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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5803 OF 2016

Shri Harishankar Ramandand Trivedi and Anr. ... Petitioners

Versus

The Deputy District Registrar of Co-operative ... Respondents
Housing Societies and Competent Authority and
Ors.

Mr. Sandesh Deshpande, for the Petitioners.

Mr. S.D. Rayrikar, AGP for Respondent – State.

CORAM : MADHAV J. JAMDAR, J.

DATED : 4th OCTOBER 2022

PC. :

1. Heard Mr. Sandesh Deshpande, the learned counsel appearing for the Petitioners and the learned AGP for the Respondent No.1.

2. The order impugned in the present petition is order dated 23rd April 2014 passed by the Respondent No.1 – Deputy District Registrar of Co-operative Housing Societies and Competent Authority, whereby deemed conveyance has been granted in favour of Respondent No.4 – Society.

3. Mr. Deshpande submitted that the Petitioners who are co-owners and other co-owners entered into a registered development agreement with Respondent No.3 – Developer on 7th November 1997. He submitted that Respondent No.3 failed to comply with his obligations towards the Petitioners and other co-owners as agreed under the said development agreement dated 7th November 1997. He submitted that the Petitioner No.2 has already filed Regular Civil Suit No.151 of 2004 before the learned Civil Judge, Junior Division, Kalyan and the same was dismissed for default and the restoration application is pending. He submitted that as there is dispute regarding rights allotted to the Respondent No.3, Competent Authority should not have granted deemed conveyance.

4. A perusal of the plaint in R.C.S. No.151 of 2004 shows that the said Suit was filed by the Petitioner No.2 seeking substantive relief that Respondent No.3 – Developer has no right to carry out further work of construction and/or to encumber and/or to deal in and/or to dispose of the flats in the building constructed on the suit property namely piece and parcel of land admeasuring 5440 sq.metres bearing Survey No.59, Hissa Nos.7A and 7B situate at Village Gajabandhan

Patherli, Taluka: Kalyan, District: Thane. However, it is admitted position that the petitioners i.e. co-owners and other co-owners executed Development Agreement dated 7th November 1997 entrusting development rights in favour of Respondent No.3. In view of this, it is relevant to note definition of “Promoter” as defined under Section 2(c) of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer)(Amendment) Act, 2008 (hereinafter referred to as “MOFA”) which reads as under:

“(c) **“promoter” means a person** and includes a partnership firm or a body or association of persons whether registered or not **who constructs or causes to be constructed** a block or building of flats or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and **where the person who builds and the person who sells are different persons, the term includes both.**”

(Emphasis added)

Thus, as per the above definition not only the Respondent No.3 is the promoter but petitioners and other co-owners are also the promoters. Under Section 11 of MOFA, it is the statutory responsibility of the promoter to execute conveyance in favour of the co-operative society of flat purchasers. The factual position on record show that as promoters failed to perform their statutory responsibility of execution

of conveyance, the Respondent No.4 – Society was constrained to approach District Deputy Registrar (hereinafter referred to as “DDR” for short) seeking Deemed conveyance. It is further significant to note that inspite of service of notice and issuance of public notice all the “promoters’ including petitioners remained absent before DDR. Thus, there is no infirmity pointed out by learned Advocate for the petitioners in the impugned order.

5. It is also to be noted that the nature of order granting deemed conveyance is well established. In the case of *M/s. Shree Chitamani Builders vs. State of Maharashtra & Ors.*¹, a Division Bench of this Court has held that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property. It is not as if such an order is passed that the petitioners have no remedy to question the act of the society on the strength of such deemed conveyance. The petitioners can still bring a substantive suit on title. It has been further held that in writ jurisdiction and in the garb of examining the legality and correctness so also validity of deemed conveyance the High Court cannot examine these issues. They concern the right, title and interest in the immovable property.

1 2016 SCC OnLine Bom 9343

Therefore, by clarifying that the order of deemed conveyance shall not preclude or prevent the petitioners from filing a suit and claiming therein appropriate reliefs, the said writ petition was disposed of.

6. The above observations are also applicable to the present case. In view of above, there is no substance in the challenge raised by the petitioners. The writ petition is dismissed with no order as to costs.

7. However, it is clarified that if, any civil suit is filed against the Respondent No.4 – Society, the same shall be decided uninfluenced by this order as well as order passed by the DDR.

(MADHAV J. JAMDAR, J)