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

WRIT PETITION NO. 2257 OF 2021

DNYANOBA NIVRUTTI SHEVKAR & ANR. ..PETITIONERS

VS.

VAISHALI COMPLEX CO-OPERATIVE
HOUSING SOCIETY LTD. & ORS. ..RESPONDENTS

Mr. Sachin S. Punde for the petitioners.
Mr. Sumant Deshpande for respondent No.1.
Smt. V.s. Nimbalkar, AGP for respondent Nos. 4 and 5 – State.

CORAM : M.S.KARNIK, J.

**DATE : JULY 5, 2021
(VIA V.C.)**

P.C.:-

Heard learned counsel for the petitioners.

2. This Petition under Article 227 of the Constitution of India challenges an order passed by the competent authority under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 granting deemed conveyance in respect of the land area of 4168.84 square meters and in respect of the building to the extent of 4158.57 square meters.

3. It is the contention of learned counsel for the petitioners that the development of the project is yet to be completed. He

further submits that as many as 38 flats in the project are unsold. He invited my attention to page 33 of the paper-book to demonstrate that the building in question comprises of 93 flats. He further submits that he is entitled to utilise the balance FSI and even the competent authority has clearly observed that the owner of the land is entitled to utilise the balance FSI. It is Shri Punde's contention that as a result of grant of deemed conveyance, development permission is denied to him for developing the land on the balance FSI.

4. Learned counsel for the respondents supported the impugned order and submits that the society has some grievance over the manner in which the project proceeded. According to him, they have been misled and misinformed as to what is the correct FSI to be utilised for the society. The respondent raises a grievance regarding balance FSI.

5. I see no reason to interfere with the order passed by the competent authority granting deemed conveyance as the same is in terms with the flat purchasers agreement. The buildings are completed and merely because the petitioners are the owner-developer, there is no reason to interfere with the impugned order only on the count that 38 flats are unsold. It is always open

for the petitioner-owners to deal with / dispose of these 38 flats over which they have the necessary rights.

6. So far as the contention of the petitioners that the project is not yet completed and therefore the deemed conveyance ought not to have been granted, I see no justification to accept this contention, as in this case, not only the construction of the buildings is complete, but even the deemed conveyance is granted in terms of the flat purchasers agreement. The society has been formed by the unit holders in accordance with law.

7. The competent authority has in terms observed that apart from the area conveyed in favour of the society by virtue of the impugned order, it is open for the petitioners to utilise the balance FSI in accordance with law. This observation supports the Petitioners. The grievance that grant of deemed conveyance and the dispute regarding FSI is the basis for rejection of building permission, is an aspect which the petitioners have to agitate before the appropriate forum. The same cannot be a subject matter of challenge in this Petition which is essentially against an order granting deemed conveyance.

8. Learned counsel for the respondents has raised a dispute about the balance FSI claimed by the petitioners. Once the deemed conveyance is granted in terms of the flat purchasers agreement, any dispute regarding entitlement of FSI which the society claims, has to be agitated by way of a suit in view of the decision of the Division Bench of this Court in **Mazda Construction Company & Others Vs. Sultanabad Darshan CHS Ltd. & Others**¹.

9. Subject to what is observed herein before, the Petition being devoid of any merits, is accordingly dismissed.

10. Needless to mention that the challenge to the rejection of the building permission shall be considered on its own merits, if at all the petitioners approach the competent forum, in accordance with law without being influenced by any observations made in this order or order granting deemed conveyance. Even the contention that the grant of deemed conveyance in favour of the society could not have been the basis for rejection of the building permission is kept open.

11. The Writ Petition is disposed of accordingly.

(M.S. KARNIK, J.)

¹ 2013 (2) ALL MR 278