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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.821 OF 2022**

Mr. Amar Chandrakant Bhumkar ..... Petitioner.  
V/s  
Competent Authority and  
District Deputy Registrar,  
Co-op. Societies, Pune City Pune  
and Others ..... Respondents.

Mr. Drupad S. Patil a/w Mr. Suyash Sule for the Petitioner.  
Mrs. M. S. Bane, AGP for Respondent No.1.

**CORAM: NITIN W. SAMBRE, J.**

**DATE : JUNE 07, 2022**

P.C.:

1] Respondent No.2 is a Co-operative Housing Society of allottees of Flats of Apartment situated on the land bearing Survey Nos. 121, Hissa Nos. 3/1, 3/2 and 3/3 to the extent of admeasuring 60 R, 60.8 R and 60.7 R respectively. Amongst other Articles of Agreement entered into between Developers, Promoters and the land owners, Schedule attached to the Articles of Agreement provides for aforesaid area on which Olympia Scheme was executed and implemented. Forming Agreement to be the basis, Respondent No.2 – Society approached District Deputy Registrar of Pune City, seeking deemed

conveyance pursuant to the provisions of Section 11 of the Maharashtra Ownership Flats Act, 1963 (hereinafter shall be referred to for the sake of brevity as “MOFA”). Said prayer of Respondent No.2 came to be allowed vide impugned order dated 17/10/2018. As such, this Petition.

2] Petitioner claims to be one of the co-owner of the property. Alleging that his right to the property is infringed, he has questioned the order of grant of deemed conveyance on the following grounds. It is claimed that grant of deemed conveyance is a statutory right of the Society consisting of the members who are apartment owners. So as to substantiate said claim, Counsel for the Petitioner would invite attention of this Court to the provisions of Section 4 of the MOFA. He would further urge that what can be conveyed to the Society is, land over which the Promoters and Builders have authority, interest and right of development. The land, other than referred to above, cannot be the subject matter of deemed conveyance. He would further urge that Promoters have right only to the extent of property mentioned in Schedule to the Agreement. As such, deemed conveyance can only be

issued to the extent of land on which buildings of the Society are erected and not in relation to the open space. He would further urge that Respondent No.2 – Society cannot claim to have right over the open spaces and main road and that being so, order impugned thereby granting deemed conveyance goes contrary to the record. It is specifically urged that deemed conveyance vide impugned order is granted for the area of land admeasuring 13631.28 sq.mtrs which consists of 9533.68 sq.mtrs of developed area.

3] While countering the aforesaid submission, learned AGP would urge that Authority has taken into account various documents such as sanctioned plan, commencement certificate and schedule to the apartment ownership agreement. It appears that Pune Municipal Corporation on 21/03/2014 granted permission for development of the land bearing Survey Nos 121/3/1, 3/2 and 3/3. The plot area over which such permission was granted was more than 15690.09 sq.mtrs. and after deducting various reservations, encroachments etc., the balance plot area was 13631.28 sq.mtrs. for which deemed conveyance is granted. The sanction obtained by Respondent-

Developers was in relation to entire plot of land and not the area to the extent of 9533.68 sq.mtrs i.e. total proposed built-up area. The said sanctioned plan also speaks of proposed area for tenements is 9533.68 sq.mtrs. The sanctioned plan in categorical terms as such provides for area of the plot to be 13631.28 sq. mtrs, 10% of which is to be kept as open space, 2480.94 sq.mtrs. was for internal roads and as such net area remained was 9786.63 sq. mtrs. The aforesaid area which is also mentioned in the agreement of sale has prompted the Authority to pass the order impugned, thereby granting deemed conveyance for entire plot area. As such, claim put forth by the Petitioner who claims to be the co-owner that larger area is conveyed through deemed conveyance, in my opinion, does not call for any re-appreciation, as findings recorded by the District Deputy Registrar in the order impugned are based on the plot area, area under development etc. Merely because Developers have not exhausted entire FSI or all buildings are not completed that by itself will not give any leverage to the Petitioner to claim that Petitioner's right to the property could be inferred as deemed conveyance has been ordered for excess area. Rather from the sanctioned plan, schedule

attached to the agreement of sale, commencement certificate, what can be noticed is, deemed conveyance is granted for such area which is duly disclosed in sanctioned map being the plot area.

4] In this backdrop, claim put forth that excess area is conveyed by the impugned order in favour of Respondent No.2 – Society is without any basis.

5] Prima facie, order impugned appears to be in tune with the provisions of Section 11 of the MOFA. In view of above, in my opinion, no error could be noticed in the order impugned granting deemed conveyance.

6] There is one more aspect of the matter to which this Court should be sensitive to. The Petitioner who is a co-promoter/co-owner/co-builder has every right to question the deemed conveyance in the proceedings before the Civil Court so as to get his rights established over a particular area. Needless to clarify that if Petitioner takes recourse to such proceedings, Civil Court is expected to decide

the same independently and without getting influenced by the findings recorded hereinabove.

7] In the aforesaid backdrop, no case for interference is made out. Petition as such fails and same stands dismissed.

( NITIN W. SAMBRE, J. )