

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

WRIT PETITION NO. 6853 OF 2018

Alap Co-operative Housing Society Ltd.

Nashik Through Its Chairman

....Petitioner

V/S

M/s. Gayatri Builders And Developers Through

Its Proprietor & Ors.

... Respondents

Mr. Sachin Gite for the petitioner.

Mr. G. S. Godbole i/b. Adv. Sumit Kothari for the respondent nos. 1 to 3

Mr. S. D. Rayrikar, AGP for the respondent no. 4

CORAM : NITIN W. SAMBRE, J.

DATED : 3rd AUGUST, 2022

P.C.:

1. The order impugned is dated 20/08/2017 passed in exercise of powers u/s 11 of the MOFA Act, 1963.
2. Mr. Gite, learned counsel appearing for the Petition-Society would urge that the prayer for deemed conveyance is rejected on the Ground - that the person through whom the proceedings were initiated were alleged to be incompetent (for want of full authorization) to file the said proceedings i.e Chairman, Mr. Dinesh Dave & (b) the issue of FSI.
3. He would urge that while denying the prayer for grant of deemed convenience, in absence of order of disqualification of Mr.

Dinesh Dave as office bearer of the petitioner-society, the competent authority ought not to have rejected the prayer on the ground of his competency to pursue the proceedings on behalf of the petitioner-society. By resolution society has authorized him to pursue the same. As regards the claim for FSI is concerned, Mr. Gite has urged that the petitioner-society is entitled for the balance FSI and as such the deemed conveyance application was accordingly moved.

4. While countering the aforesaid submissions Mr. Godbole, counsel for the respondent-developer would urge that the respondent-developer are not objecting the prayer for grant of deemed conveyance to the extent of such area which was agreed to be conveyed through the various deeds. He has invited my attention to clause nos. 6(i) to (iii) of the conveyance in favour of the members of the petitioner-society which reads thus:

"6(i) The F.S.I. of unsold premises or the premises not constructed shall remain the property of the promoter. The area excluding stair-case, and landing shall remain the property of the promoter. The right of ownership of terrace shall remain with the promoter and the promoter may deal with the area of the terrace and other areas as the promoter deems fit.

6(ii) If any additional F.S.I. is made available by the authority then the promoter alone is entitled to

the benefits thereof.

6(iii) The purchaser shall not raise any objection for the utilization of F.S.I. as aforesaid by the promoter for the construction of additional premises."

5. Based on the above, his contentions are prayer for deemed conveyance can be granted to the extent of the area excluding the one which is provided under Clause (6) as referred above.

6. He would further urge that unsold flats from the society building can be sold by the respondent-developer to which the petitioner-society cannot have any objection or right over.

7. I have appreciated the aforesaid submission.

8. The petitioner has sought deemed conveyance to the extent of plot nos. 6 & 7, survey nos. 712 / 2A+2D / 6 & 7 to the extent of 1329.36 sq.mtrs. As far as grant of deemed conveyance to the extent of aforesaid area is concerned, the respondent-developer i.e respondent nos. 1 to 3 have extended no objection.

9. As regards claim of the petition for grant of right over the FSI is concern, the perusal of the terms of the conveyance executed in favour of members, which are reproduced hereinabove from 6(i) to (iii) in categorical terms keeps the right of the developer i.e respondent nos. 1 to 3 intact over the said property i.e. non-executed or balance / additional FSI.

10. As such, the claim of the petitioner to the said extent cannot be granted. That being so the petition stands partly allowed. The order impugned passed by the respondent no. 4-authority is hereby quashed and set aside.

11. It is directed that the petitioner is entitled for the deemed conveyance pursuant to provisions of sub-section 3 of section 11 of the MOFA to the extent of plot nos. 6 & 7, survey nos. 712 / 2A+2D / 6 & 7 to the extent of 1329.36 sq.mtrs. As regards the rest of the claim of the petitioner i.e. right over the FSI or claim over the unsold tenements cannot be accepted and stands rejected.

12. The petition stands dispose of. The respondent-authority shall issue appropriate conveyance and petitioner shall be at liberty to lodge the same for registration.

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Date: 2022.08.19
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(NITIN W. SAMBRE, J.)