Counsel referred to section 11 of the MOFA to contend that granting deemed conveyance even prior to the grant of full occupation certificate is contrary to the mandate of the said Act.

3. The next submission of learned Counsel for the Petitioners is that an area in excess of land to which the Society is entitled to claim has been granted in favour of the Respondent No.1 – Society by virtue of the impugned order. It is his submission that pursuant to the grant of deemed conveyance and the issuance of the certificate thereof, Respondent No. 1 – Society is obstructing the Petitioners from constructing the rest of the building in respect of the said project. He submits that on the basis of this deemed conveyance, Respondent No.1 claims right, title and interest over the said land.

4. I have gone through the impugned order. It is not in dispute that so far as buildings A to P are concerned, they are duly constructed and flat purchasers are put in possession. The Society has been formed. Even part completion certificate has been issued in respect of these buildings. It is not possible for

me to accept the contention that the deemed conveyance cannot be granted in favour of the Respondent No.1 as not only the buildings are completed but even the flat purchasers are put in possession. Even the Society has been formed.

5. I do not see any error in the view taken by the Competent Authority in granting deemed conveyance and which is granted on the basis of the certificate issued by an Architect. So far as the issue raised by the Petitioners that Petitioners are not being allowed to complete the project and the Respondent No.1 is restraining the Petitioners from constructing the buildings over which the Petitioners have title, it is made clear that on the basis of the deemed conveyance, Respondent No.1's claim for title is not conclusive. The Division Bench of this Court in the case of **Mazda Construction Company & Others Vs. Sultanabad Darshan CHS Ltd. & Others**¹ has clarified that order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property. Further in the case of **Angeline Randolph Pareira & Ors. Vs. Suyog Industrial Estate Premises Co-operative Society Ltd. & ors.**² this Court has held thus :-

“20. In this case also various contentions issues as referred to

1 2013 (2) ALL MR 278

2 2018 (6) ALL MR 729

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.”

6. Keeping liberty of the Petitioners open to file a Suit for redressing grievance regarding title and other reliefs, I find no reason to interfere with the impugned order. However, the claim that the Respondent No.1 is not entitled to the excess area granted in terms of the deemed conveyance can be agitated before the competent Civil Court. The order granting deemed conveyance shall not preclude or prevent the Petitioners from pursuing the remedy of Suit and the reliefs claimed therein. It is clarified that order of deemed conveyance will not preclude the Civil Courts from granting appropriate reliefs to which the Petitioners are entitled to in law. The Writ Petition is dismissed.

(M.S.KARNIK, J.)