

Dusane

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

WRIT PETITION NO.1579 OF 2016

A.H. Wadia Trust & Ors. ...Petitioners

V/s.

District Deputy Registrar ...Respondents
Co-op. Societies & Ors.

Mr. Atul Damle, Senior Advocate a/w Mr. Nikhil Jayakar, Mr. Levi S. Rubens, Mr. Yohaam Rubens, Mr. Mohammed naved Mullah i/by L.R. & Associates for Petitioners.

Ms. M.S. Srivastava, AGP for State- Respondent no. 1.

Mr. Joquim Reis, Senior Advocate a/w Mr. Kevin Pereira i/by Omkar Kulkarni for Respondent no. 3.

Mr. Reyden L. Gonsalves a/w Mr. Trinity Rebello i/by Rupali Pandit for Respondent no. 2.

CORAM: MADHAV J. JAMDAR, J.

DATE: SEPTEMBER 20, 2022

P.C.:

1. The Petitioner is Charitable Trust registered under the Bombay Public Trust Act, 1950. The Petitioner no.1- Trust and Petitioner nos. 2 to 5 in their capacity as Trustees of the Trust, by the present petition filed under Articles 226 and 227 of the Constitution of India are challenging legality and validity of

order dated 18th May 2015 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies (3), Mumbai in Deemed Conveyance Application No. 05 of 2015.

2. Heard Mr. Damle, learned Senior Counsel appearing on behalf of the Petitioners, Mr. Reis, learned Senior Counsel appearing on behalf of Respondent no.3 and Mr. Gonsalves, learned Counsel appearing on behalf of Respondent no.2.

3. It is the main contention of Mr. Damle, learned Senior Counsel appearing for the Petitioners that although the Petitioner no.1 has been made as party- opponent no. 2 in said Deemed Conveyance Application, opponent no. 2 has not been served. He submitted that the impugned order records that the Respondent no. 2 has been served by public notice. Relying on the judgment in the matter of **Tushar Jivram Chauhan & Anr. Vs. The State of Maharashtra & Ors**, reported in (2015) 4 ALL MR 223, he submits that the grant of unilateral conveyance followed by the registration of the same is serious issue and therefore the Competent Authority needs to follow the prescribed procedure. He submits that the

impugned order has been passed in violation of principles of natural justice.

4. As far as the merits are concerned, he submits that a limited lease right was granted in favour of Respondent nos. 4 to 9 and therefore conveyance of leasehold land could not have been granted. He, therefore, submits that the impugned order needs to be quashed and set aside and the said Deemed Conveyance Application be remanded back.

5. On the other hand, Mr. Reis, learned Senior Counsel appearing for the Respondent no.3 submits that the Petitioners have already filed Suit No. 917 of 2018, which is pending in this Court and therefore, no interference is required. He relied on the judgment of this Court in the case of **Mazda Construction Company & Ors. Vs. Sultanabad Darshan CHS Ltd. & Ors.**, reported in (2013) 2 ALL MR 278 and order dated 12th February 2021 of this Court in Civil **Writ Petition No.576 of 2021** (M/s Gita Construction & Developers vs. Mangesh Park CHS). He therefore submitted that Writ Petition be not entertained.

6. Learned AGP for the State and Mr. Gonsalves, learned Counsel appearing for Respondent no.2 supported the impugned order.

7. The factual position on record show that the land bearing CTS No. 2661, admeasuring 100.9 sq. mtrs. and bearing CTS no. 2678 admeasuring 270.2 sq. mtrs. are leasehold properties. The Petitioner is the owner of the said properties and the Petitioner no. 1 has executed two registered lease-deeds dated 11th January 1933 and 19th December 1934 respectively in favour of predecessor-in-title of Respondent nos. 4 to 9. The factual position on record further shows that Respondent nos. 4 to 9 executed agreement for sale dated 28th January 1993 in favour of Respondent no.3 with respect to CTS no. 2670, 2671 and 2672 admeasuring 1200.1 sq. mtrs. as well as relating said leasehold properties. It is the contention of the Respondent no. 2- Society and Respondent no.3- Developer that the Trust has given their no objection / consent by letter dated 26th July 1994 to the said agreement. It appears that as the Respondent no.3 failed to execute the conveyance, the Respondent no.2-Society filed deemed conveyance application under Section 11(3) of the

Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 ("**MOFA**" for short). By impugned order dated 18th May 2015, the Competent Authority has passed an order granting deemed conveyance in favour of the Society.

8. Although there is some substance in the contentions raised by the learned Senior Counsel appearing for the Petitioners that Petitioner no.1 has not been served, however, in this case even public notice has been issued and the same has been published in two daily newspapers Free Press Journal and Dainik Navshakti. In any case, as far as the certificate issued by the Competent Authority dated 18th May 2015 clearly shows that the only leasehold rights were allotted as far as the said leasehold lands are concerned.

9. It is settled legal position that the order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property. It has been held in **Mazda Construction Co.** (supra) and **Angeline Randolph Pareira and Ors Vs. Suyog Industrial Estate Premises Co-op. Society Ltd. and Ors.** (2018) 3 AIR Bom. R.825 that

if the deemed conveyance order is passed, it cannot be held that the Petitioners have no remedy to question the same. The Petitioner can still bring the substantive suit for adjudication of the title or other reliefs. It is always open for the Petitioner to file a substantive suit regarding title and claim that the Society is not entitled for the said land. In this particular case as the Petitioner has already instituted a Civil Suit, the same also can be amended seeking appropriate reliefs.

10. A Division Bench of this Court in judgment reported in (2021) 6 Maharashtra L.J. 557 in the matter between **Tripura Shopping Centre Premises Co-op. Society Ltd. Vs. Shabyesha Construction Co. Pvt. Ltd.** has occasion to deal with effect of even ex-parte order of Deemed Conveyance. The relevant discussion in this behalf is as follows:

"55. In our view, the proceedings under Section 11 of the MOFA are filed in view of the default committed by the promoter to execute a Deed of Conveyance in favour of the Society by complying with its application under the provisions of the MOFA by executing a Deed of Conveyance. The Competent Authority is thus empowered to pass an order of Deemed Conveyance *ex parte*. Such order passed by the Competent Authority does not create title in respect of such property conclusively in favour of the society. Such an order of Deemed Conveyance is

subject to the final adjudication of title in the appropriate civil proceedings either before the Civil Court or by Arbitral Tribunal in case of therebeing an Arbitration Agreement between the parties. There is no such provision under MOFA that the order passed by the Competent Authority under Section 11 of the MOFA is final in all respect including on the issue of title in the property and bars the Civil Court or the Arbitral Tribunal from deciding the issue of title independently."

The said observations of Division Bench of this Court are squarely applicable to the present case.

11. In this particular case, it is admitted position that the Petitioners have instituted Suit No. 917 of 2018 in this Court seeking declaration that the agreement for sale dated 28th January 1939 and development agreement dated 28th January 1993 are illegal, null and void and not binding on the Petitioners. In the said plaint, reference is made to the impugned order of deemed conveyance.

12. Thus this is not a case where interference in the impugned order is warranted. However, it is clarified that the Society can either file fresh suit or application can be filed in pending Suit No. 917 of 2018 seeking appropriate amendment. Such fresh suit or pending suit is to 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.

13. It is clarified that this Court has not expressed any opinion on the merits of the rival contentions.

14. The Writ Petition is disposed of in above terms with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2022.10.04
20:02:12 +0530