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

WRIT PETITION NO. 7438 OF 2016

M/s. Sable Associates

...Petitioner

Versus

Shivsagar City Phase-1 Gruh Rachana Sanstha

Maryadit through Shri. Manohar M. Bodhe & Ors.

...Respondents

Mr. Ajay A. Joshi, for the Petitioner.

None appears for the Respondent No.1.

Mr. P P Pujari, AGP, for the Respondent Nos. 2 & 3–State.

CORAM : MADHAV J. JAMDAR, J.

DATED : 14th SEPTEMBER 2022

PC. :

1. Heard Mr. Joshi, the learned counsel appearing for the Petitioner and Mr. Pujari, the learned AGP appearing for the Respondent Nos.2 and 3. None appears for the Respondent No.1 despite service.

2. In the present petition, the Petitioner is challenging the order dated 12th June 2015 passed by the Respondent No.2-the Competent Authority, the District Deputy Registrar, Co-operative Society, Pune in

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Deemed Conveyance Application No.1000308/2014. By the impugned order the deemed conveyance application filed by the Respondent No.1-society was allowed. The said order has been challenged by the original opponent i.e. the developer.

3. It is the contention of Mr. Joshi, the learned counsel appearing for the Petitioner that the impugned order has been passed without recording substantive satisfaction based upon the inquiry and verification of the documents executed with the flat purchasers. He submits that the Respondent No.2 has not taken into consideration the common layout plan sanctioned by the Pune Municipal Corporation in respect of amalgamated area and therefore, the order granting deemed conveyance is perverse and illegal. He submitted that there is no separate layout plan sanctioned by the Pune Municipal Corporation for Respondent-society exclusively.

4. He relied on judgment of this Court in the matter of ***Mazda Construction Company & Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.***¹ and particularly on paragraph Nos. 21 and 22 of the same.

1 2013(2) ALL MR 278

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5. Although none appears for the Respondent No.1-society, an affidavit-in-reply dated 9th January 2020 has been filed by the society. In the said affidavit-in-reply it is inter alia stated, that the order of deemed conveyance was passed by the Respondent No.2 on 12th June 2015 and accordingly on 27th August 2015, the deemed conveyance has been registered in the office of Sub-Registrar Office at Haveli No.10 and therefore, the Writ Petition has become infructuous and not maintainable. In fact, the Petitioner has also fairly mentioned the same in para 15 of the memo of Writ Petition and copy of the Deemed Conveyance is also annexed as Exhibit-“J” to the Writ Petition.

6. Mr. Joshi, the learned counsel appearing for the Petitioner pointed out copy of deemed conveyance annexed at Exhibit-“J” and boundaries mentioned in the said deemed conveyance of the subject property. He submits that totally incorrect boundaries are mentioned. He relied on sanctioned plan at page 65. He also pointed out the order dated 3rd October 2016 passed by this Court, by which following ad-interim order has been passed:-

“a) Both parties are directed to maintain status quo in

respect of the area as shown at page 65 rectangle area where it is stated that Building-H B+G+5 as marked by read pencil, till next date.”

7. Mr. Joshi, the learned counsel appearing for the Petitioner has relied on paragraph Nos. 21 and 22 of the ***Mazda Construction Company & Ors.***(supra).

8. This Court by order dated 12th February 2021 passed in Writ Petition No. 576 of 2021, on the basis of ***Mazda Construction Company & Ors.*** (supra) as well as ***Angeline Randolph Pereira & Ors. vs. Suyog Industrial Estate Premises Co-operative Society Ltd. & Ors.***², clarified that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property. It is further observed that 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 Petitioner can still bring a substantive suit on the title or for other appropriate reliefs. It is always open for the Petitioner to file a substantive suit of title and point out that the society has illegally claiming the FSI and raised dispute regarding excess area usurped. All these assertions can

2 2018 (3) AIR Bom. R 825

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be made good by placing relevant documents on record so also by leading oral evidence substantiating the Petitioner's claim in a suit. It is further observed in the said order that in ***Angeline Randolph Pereira & Ors.*** (supra), it is clarified that Petitioner would be at liberty to file a substantive suit for adjudication of title in respect of the property in question. The same can be decided independently without being influenced by the fact that an order of deemed conveyance of the property in question is passed by the competent authority and the certificate of title of the property was issued by the competent authority under Section 11(5) of Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963.

9. The learned counsel of the Petitioner submitted that order granting deemed conveyance be set aside or the ad-interim order dated 3rd October 2016 granted in this Writ Petition be continued for a period of twelve weeks, so that substantive suit seeking appropriate reliefs can be filed.

10. In view of above reasoning, the Writ Petition is disposed of

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with the clarification that the Petitioner is at liberty to file a substantive suit for adjudication of title in respect of the property in question. For availing remedy of filing substantive suit seeking appropriate reliefs including interim reliefs, the ad-interim order dated 3rd October 2016 passed by this Court is continued for a period of twelve weeks from today.

11. It is clarified that this Court has not examined the merits of the rival contentions and all the contentions of both the parties are specifically kept open.

MADHAV J. JAMDAR, J.