

Bhogale

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

WRIT PETITION NO. 10860 OF 2017

Nirman Co. Op. Hsg. Soc. Ltd. .. Petitioner
vs.

State of Maharashtra & ors. .. Respondents

Mr. G.S. Godbole a/w Mr. B.P. Pandey, Mr. Vikas Pandey and
Mr. Ayush Tiwari I/b. Mr. Shishir Pandey for the Petitioner.

Ms. Pooja Kane I/b. J. Sagar Associates for Respondent No.4.

Mr. P.V. Nelson Rajan, AGP for the State/Respondent Nos.1 and 2.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 22, 2021

P.C.:-

Heard learned counsel for the parties at some length.

2. The order under challenge is an order passed by the competent authority under the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 ('the said Act' for short) granting deemed conveyance only partially. It is the case of the Petitioner-Society that the Society is entitled to a deemed conveyance to the extent of 5549.80 sq. mtrs. In respect of an area of 824 sq. mtrs. of which the Respondent No.4 claims to have right and interest, the

Society claims to have title on the land beneath and appurtenant to the bungalow which comprises the area of 824 sq. mtrs.

3. Mr. Godbole invited my attention to the agreements on record dated 14.08.1989 and another agreement dated 04.09.1989. According to him when the Society approached the Authority for grant of deemed conveyance, they were not aware of the consent terms which were entered into between the developers and the predecessors in title of Respondent No.4 and Respondent No.4. In his submission the Respondent No.4 was aware of the consent terms. My attention is invited to the consent terms which are at page 129 of the paper book. According to him from the consent terms which were entered into between the parties on the basis of agreement dated 24.09.1999, the covenants therein will clearly reveal that Respondent No.4 has the ownership right in respect of the bungalow. No development activities were to be carried out in the area admeasuring 824 sq.mtrs. The agreement did not confer the ownership right in the land on the Respondent No.4 as is clear from the agreement. He further submits that the consent terms and the agreement categorically record that the Respondent No.4 is only the owner of the bungalow in question and the said disputed portion of 824 sq. mtrs. would always be a

part and parcel of area admeasuring 5549.80 sq. mtrs. Mr. Godbole submitted that there is material suppression on the part of Respondent No.4. The Respondent No.4 practiced fraud on the competent authority as well as the Petitioner-Society by not producing the consent terms as well as the agreement. Mr. Godbole submitted that the impugned order to the extent it denies the deemed conveyance of 824 sq. mtrs. to the Petitioner deserves to be set aside.

4. Learned counsel for the Respondent No.4 on the other hand invited my attention to Clause 7 of the agreement dated 24.09.1999 to contend that the covenants specifically mention that the company shall not convey the said land admeasuring 824 sq.mtrs. and protect the right, title and interest of the Party of the Second and Third Part by providing suitable covenants in terms thereof. She therefore submitted that the Petitioner-Society is not entitled to the conveyance of 824 sq. mtrs. and it is the Respondent No.4 who has right and interest in the said land.

5. Considering the rival contentions and having regard to the nature of dispute between the parties it will not be possible to decide the same in the exercise of writ jurisdiction under Article 227 and in view of the law laid down by this Court in the case of

Mazda Construction Company & Others v/s Sultanabad Darshan CHS Ltd. & Others¹

This Court has clarified that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property. If it is the contention of the Petitioner-Society that they are the owners and have title and interest over the said portion, then it is always open for the Petitioner to bring a substantive suit by making necessary assertions and by pointing out the relevant documents and records so also by leading oral evidence before the Civil Court.

6. It is clarified that the order of deemed conveyance shall not preclude or prevent the petitioner from filing a suit and claiming therein appropriate reliefs. It is further clarified that the observations made in the order of deemed conveyance in so far as an area of 824 sq. mtrs. is concerned shall not come in the way of Civil Court from independently considering the question on the basis of the pleadings and the evidence adduced.

7. It would also be material to refer to the decision of this Court in the case of **Angeline Randolph Pareira & Ors. Vs. Suyog Industrial Estate Premises Co-operative Society**

1 2013 (2) ALL MR 278

Ltd. & ors.² In paragraph 23 it is observed thus :-

“23. It is made clear that if any civil suit is filed by the petitioners for adjudication of title in respect of the property in question, the said suit can be independently decided without being influenced by the fact that an order of deemed conveyance passed by the competent authority or that the certificate of title of the property is issued by the competent authority in favour of the respondent no.1 in respect of the property in question. ”

8. In this view of the matter, I pass the following order.

ORDER

(i) 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.

(ii) Writ Petition is rejected subject to the above clarifications.

(M.S.KARNIK, J.)