

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8702 OF 2022

M/s. Gagan Emerald Co-op. Hsg.

Soc. Ltd.

...Petitioner

V/s.

M/s. Gagan Associates and Ors.

....Respondents

Mr. Mohd. Arshad Nehal a/w. Mr. Anshuman Deshmukh, for the
Petitioner.

Mr. Ridhikesh Uttarwar a/w. Ms. Pooja R. Thakur, Mr. Shrikant Patil,
Mr. Arjun Pawar, for Respondent Nos. 1 to 3.

Mrs. Vaishali S. Nimbalkar, AGP for Respondent No.5.

CORAM : SANDEEP V. MARNE, J.

Dated : 7 November 2023.

P.C. :

1. The challenge in the present petition is to the order dated 14 February 2022 passed by the District Deputy Registrar, Co-operative Societies, Pune and Competent Authority rejecting Petitioner's application filed under Section 11(3) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The reason for which the Competent Authority has rejected the Society's application for

unilateral deemed conveyance is pendency of Special Civil Suit No. 322/2021 in the Court of Civil Judge Senior Division, Pune. I have perused the plaint in Special Civil Suit No. 322 of 2021 which is filed in respect of the land admeasuring 3,865 sq.mtrs out of total land admeasuring 23,850 sq.mtrs. The Plaintiff-society has challenged the sale-deed dated 27 January 2021. The Society is already armed with an order of injunction in the said Suit. The issue of title of land admeasuring 3,865 sq.mtrs would ultimately be decided in Special Civil Suit No. 322 of 2021. In its application for deemed conveyance, the Plaintiff-Society had sought conveyance of the entire land admeasuring 23,850 sq.mtrs which also includes land admeasuring 3,865 sq.mtrs in respect of which the suit is already pending. In my view, the Society needs to file application for deemed conveyance in respect of the entire land admeasuring 23,850 sq.mtrs after decision of Special Civil Suit No. 322 of 2021. Liberty to that effect has already been granted to the Petitioner-Society by the Competent Authority.

2. The learned counsel appearing for the Petitioner would express an apprehension that the Society will have to unnecessarily wait till decision of Special Civil Suit No. 322 of 2021 even though the Developer had expressly agreed under the Agreement to convey entire land admeasuring 23,850 sq.mtrs. According to him, Society has a right to seek deemed conveyance of the entire land admeasuring 23,850 sq.mtrs and mere execution of an illegal sale-deed dated 27 January 2021 by the Developer, cannot prolong the conveyance of the entire land in Society's favour. The apprehension expressed by the

Petitioner about delay in conveying the property on account of pendency of the suit can be taken care of by making an appropriate application before the Civil Judge Senior Division for expediting the hearing of Sp. Civil Suit No. 322/2021. However, till such suit is decided, the Competent Authority cannot grant deemed conveyance atleast of land admeasurig 3,865 sq.mtrs. The Competent Authority has rightly returned the application for deemed conveyance filed by the Petitioner-Society. Petitioner may apply to the Civil Court for expediting Spl. Civil Suit No.322/2021. Once the suit is decided, the Society shall be entitled to file a fresh application for issuance of Certificate of unilateral deemed conveyance. With the above observations, the Writ Petition is **disposed of**.

SANDEEP V. MARNE, J.

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