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

**WRIT PETITION NO.14274 OF 2016
WITH
CIVIL APPLICATION NO. 1803 OF 2017
IN
WRIT PETITION NO.14274 OF 2016**

Mahatma Co. Operative Housing Society
Through Chairman & Secretary .. Petitioner
vs.

The District Deputy Registrar, Co.Operative
Soc., Pune & Competent Authority & ors. .. Respondents

Mr. S.C. Wakankar i/b. P.B.Gujar for petitioner.

Mr. S.L. Babar, AGP for State.

Mr. Gaurav Potnis i/b. Pallavi Potnis for respondent No.2.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 18, 2021

P.C.:-

Heard learned counsel for the petitioner.

2. The challenge in this Petition filed under Article 227 of the Constitution of India is to an order passed by the competent authority under the Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as 'the MOFA' for short).

3. It is the contention of learned counsel for the petitioner - society that the plot in question belongs to the society. The society entered into the development agreement with the respondent No.3 - Developer. Thereafter, there was supplementary development agreement executed in favour of the respondent No.3 - Developer on 27/4/1993. By a deed of assignment dated 24/1/1994 the respondent No.3 assigned the development rights in favour of the respondent No.4.

4. It is the contention of learned counsel for the petitioner that the respondent No.4 has unilaterally sold the flats in respect of Plot No. 519 despite the petitioner being promoters and the dispute is regarding the land admeasuring 866 sq.mts. comprising of Plot No.519. It is the contention of learned counsel for the petitioner that the developer i.e. respondent No.3 as well as the respondent No.4 have not complied with the terms and conditions of the development agreement.

5. It is further contended by learned counsel for the petitioner that the findings in the impugned order by the competent authority would show that what was to be granted to the respondent No.2 - society was only a lease deed but in the operative portion of the order what has been granted by the

competent authority is a deemed conveyance under Section 11 (3) of the MOFA.

6. Shri Potnis, learned counsel appearing on behalf of the respondent No.2 argued in support of the impugned order.

7. Having heard learned counsel for the petitioner, it is seen that the petitioner – society has some dispute regarding breach of the terms and conditions of the development agreement which the petitioner – society had entered into with the respondent No.3 and as regards assignment by respondent No.3 in favour of the respondent No.4. It is the respondent No.4 who has alleged to have sold the flats to the flat purchasers in respect of Plot No.519, admeasuring 866 sq.mts. in violation and without complying with the agreed terms and conditions.

8. 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. It is further clarified that the order of deemed conveyance shall not preclude or prevent the petitioner from

¹ 2013 (2) ALL MR 278

claiming appropriate reliefs. It is not possible for me in the exercise of writ jurisdiction and in the garb of examining the legality and correctness so also validity of the deemed conveyance to examine the issues which have been raised by the petitioner – society.

9. 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 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.”

10. In this view of the matter, the appropriate course for the petitioner- society is to file the suit or any other appropriate proceedings. It is clarified that the order granting deemed

² 2018 (6) ALL MR 729

conveyance shall not come in the way of the petitioner - society in claiming appropriate reliefs which shall obviously be dealt with on the basis of the pleadings and the evidence oral or documentary led by the parties.

11. The Writ Petition is dismissed and disposed of accordingly.

12. The parties to maintain status quo for a period of two weeks from today.

Diksha
Rane

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13. In view of the disposal of the Writ Petition, the Civil Application is disposed of.

(M.S.KARNIK, J.)