

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

**WRIT PETITION NO.9393 OF 2016**

M/s.N.R.C. Construction Ltd.

.. Petitioner

Versus

District Deputy Registrar, Co-operative  
Societies (2), Konkan Bhavan and Ors.

.. Respondents

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Mr.Rohit D. Joshi, Advocate for the Petitioner.

Mr.Ashutosh R. Gole, Advocate for Respondent No2.

Mrs.V.S. Nimbalkar, AGP for the Respondent Nos.1, 3 and 4..

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**CORAM : SHARMILA U. DESHMUKH, J.**

**DATED : 28 September 2022.**

**P.C. :**

By consent of parties, Petition is taken up for final disposal.

2 By the present petition filed under Article 227 of Constitution of India, Petitioner is challenging order dated 15 February, 2014 passed by District Deputy Registrar, Co-operative Society- Respondent No 1 granting unilateral deemed conveyance in

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respect of the land admeasuring 3577.20 square meters bearing Survey No 40 (part) and 41(part), CTS No 63(part) and 64 (part), Sub divided CTS No 64C of village Tirandaz Taluka Kurla, District Bombay in favour of Respondent No.2-Society and the Unilateral Deemed Conveyance Deed registered on 18 November, 2014.

2. Heard the learned counsel for the Petitioner and the learned Counsel for Respondent No 2 and Learned AGP.

3 Petitioner claims to have acquired lease hold rights in the subject property through a Deed of Assignment executed by the original lessees in favour of Petitioner in the year 2007. Learned counsel appearing for the Petitioner submits that the impugned order granting deemed conveyance of 3577.20 square meters of land, is erroneous, inasmuch as, the building of the society is situated on 1699 square meters of land and is bounded by a compound wall and about 800 square meters of land is vacant, which Petitioner is entitled to develop. He further submits that the entitlement of Respondent No 2- Society is restricted only to 1699 square meters on which the building is constructed. Learned counsel submits that by an unregistered deed of assignment dated

31 December 2007, leasehold rights in respect of the said property have been assigned by the original lessees in favour of the Petitioner and subsequently by a deed of declaration dated 31 January 2011, Deed of Assignment came to be confirmed. Learned counsel further submits that in the proceedings under Section 11 of MOFA, only the original lessees and builder were impleaded as parties. As Petitioner was not impleaded, it was not aware of the proceedings and was not heard in the matter.

4            Learned counsel appearing for Respondent No.2-Society submits that the society has filed a Civil Suit being No.3835 of 2013, challenging the Deed of Assignment executed between the original lessees and the present Petitioner, and, for other subsequent reliefs, which is pending and the Petitioner can agitate its rights before the Civil Court.

5            Perusal of the impugned order shows that as none appeared on behalf of original lessees and builder, in the proceedings under Section 11 of MOFA on 26.11.2013, the District Deputy Registrar, Co-operative Society- Respondent No 1 directed issuance of public notice of the hearing pursuant to which public notice was duly. As none appeared on behalf of the Respondents, the Competent

Authority after hearing the Respondent No 2 Society and upon scrutiny of the documents on record passed the impugned order. Considering the fact that public notice of hearing was given, the submission of Petitioner that he was not aware of the proceedings and was not granted opportunity of being heard is liable to be rejected. In any event, the Petitioner claim's right in the subject property to the extent of 800 square meters for the purpose of development. The Competent Authority in proceedings under Section 11 of MOFA could not have adjudicated contentious issues regarding the right title and interest in the subject property.

6           As far as assignment of leasehold rights in the subject property in favour of Petitioner is concerned, the Deed of Assignment is subject matter of challenge before the Civil Court in Suit being No.3835 of 2013. Petitioner claims entitlement to develop the alleged vacant portion admeasuring 800 square meters, which is disputed by Respondent No 2 Society which claims that the vacant portion is reserved for parking space. It is not in dispute that the Respondent No 2 Society was constructed in the year 1990, occupation certificate issued in the year 1990 and the Society was registered in the year 1993. The duty of promoter/developer to

convey the land to Respondent No 2 Society not having been fulfilled, Competent Authority had to step in and comply with the duty cast upon the promoter/developer. In my opinion, while examining the legality and validity of the order granting unilateral deemed conveyance, contentious issues regarding the right, title and interest in land cannot be gone into.

7 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. This Court in the case of ***Mazda Construction Company and Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.***<sup>1</sup>, which was later clarified in the case of ***M/s. Shree Chintamani Builders vs. State of Maharashtra***<sup>2</sup> has held that an order granting deemed conveyance will not conclude the issue of right, title and interest in the property. Petitioner is at liberty to bring a substantive suit on title and seek appropriate relief. Learned Counsel for Petitioner submit that the Petitioner has not filed any suit inter-alia praying for adjudication of their title in respect of the subject property.

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1 2013(2) ALL MR 278

2 2016 SCC Online Bom 9343

8           In the garb of examining the legality and correctness of grant of deemed conveyance, this Court cannot adjudicate contentious issues. All assertions raised by the Petitioner herein can be raised and adjudicated in substantive proceedings by leading evidence, if so necessary. I am thus not inclined to interfere with the impugned order passed by the Competent Authority.

9           In view thereof, the following order is passed:

**:: ORDER ::**

- (i) The Petitioner is at liberty to file a substantive suit for adjudication of title in respect of property in question, if permitted as per 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.2-Society;
- ii) Writ Petition is dismissed with aforesaid clarification and directions;

- iii) Civil Application, if any, does not survive and stands disposed of accordingly.

(SHARMILA U. DESHMUKH, J.)