

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

WRIT PETITION NO.1744 OF 2015

Ms. Indoo Mohanlal Shah & Ors. .. Petitioners
v/s.
Mercantile Co-operative Housing
Society Limited & Ors. .. Respondents

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Mr. Jeetendra Ranawat a/w. Parikshit Desai i/b Waquar Ahmed for the
Petitioners.
Mr. P. P. Pujari, AGP for Respondent-State.
Ms. Bhagyashri Mangale i/b Mr. E. A. Sasi for Respondent Nos.1
and 2.

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CORAM: SHARMILA U. DESHMUKH, J.

DATE : 28 SEPTEMBER 2022

P. C:-

By the present petition filed under Article 227 of Constitution of India, Petitioners are challenging the order dated 2 April, 2014 passed by District Deputy Registrar, Co-operative Society-Respondent No 2 granting unilateral deemed conveyance in respect of the land admeasuring 2039.6 square meters bearing Survey No 6, Hissa No 1 and Hissa No 2, CTS No 168, 168/1 to 168/11 situated at Mouje Wadhvali, Taluka Kurla in favour of Respondent No.1-Society and Conveyance Deed registered subsequently on 12 August, 2015.

2. Heard the learned counsel for the Petitioner and the learned AGP.

3. The learned counsel for the Petitioners assailed the impugned order on several grounds i.e that the Application under Section 11 of the Ministry of Foreign Affairs (for short, said Act) was filed in the name of Mohanlal Premchand Shah- deceased owner; that the Petitioners being legal heirs were not impleaded as party Respondents; that the entire consideration is not received from Respondent No 1 under Agreement for Sale dated 26 September, 2003 executed between the owners of the property and Respondent No 1 Society. Learned Counsel for Petitioners submits that the Application under section 11 of the said Act filed by Respondent No 1 Society impleaded the deceased owner and the Petitioner's being the legal heirs of the deceased owner were not served with the notice of hearing. He further submits that the Petitioners had filed an Application in the proceedings under Section 11 of the said Act for being impleaded as party and that Application was not considered by Respondent No 2 Authority. He further submits that as per Agreement of Sale dated 26 September, 2003 the owners have yet to receive the entire consideration and pending the receipt, deemed conveyance cannot be granted in favour of Respondent No 1 Society.

4. On perusal of the proceedings, I find that the submissions

made by Learned Counsel for Petitioners is contrary to the record. As far as the submission regarding non-impleadment of the Petitioners and non-receipt of notice is concerned, cause title of impugned order shows that the Petitioners are arrayed as Respondents in the proceedings and were duly heard by the Competent Authority. In the proceedings before Competent Authority, reply has been filed by the Petitioners which is annexed to Exhibit E to the Petition. Challenge to the impugned order on the ground of non impleadment and non service of notice in the proceedings before the Competent Authority in teeth of the documents on record is rejected. As far as submission about non receipt of balance sale consideration is concerned, I find that no such ground has been taken in the reply filed by the Petitioners before the Competent Authority. In any event the Petitioners are at liberty to adopt appropriate proceedings for recovery of the said amount, if any.

5. It is not in dispute that an Agreement for Sale was executed between the Petitioners and Respondent No 1 Society on 26 September, 2003 in respect of the land forming subject matter of deemed conveyance. Present Petition avers that the Agreement for Sale is undervalued, unstamped and unregistered and no rights flow from the Agreement for Sale.

6. In my view, the Competent Authority has considered the relevant issues and was satisfied that there is compliance of all relevant provisions by Respondent No 1 Society seeking deemed conveyance of the property in question. In proceedings under Section 11 of MOFA, the Competent Authority is not expected to go in the validity of agreements executed by the parties. This Court in the case of *Mazda Construction Company and Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.*¹ which was later clarified in the case of *M/s. Shree Chintamani Builders vs. State of Maharashtra*² has held that an order granting deemed conveyance will not conclude the issue of right, title and interest in the property. Petitioners are at liberty to bring a substantive suit on title and seek appropriate relief. Learned Counsel for Petitioners submits that the Petitioners have not filed any suit inter alia praying for adjudication of their title in respect of the subject property.

7. This Court has taken a consistent view that in the garb of examining the legality and correctness of grant of deemed conveyance, Court cannot adjudicate contentious issues. All assertions raised by the Petitioners herein can be raised and adjudicated in substantive proceedings by leading evidence, if so necessary. It is not in dispute that the order of deemed conveyance has already been executed in favour of Respondent No 1 and Conveyance Deed has been registered on 12 August, 2015. I am thus not inclined to interfere with the

¹ 2013(2) ALL MR 278

² 2016 SCC Online Bom 9343

impugned order passed by the Competent Authority.

8. In view thereof, the following order is passed:

I) The Petitioners are at liberty to file a substantive suit for adjudication of title in respect of property in question, if permitted by law and the same be decided independently without being influenced by the fact that an order of deemed conveyance has already been passed by Competent Authority and Conveyance Deed registered in favour of Respondent No.1-Society;

II) Writ Petition is dismissed with aforesaid clarification and directions.

(SHARMILA U. DESHMUKH, J.)