

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

WRIT PETITION NO.6623 OF 2022

Smt. Veena Ashutosh Joshi & Anr.

..Petitioners

Versus

Mohak House No.3 Co-operative
Housing Society Ltd. & Ors.

..Respondents

Mr. A. R. Gole, for the Petitioners.

Mr. Balkrishna K. Raje, for the Respondent No.1.

Mr. Sandeep Kocharekar, for the Respondent No.2.

Mr. S. H. Kankal, AGP for the Respondent No.4.

CORAM : NITIN W. SAMBRE, J.

DATE : 19th AUGUST, 2022

P.C.

1. The order impugned is dated 1st July, 2021 passed in exercise of powers under the provisions of MOFA, wherein directions are issued to the petitioners to execute deemed conveyance.

2. The said order is questioned by the petitioners, who claim to be owners and developers on the ground that the respondent society is entitled to the area to the extent of 1312.564 sq.mtrs. and not 1835.664 sq.mtrs. So as to substantiate his claim, he would urge that there are in all three societies in area of 2730 sq.mtrs. According to him, as far as respondent No.1 is concerned, the claim for

deemed conveyance for the area of 1312.564 sq.mtrs. and other two societies are entitled to the area of 639.334 sq.mtrs. and 778.101 sq.mtrs. i.e. 'Wing A' and 'Wing B' respectively. He would further urge that if the deemed conveyance in favour of the respondent No.1 as directed is permitted to be executed, same will reduce the area of other two societies i.e. 'Wing A' and 'Wing B'.

3. Counsel for the respondents would support the order impugned, as according to him, the claim put forth by the petitioners was never part and parcel of the pleadings before the authority and by way of afterthought, pleadings are sought to be inserted. The case is sought even without absence of pleadings. Counsel for the respondent No.2 society would support the claim of respondent No.1 society and would urge that the order of grant of deemed conveyance is quite justified.

4. I have appreciated the said submissions.

5. With the assistance of respective learned counsels, I have gone through the application preferred by the respondent No.1 for grant of deemed conveyance, reply tendered by the petitioners to the said application and the order impugned.

6. The fact remains that the case which is sought to

be canvassed before this Court was never canvassed or pleaded before the authority below. As such, the authority below had no occasion to consider the claim of the petitioners, as has been sought to be canvassed particularly in absence of specific pleadings and absence of documentary evidence.

7. Apart from above, the claim put forth by the petitioners give rise to the disputed question of fact on the issue of area to which the respondent No.1 is entitled.

8. The petitioners even in the petition have failed to disclose the total holding of the petitioners and the entitlement of each of the respondents to a particular area out of such holding.

9. In the aforesaid background, no case for interference in the extraordinary jurisdiction is made out.

10. The petition as such fails, dismissed.

11. However, this will not preclude the petitioners from taking recourse to civil proceedings before the competent civil Court questioning the order of grant of deemed conveyance.

[NITIN W. SAMBRE, J.]