

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

WRIT PETITION NO. 13346 OF 2017

Vijay Pannalal Talwar (Since Decd.) through LR. & Ors. V/s. Anuradha CHS Limited and Ors.	...Petitioners ...Respondents
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Mr. Sandesh Patil i/b. Mr. Chintan Y. Shah, for the Petitioners.
Mr. Shreepad Murthy a/w. Clarissa Miranda i/b. Mr. Abhishek Patil, for the Respondent No.1.

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CORAM : C.V. BHADANG, J.
DATE : 20 SEPTEMBER 2022

P.C.

1. The challenge, in this petition, is to the order dated 6 December 2016 passed by the District Deputy Registrar of Cooperative Societies, Mumbai, in Application No.57/2016 granting deemed conveyance in favour of the first Respondent – Cooperative Society, under Section 11 of the Maharashtra Ownership of Flats (Regulations of Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. I have heard the learned counsel for the Petitioners and the learned counsel for the first Respondent. With the assistance of

the learned counsel for the parties, I have gone through the record.

3. The learned counsel for the Petitioners has submitted that deemed conveyance has been granted in respect of 777 Sq. Mtrs. of land out of which, land admeasuring 165.92 Sq. Mtrs. forming part of the set back area was required to be surrendered in favour of the Municipal Corporation of Greater Mumbai (MCGM). Secondly, it is submitted that as per requirements of sub-section 3 of Section 11 of the Act, the first Respondent / Applicant was required to produce the registered agreements to sale entered into with the members, which has not been done. Lastly, it is submitted that even agreement to sale of the year 1981 entered into between the owners and the Builder Anupam Construction is also not registered. Except these, there are no other contentions raised.

4. The learned counsel for the first Respondent – Society states that all the agreements are registered. Secondly, it is submitted that Petitioner is one of the legal representatives of the original owners. He pointed out that Late Pannalal Talwar who is father of the Petitioner, was the Respondent No.1 in Application No.57/2016 before the District Deputy Registrar and after his death, his legal representatives which includes Petitioners were brought on record. It is submitted that owners have already transferred the land in the year 1981 and cannot question grant of

unilateral deemed conveyance of the land, at this distance point of time.

5. I have considered the rival circumstances and the submissions made.

6. At the outset, it is necessary to note that the issue about surrender of the set back area, is a matter between MCGM and Respondent -society. In so far as the ground based on sub-section 3 of Section 11 is concerned, it is contended that already there are registered agreements to sale. The owners have transferred the land in the year 1981 itself and thus cannot question the deemed conveyance at this distance of time as rightly submitted on behalf of the Respondent No.1. The Competent Authority under Section 11 of the 1963 Act cannot go into such disputed questions of fact.

7. The petition is without any merits and is accordingly dismissed, with no order as to costs. Pending civil applications, if any, are also disposed of.

C.V. BHADANG, J.