

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

WRIT PETITION NO. 2556 OF 2022

Devdarshan Co-op. Hsg. Soc. Ltd.

...Petitioner

V/s.

The State of Maharashtra & Ors.

..Respondents

Mr. Anand Pai a/w. Mr. Janay Jain, Ms. Diksha Shirodkar, Ms. Rochellen Fernandes, Ms. Sharmili Mhatre, Mr. Sachin Mhatre, for the Petitioner.

Mr. C.D. Mali, AGP for Respondent Nos.1 and 2.

Mr. Mayur Khandeparkar i/by. Mr. Yogesh Adhia, for Respondent No.9.

CORAM : SANDEEP V. MARNE, J.

Dated : 26 October 2023.

P.C. :

1. The challenge in the present petition is to the order dated 22 December 2017 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4) and Competent Authority granting unilateral deemed conveyance in favour of the Petitioner-Society. By order dated 22 December 2017, the Competent Authority has granted deemed conveyance of land admeasuring 535.90 sq.mtrs out of the total land admeasuring 991.90 sq.mtrs.

Petitioner has filed the present petition challenging the order dated 22 December 2017 to the extent it does not convey the balance 456 sq.mtrs of land in favour of the Petitioner-Society.

2. It appears that during pendency of the present petition, the Petitioner-Society filed an application for issuing a Corrigendum to the Certificate of Deemed Conveyance by claiming conveyance in respect of the land admeasuring 731.26 sq.mtrs. The Competent Authority has proceeded to reject that application by order dated 19 May 2022. Mr. Pai, the learned counsel appearing for the Petitioner-Society would submit that the said application for issuance of Corrigendum was erroneously filed by some of the members without any authority from the Society. That such application was erroneously filed on the strength of contents of para-5 of the Interim Application filed by Respondent No.9 before the Competent Authority. He would pray for leave to amend the petition for setting up a challenge to the order dated 19 May, 2022. However, considering the nature of order that is proposed to be passed in the present petition, in my view, amendment of the petition for setting up of challenge to the order dated 19 May 2022 would not be necessary.

3. It appears that in the agreement executed with the flat purchasers, the total land is described to be admeasuring 1187.26 sq.mtrs. However, it has now transpired that the actual area

of land as stated in the property card extract is only 991.90 sq.mtrs. In addition to the building of the Petitioner-Society, there appears to be some tenanted structure on the land. Respondent No.9 contends that by an Agreement dated 14 October 1985, an area admeasuring 456 sq.mtrs out of the total area of land admeasuring 991.90 sq.mtrs has been purchased by Respondent No.1. It is with this objection that Respondent No.9 intervened in the application for deemed conveyance filed by the Society seeking exclusion of land admeasuring 456 sq.mtrs, which according to Respondent No.9, belongs to him.

4. Mr. Pai, would seriously dispute such a purchase transaction by Respondent No.9 by virtue of Agreement dated 14 October 1985. According to Mr. Pai, the Agreement is insufficiently stamped and unregistered and would therefore not have any effect of transfer of title in the land. According to Mr. Pai, at the highest, Agreement seeks to create mere leasehold rights in favour of Respondent No.9. It is by raising these objections that the Petitioner-Society contends that the entire land admeasuring 991.90 sq.mtrs ought to have been conveyed to it by ignoring the transaction effected vide Agreement dated 14 October 1985.

5. In my view, there appears to be serious dispute between the parties as to the nature of transaction by which Respondent No.9 claims title in respect of the land admesuring 456

sq.mtrs. Such disputes cannot be raised before or decided by the Competent Authority while deciding the application for unilateral deemed conveyance.

6. By now, the law is well settled that the Certificate of Deemed Conveyance is not determinative of adjudication of rights and entitlements of parties to the land in question. Reference in this regard can be made to the judgment of this Court in **Mazda Constructions Company & Ors. V/s. Sultanabad Darshan CHS Ltd.** 2012 SCC Online Bom 1266, **ACME Enterprises V/s. Deputy Registrar Co-op. Societies & Ors.** 2023 (4) ABR 817 and also to the Division Bench judgment of this Court in **Tirupati Shopping Center Premises Co-operative Society Ltd. Vs. Shabayesha Construction Company Pvt. Ltd.** Writ Petition (St.) No. 9105 of 2021 decided on 22 April 2021. In my view, therefore parties will have to get their rights and entitlement to the land in question adjudicated before the Civil Court by filing appropriate proceedings. Accordingly, the present petition is disposed of reserving the remedy for the Petitioner-Society to file a civil suit to claim right, title and interest in respect of the remainder of the land admeasuring 456 sq.mtrs. If such suit is filed, all rights and contentions raised by the parties in the present petition are kept open. With the above clarification, the Writ Petition is **disposed of.**