

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2166 OF 2020

Link Promoters and Pokar Enterprises
V/S

....PETITIONER

District Deputy Registrar
Co-operative Societies & Ors.

....RESPONDENTS

...

WITH

INTERIM APPLICATION NO.31 OF 2023

IN

WRIT PETITION NO.2166 OF 2020

Shiv Parvati CHS Ltd.
IN THE MATTER BETWEEN

....APPLICANT

Link Promoters and Pokar Enterprises
V/S

....PETITIONER

District Deputy Registrar
Co-operative Societies & Ors.

....RESPONDENTS

...

Mr. Bhavin Gada with Ms. Pratibha Mehta for the Petitioner.

Mr. Ashok M. Saraogi a/w Mr. Amit Dubey for Respondent
No.3/Applicant/Society.

Mr. P.P. Pujari, AGP for the Respondent Nos.1 and 2/State.

...

CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 20, 2023.

P.C.:

1. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel appearing for the parties the Petition is taken up for final hearing and disposal.

2 The challenge in the Petition is to the order dated 25 September 2019 passed by the District Deputy Registrar of Co-operative Societies and the Competent Authority granting unilateral deemed conveyance of land admeasuring 2858 square meters bearing City Survey No.209A.

3 I have heard Mr. Gada, the learned Counsel appearing for the Petitioner and Mr. Saraogi, the learned Counsel appearing for the Society.

4 Perusal of the impugned order dated 25 September 2019 passed by the Competent Authority would show that the Petitioner made an attempt to impress upon the Competent Authority that it has an obligation to handover land beneath the Municipal Retail Market to the Municipal Corporation, which is a precondition for availing additional FSI for having build the Municipal Retail Market. The Competent Authority has taken into consideration possession receipt dated 4 November 2015 and has arrived at the finding that the obligation of the Petitioner is to transfer only the built-up of area of the Municipal Retail Market and not the land. In this regard the relevant findings recorded by the Competent Authority in paragraph 17 of the order reads thus:

“17. The applicant society has claimed plot of area 3831.20 sq.m. After detailed scrutiny of documents it is observed that the plot area in schedule of property in development agreement is 3821.20 sq.m. As per flat sale agreement area of plot is 3724.91 sq.m. However as mentioned earlier in clause no.3, the area of said plot bearing City Survey No.209A is 2858 sq.m.

As per the possession receipt dated 04/11/2015 issued by the MCGM, it appears that, 729.34 sq.m. built up area in wing "A" and 38.48 sq.m. built up area on ground floor of wing "B". total 768.82 sq.m. built up area (Municipal Retail Market) situated on property bearing C.T.S. No.209A of village Asalpha, Kurla (W), L ward is taken over in possession by the Asst. Engineer (Market) from Assistant Engineer (Impt)-1 (Estates) and further as per clause no.6 of the said possession receipt the owner/developer has to transfer the ownership of the built up amenity in favour of MCGM. Accordingly only the built up area 768.82 sq.m. (Municipal Retail Market) is to be transferred to MCGM and not the land by the Respondents on which the building of applicant society & the built up amenity (Municipal Retail Market) are situated. Therefore, it is clear that the applicant society is entitled for a unilateral deemed conveyance of plot of land of area 2858 sq.m."

5 Mr. Gada would invite my attention to the certain additional documents in the form of letter dated 30 September 1993. Paragraph 4 of the said letter dated 30 September 1993 reads thus:

"4. That the IOD & CC shall be given in phases. In the first phase, the IOD and C.C. will be given for permissible F.S.I. taking built up area of the Municipal Retail market to be handed over to the M.C.G.B. also in F.S.I. computation. In the 2nd phase, after the built up accommodation for Municipal Retail Market is completed and handed over to the M.C.G.B. after execution of required lease agreement, subject to various terms & conditions as may be stipulated by the Municipal Commissioner, the remaining F.S.I. equivalent to the built up area of such Municipal Retail Market permissible under the D.C. Regulations will be permitted by approving amended plans."

6 Thus paragraph 4 of the letter dated 30 September 1993 provides for execution of lease agreement with the Municipal Corporation for Greater Mumbai. My attention is also drawn to condition No.5 of the

possession receipt dated 4 November 2015 in which an obligation has been imposed on the Petitioner to get the name of the Municipal Corporation mutated in the revenue records in respect of the Municipal Retail Market.

7 Whether the obligation to execute lease deed and to mutate the name of Municipal Corporation in revenue records would mean transfer of land beneath the Municipal Retail Market is something which is required to be considered by the Competent Authority. It appears that the Competent Authority has glossed over the condition No.5 in the possession receipt dated 4 November 2015. The Petitioner did not rely upon the letter dated 30 September 1993 which pertains an obligation for execution of lease agreement with the Municipal Corporation.

8 In my view, therefore, the proceedings are required to be remanded to the Competent Authority for being decided afresh, especially with regard to the obligation of the Petitioner with regard to the land beneath the Municipal Retail Market. The Competent Authority accordingly shall hear both the parties on the issue as to whether the Petitioner is under obligation only to handover the built-up area of the Municipal Retail Market or whether it is under obligation to handover even the land to the Municipal Corporation. If the Competent Authority comes to a conclusion that the Petitioner is under obligation to handover land to the Municipal Corporation, the area of the land will have to be deducted from the land

which can be conveyed to the Society. If on the other hand, the obligation is only to handover the built up area, the Society can continue to own the land and the Municipal Corporation can own construct structure.

9 Accordingly, the order dated 25 September 2019 passed by the Competent Authority is set aside. The Society's application for grant of deemed conveyance is restored on the file of the Competent Authority who shall proceed to decide the same on its own merits without being influenced by any of the observations made in the present order. Considering the fact that the Society is made to wait for abnormally long period of time for grant of conveyance, the Competent Authority is requested to decide the proceedings in an expeditious manner, preferably within a period of four months from today.

10 Parties shall co-operate with the Competent Authority for expeditious disposal of the proceedings. Parties would be at liberty to file additional replies/affidavits and documents in support of their contentions.

11 Mr. Saraogi would express an apprehension that setting aside the order of deemed conveyance would be interpreted by the Petitioner as a permission to put up additional construction at the site. Considering the limited aspect as to why the certificate of deemed conveyance is set aside, the Petitioner shall not carry out any additional construction at the site till the decision of the proceedings by the Competent Authority.

12 All contentions of the parties are left open to be raised and decided by the Competent Authority.

13 With the above directions, the Writ Petition is allowed and disposed of. Rule is made absolute.

14 In view of the disposal of the Writ Petition, the Interim Application does not survive and the same is disposed of accordingly.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
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+0530