

Prajakta Vartak

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

**WRIT PETITION NO.9705 OF 2016
WITH
INTERIM APPLICATION NO.3924 OF 2021**

Smt. Nalini Thakkar & Ors.

...Petitioners

V/s.

Mulund Ambe Mahal Co-op. Hsg. Soc. Ltd. & Ors.

...Respondents

Mr. D. S. Sakhalkar with Mr. Aditya Sashittal i/b. Mr. Nachiket Khaladkar for Petitioner.

Mr. Abhay Khandeparkar with Mr. Prerak Sharma and Ms. Apoorva Khandeparkar and Mr. Mihir Dedhia for Applicant.

Mr. Shantanu Chandratre i/b. Mr. Sahil Shah for Respondent No.2.

Ms. Neepa Pujara and Ms. Bhavna Sanshvi, Administrators of Respondent No.1 present.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 15, 2021

Oral Order :

1. The challenge in this petition is to an order dated 29 May, 2014 passed by the Competent Authority constituted under Section 5A of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, “the Act”) who, in exercise of powers conferred under Section 11 of the Act, has allowed an application for a deemed conveyance made by respondent no.1-Mulund Ambe Mahal Co-op. Hsg. Soc. Ltd. (for short, “the society”).

2. Some facts are required to be noted:-

The petitioners claim to be the owners of Plot No. 823 Survey No.1000, CTS No.938, 938/1 to 28 admeasuring 1995 sq. yards more particularly described in an Agreement to Sale dated 14 February, 1978 which was entered between the petitioners and respondent no.2-M/s. Shivshakti Builders (for short, “the **developer**”). By virtue of the said agreement, the petitioners agreed to sell in favour of the developers such land categorically described as 1995 sq. yards. Some of the clauses of such Agreement to Sale are required to be noted:-

“1. The Vendor shall sell and the Purchasers shall purchase all the plot of land hereditaments and premises together with structures thereon lying and being at Mulund bearing Plot No.823 Survey No. 1000 and more particularly described in the Schedule hereunder written and admeasuring 1995 sq. yds. with their appurtenances in fee simple free from all incumbrances for the price of Rs.6,80,000/- to be paid as hereunder written.

15. The Purchaser shall be entitled to a proper conveyance by the Vendor and all nuniments of title relating to the said property in possession of the Vendor.

16. The Vendor shall get the consent of all persons interested in the premises agreed to be sold and shall get the documents duly executed by him.

17. The Vendor shall execute the deed of conveyance and all other assurances in favour of the Purchasers or in favour of such person or persons including a Co-operative Housing Society in whose name or names the Purchasers may direct.

19. The Conveyance and all other necessary documents to complete the transaction shall be prepared by M/s. Chandan & Chandan Advocate.”

3. Having obtained such land from the petitioners, the developer undertook construction of the building. There is no dispute on the construction being undertaken after obtaining sanction from the competent authority. The construction was completed in the year 1984. The constructed building consisted of 22 flats and 9 shops. The developer as per the provisions of Section 10, formed the respondent no.1-society. Accordingly, the flat purchasers as also the shop owners became members of the society which was formed in the year 1983. Thereafter on 29 March, 2004, a Memorandum of Understanding was entered between the petitioners and the developer which in fact confirms the fact that by the said Agreement to Sale dated 14 February, 1978 as entered between the petitioners and the developer, was acted upon and/or worked out.

4. Although the society of the flat purchasers came to be formed by the developer as noted above, the developer, however had failed to comply with the mandatory obligation to convey the plot of land in favour of the society which was almost for a period of 29 years i.e. from 1984 till 2013. This made the society to make an application to the competent authority under Section 11 of the Act to obtain a deemed conveyance in regard to the area on which the developer had undertaken the construction work. At this stage, it would be appropriate to extract Section 11 of the Act to which recourse was taken

by the society which reads thus:-

“11. Promoter to convey title, etc., and execute documents, according to agreement. - [(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat takers [or apartment owners] his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.]

[(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed "period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the co-operative society formed under Section 10 or, as the case may be, the company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such co-operative society or, as the case may be, the company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the

Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may, on being satisfied that it was a fit case for unilateral conveyance, register that instrument as 'deemed conveyance'.]"

(emphasis supplied)

5. It needs to be noted that the developer did not oppose the society's application for deemed conveyance. However, the society's application was surprisingly opposed by the petitioners who had in fact no interest left in the said land as they had agreed to sell the land to the developer under the Agreement to Sale dated 14 February, 1978 and as confirmed by the subsequent Memorandum of Understanding dated 29 March, 2004 as noted above. A reply was also filed by the petitioners opposing such application. The competent authority after granting complete opportunity of a hearing to the parties, has passed the impugned order dated 29 May, 2014 granting deemed conveyance in favour of the society in respect of the land in question admeasuring 1093.40 sq. mtrs. as specifically described in the certificate

(page 95 of the petition).

6. After the impugned order came to be passed on 29, May, 2014, there are substantial developments which have taken place in as much as the building which was constructed in the year 1984 had become dilapidated in the year 2019 the building was categorized as a dangerous and a dilapidated structure and was required to be demolished in December, 2020. The situation today is that all the members of the society including the commercial members are out of their respective premises and are awaiting re-development/reconstruction of the building.

7. Mr. Khandeparkar, learned counsel for the society submits that the entire redevelopment work would be delayed on account of the deficiency in the documents and the document of deemed conveyance is vital which was sought to be obtained for such purposes by the society, failing which there will be difficulty in the plans being sanctioned and for the redevelopment work to be undertaken.

8. Mr. Sakhalkar, learned counsel for the petitioners in assailing the impugned order has limited submissions. Firstly, he submits that the competent authority ought to have looked into the "Agreement of Sale" as entered between the member (flat purchaser) and the developer, which according to him, contains the following clause being clause 14 which reads

thus:-

“14. Nothing contained in these presents shall be construed as a transfer, assignment, demise or conveyance of the said right, title and interest in the said land together with building therein till a proper Lease for 999 years at an yearly rent of Rs.1/- to be paid by the buyer and registered in favour of a limited company, association of apartment owners or a Co-operative Housing Society as the case may be to be formed as hereinabove provided.”

9. Mr. Sakhalkar submits that the above clause would indicate that there was a clear understanding that there would not be any transfer, assignment, demise or conveyance in respect of the right, title and interest in the land and in the building till a proper lease for 999 years at an yearly rent of Rs.1/-, to be paid to the buyer and registered in favour of a limited company, association of apartment owners or a Co-operative Housing Society as the case may be is formed as agreed under the said clause.

10. Mr. Sakhalkar's second contention is that today, there is a situation of uncertainty as there is likelihood that some portion of the land which belonged to the petitioners would be hit by the order of deemed conveyance passed in favour of the society. He submits that it was an obligation on the competent authority to look into the specific terms and conditions of the agreement before passing any order of the deemed conveyance. In support of his submission, learned counsel for the petitioners placed reliance on the decision of the Single Judge of this Court in **Tushar Jivram Chauhan and**

another Vs. State of Maharashtra and others¹.

11. On the other hand, Mr. Khandeparkar would submit that the impugned order has been appropriately passed taking into consideration all materials and more particularly taking into consideration the clear position on record that by the Agreement to Sale dated 14 February, 1978, the petitioners had agreed to transfer in favour of the developer land admeasuring 1995 sq. yards equivalent to 1093.40 sq. mtrs. which now by virtue of the impugned order is directed to be conveyed in favour of the society. It is his submission, that the contention as urged on behalf of the petitioners, that the agreement entered by the developer with the flat purchasers and more particularly clause 14 of the said agreement ought to have been considered is completely untenable in as much as an agreement entered between the developer and the flat purchaser was certainly subservient to the basic agreement between the petitioners/owners and the developer which incorporates a clause to transfer 1995 sq. yards in favour of the petitioners. Mr. Khandeparkar submits that not only the Agreement to Sale dated 14 February, 1978 as entered between the petitioners and the developer was acted upon, but the same was also confirmed by the subsequent Memorandum of Understanding dated 29 March, 2004 entered between the petitioners and the developer. He submits that it was too late in time and more so after the construction of the

¹ 2015(4) Mh. L.J. 867

building itself was completed in the year 1984, and the society itself being formed on 5 December, 1984, for the petitioners to contend that the petitioners' rights qua the land in any manner are affected by the deemed conveyance as granted in favour of the society. It is, therefore, his submission that the petition deserves to be rejected and more particularly considering the series of subsequent developments, which have taken place, as now the building of the society is already demolished. He submits that the society now intends to submit plans for a redevelopment. The members of the society are without a roof on their head.

12. Having heard learned counsel for the parties and having perused the impugned order and the documents on record, I am not persuaded to accept any of the submissions as urged on behalf of the petitioners for the following reasons.

13. At the outset, it is required to be noted that it is not in dispute that the petitioners had entered into an Agreement to Sale dated 14 February, 1978 with the developer which is almost about four decades back. The said agreement was admittedly acted upon, on which there is no dispute, as the developer exercising complete rights unhinderedly completed the construction of the building which he ought to have conveyed in favour of the society as per the provisions and obligations as mandated under the Act. The

developer after following the procedure of law formed a society on 5 December, 1984. There appeared to be no embargo at any point of time or any prohibition which was asserted by the petitioners in the developer completing the construction of the building and handing over of the tenements in favour of the flat purchasers, who are now members of the society. Further a perusal of the Memorandum of Understanding dated 29 March, 2004 which came to be entered almost after about 26 years between the petitioners and the developer would indicate and as rightly pointed out by Mr. Khandeparkar that a complete arrangement was agreed between the said parties, at least in regard to the area ought to be entitled to the society, and the construction of the building undertaken by the developer, was not a matter of any issue or dispute between the parties.

14. Be that as it may, once the society was registered anything which may happen between the petitioners and the developer ought not to be of any relevance in so far as the right of the society, which is statutory in nature to avail of a deemed conveyance and more particularly considering the mandatory provisions of Section 10 read with Section 11 of the Act. The developer admittedly had failed to make a conveyance in favour of the society. Eventually the society was required to invoke the jurisdiction of the competent authority by making an application for a deemed conveyance on

26 July, 2013, which is granted by the impugned order. If these are the admitted facts, in my opinion, the first contention as urged on behalf of the petitioners that it was an obligation on the part of the competent authority to look into clause 14 of the agreement entered by the developer alongwith the flat purchasers namely that *the agreement would not be construed a transfer, assignment, demise or conveyance of the said right, title and interest in the said land to undertake the building therein till a proper Lease for 999 years at an yearly rent of Rs.1/- to be paid by the buyer and registered in favour of a limited company, association of apartment owners or a Co-operative Housing Society as the case may be to be formed*, is completely irrelevant. In fact, such a clause in my opinion, supports the flat purchasers, as the said clause reflects that a long lease for 999 years was entitled in favour of the society, such lease of 999 years would be required to be understood to be as good as an ownership being conferred on the society. There cannot be any other reading of such clause, to hold that such clause restricted the rights of the developer to convey the land in favour of the society. The contention as urged on behalf of the petitioners referring to clause 14 of the agreement is thus required to be rejected.

15. In so far as the other contention as urged on behalf of the petitioners that there is likelihood that the rights of the petitioners would be affected by

the said deemed conveyance also cannot be accepted. It appears to be quite clear that the petitioners at no point of time had asserted in any proceedings or by any other method as known to law, any of their rights either under the original agreement dated 14 February, 1978 or the subsequent MOU entered with the developer. It is only when a deemed conveyance was sought to be obtained by the society by making an application before the competent authority, the developer remaining a mute spectator, the petitioners appears to have grabbed an opportunity to assert, and probably their dead rights which they could not have at all asserted against the developer, so as to have a back door entry. The petitioners on such plea cannot in any manner create hurdles in the society obtaining a deemed conveyance in respect of the plot and which ought to have been granted by the developer to the society. If at all the petitioners had any interest in the said land which was subject matter of the agreement dated 14 February, 1978 which the petitioners had failed to assert, and such rights which today are possibly barred by limitation, could not have been asserted in this indirect manner in obstructing the society from obtaining a deemed conveyance. In my opinion, the entire endeavour of the petitioners is an indirect and a systematic attempt by which they intend to assert dead rights under the Agreement to Sale dated 14 February, 1978 which, as noted above, completely stood extinguished and certainly qua the society. Such back door entry to assert such unasserted rights is certainly not

permissible. In my opinion, the petitioners' case is mischievous so as to cause an unwarranted harassment to the society, when the building of the society stands demolished having outlived its life. As noted above the developer has remained to be a mute spectator. I would not be surprised that having taken such position, he has put up the petitioners to oppose a deemed conveyance for extraneous considerations.

16. In so far as the petitioners' reliance on the decision of the Single Judge of this Court in **Tushar Jivram Chauhan** (supra) is concerned, in my opinion, the reliance is wholly misplaced in the facts of the present case. This was a case in which there was a tripartite agreement between the parties. The observations of the Court and more particularly in paragraph 23 are in the context of such tripartite agreement. The position in the present facts is completely different as noted above.

17. In the aforesaid circumstances, the petition is wholly misconceived. It is required to be rejected. In the facts of the case, it cannot be rejected simplicitor and it is required to be rejected with costs of Rs.50,000/- to be deposited by the petitioners with Bar Council of Maharashtra and Goa. Let the costs be paid within two weeks from the date a copy of this order is available.

18. Before parting it needs to be observed that by virtue of the interim

orders, re-development work of the society has been stalled, although the building is demolished in December 2020 itself. In these circumstances, respondent no.1, in my opinion, would be entitled to immediate execution of the conveyance without any further delay, so that the stalled work of the redevelopment of the building can be undertaken as the members of respondent no.1 are out of their premises for a substantial time/period. The interim order passed earlier stands vacated henceforth. Ordered accordingly.

19. At this stage, learned counsel for the petitioners has prayed that ad-interim reliefs which came to be granted be continued for a period of 8 weeks. In the facts of the case, the prayer is rejected.

20. In view of disposal of the petition, the interim application would not survive. It is accordingly disposed of.

(G. S. KULKARNI, J.)

corrected as per speaking to minutes order dated 13.01.2022.