

Urmila Ingale

Urmila
P.
Ingale

Digitally
signed by
Urmila P.
Ingale
Date:
2021.02.17
20:19:41
+0530

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

**WRIT PETITION NO. 2456 OF 2018
WITH
INTERIM APPLICATION STAMP NO. 99480 OF 2020**

Salma Munshi A.Rashid Abdul Haq
Ansari and ors.

.. Petitioners

Vs.

Chetna Apartment Co-operative Society
Ltd. and ors.

..... Respondents

Mr.Kishore Malpathak, for Petitioners.
Mr.Sandesh Patil i/b Mr.P.S. Gole, for the Respondent No.1.
Mr.S.L. Babar, AGP for the Respondent - State.

CORAM : M. S. KARNIK, J.

DATE : 17th FEBRUARY, 2021

P.C. :

. Heard learned Counsel Shri Malpathak appearing for the Petitioners, Shri Patil appearing for Respondent No.1. Learned AGP appears for Respondent No.3.

2. The order dated 18/08/2017 under challenge is passed by Respondent No.3 granting deemed conveyance in

favour of Respondent No. 1 – Society under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963 (for short ‘ the said Act’). Learned Counsel for the Petitioners says that they are the owners of the suit property. According to him, the Petitioners had only entered into an agreement with developer for constructing the building on the land owned by them. Some terms were agreed whereby upper two floors were to be sold by the builder as the consideration for the development. However, the right, title and interest in the said land was never handed over to the builder. According to the learned Counsel the developer has forged some agreement and transferred the right title and interest in the said land in his favour. Learned Counsel pointed out that there are as many as three suits pending in the Civil Court viz. (I) RCS/1071/2012 (II) RCS/1510/2013 (III) RCS/907/2016 seeking appropriate reliefs in respect of the claim of the Petitioners as to their right, title and interest in the said property.

3. The order impugned is order granting deemed conveyance. This Court in the case of **Mazda Construction Company & Others Vs. Sultanabad Darshan CHS Ltd. & Others**¹ in which it has been clarified that order granting

¹ 2013 (2) ALL MR 278

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 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.”

4. The substantive suits are already filed by the Petitioners. 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 conversation will not preclude the Civil Courts from granting appropriate reliefs to which the Petitioners are entitled to in law.

² 2018 (6) ALL MR 729

5. With this clarification, Petition is disposed of.
6. In view of disposal of the Petition, Interim Application does not survive and the same stands dispose of accordingly.

(M.S.KARNIK, J.)