

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO. 11873 OF 2019**

Madhusudan B. Vakharia

... Petitioner

V/s.

Sai Milap CHSL & Ors.

... Respondents

Mr.PS. Dani, Senior Advocate i/b. Mr.Chetan Patil for Petitioner.

Mrs.VS. Nimbalkar, A.G.P for Respondent No.5-State.

CORAM : A.S. GADKARI, J.**DATE : 20th April 2022.****PC. :**

1. By the present Petition under Article 227 of the Constitution of India, Petitioner, Original landlord, has impugned Order dated 30th March 2019 passed by the Respondent No.5, thereby granting Deemed Conveyance in favour of the Respondent No.1 i.e. Sai Milap Cooperative Housing Society Ltd. to the extent of 1595.45 sq.mtrs. of land and as contemplated under Section 11(3) of The Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 (for short, "M.O.F.A. Act").

2. Heard Mr.Dani, learned Senior Advocate for the Petitioner and Mrs.Nimbalkar, learned A.G.P for the State. Perused entire record.

3. Record indicates that, by an Agreement of Sale dated 25th January

1985 executed between the Petitioner being HUF and Respondent No.2, a partnership firm, the Petitioner permitted Respondent No.2 to develop his property admeasuring 2971.65 sq.mtrs. by accepting valuable consideration for the same. The execution of Agreement dated 25th January 1985 is not in dispute. That, the Respondent No.2 thereafter constructed two different buildings on the said piece and parcel of land admeasuring 2971.65 sq.mtrs. and sold the tenements/flats therein to the prospective purchasers. The flat purchasers subsequently formed two Cooperative Housing Societies, namely, Sai Milap Cooperative Housing Society Ltd., i.e Respondent No.1 herein and Sai Milan Cooperative Housing Society Ltd., i.e. Respondent No.4. As the Respondent No.2 did not conveyed the land beneath the said buildings including the necessary open spaces thereof as sanctioned by the Mumbai Municipal Corporation, the Respondent No.1 filed an application as contemplated under Section 11(3) of the M.O.F.A. Act before the Respondent No.5 for seeking Deemed Conveyance of the land admeasuring 1595.45 sq.mtrs.. The Respondent No.5 in compliance with the principles of natural justice afforded an opportunity of being heard to the Petitioner and thereafter passed the impugned Order dated 30th March 2019.

By the impugned Order, the Respondent No.5 granted Deemed Conveyance of 1595.45 sq.mtrs. of land in favour of the Respondent No.1. The Respondent No.5 also granted Deemed Conveyance in favour of Respondent

No.4, who is Respondent No.1 in Writ Petition No. 10206 of 2019 to the tune of 1376.15 sq.mtrs. of land. A bare perusal of para No.(j) (page No.167) of impugned Order along with the conclusions drawn and Order passed by the Respondent No.5, would clearly indicate that, the Respondent No.5 has granted Deemed Conveyance of total 2971.60 sq.mtrs. of land in favour of Respondent No.1 and Respondent No.4. As noted earlier, the land which was given for development to Respondent No.2 was 2971.65 sq.mtrs. It is thus clear that, not a single inch of excess land has been directed to be conveyed in favour of Respondent No.1 and Respondent No.4 by the impugned Order. It is to be noted here that, the Petitioner had given development rights of the said entire piece of land in favour of Respondent No.2 by executing the said Agreement dated 25th January 1985 and after accepting valuable consideration for the same, thereafter has no right to claim or demand any portion of the said land from either Respondent Nos.1, 2 or 4.

4. After perusing entire record and impugned Order dated 30th March 2019, this Court is of the considered view that the Respondent No.5 has not committed any error either in law or on facts while passing it.

5. Petition being de hors of merits is accordingly dismissed.

[A.S. GADKARI, J.]