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

WRIT PETITION NO. 576 OF 2021

M/S. GIA CONSTRUCTION AND DEVELOPERS ..PETITIONER
vs.

MANGESH PARK CO-OP.HOU. SOC. THROUGH
SECRETARY & ORS. ..RESPONDENTS

Mr. Rajesh More for the petitioner.
Mr. Amey Deshpande for respondent No.1.
Mrs. V.S. Nimbalkar, AGP for respondent No.4.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 12, 2021

P.C.:-

Heard learned counsel for the petitioner.

2. The order under challenge is one of deemed conveyance granted by the competent authority under Section 11 (3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 ('the MOFA Act' for short).

3. The flat purchasers - society had made an application for deemed conveyance and the same was granted by the competent authority as per the agreement vide the impugned order. The learned counsel for the petitioner raises the dispute

about the FSI and area on which the construction is made.

4. This Court in the case of **Mazda Construction Company & Others v/s Sultanabad Darshan CHS Ltd. & Others**¹ has clarified that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property. It is further observed that it is not as if such an order is passed that the Petitioners 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 the title or for other appropriate reliefs. It is always open for the Petitioner to file a substantive suit of title and point out that the society has illegally claiming the FSI and raised dispute regarding excess area usurped. All these assertions can be made good by placing relevant documents on record so also by leading oral evidence substantiating the Petitioner's claim in a suit.

5. In the present Petition, in the garb of examining the legality and correctness so also validity of the deemed conveyance, it is not possible to examine the issues raised by the Petitioner in this Petition as they concern the right, title and interest in the immovable property. Therefore, by clarifying that the order of

¹ 2013 (2) ALL MR 278

deemed conveyance shall not preclude or prevent the Petitioner from filing a suit, the Petition can be disposed of.

6. Needless to mention that also in view of the decision of this Court in the case of **Angeline Randolph Pereira and others vs. Suyog Industrial Estate Premises Co-operative Socceity Ltd. And others**² it is clarified that the petitioner would be at liberty to file a substantive suit for adjudication of title in respect of the property in question. The same can be decided independently without being influenced by the fact that an order of deemed conveyance of the property in question is passed by the competent authority and the certificate of title of the property is issued by the competent authority under Section 11(5) of the MOFA Act.

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7. The Writ Petition is disposed of with these clarifications.

(M.S.KARNIK, J.)