

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4668 OF 2014
WITH
WRIT PETITION NO. 9296 OF 2015

Vibhushan Estate Pvt. Ltd. ... Petitioner

Versus

District Deputy Registrar Co-operative Societies, ... Respondents
Mumbai IV and the Competent Authority & Ors.

WITH
INTERIM APPLICATION (ST.) NO. 5004 OF 2023
IN

WRIT PETITION NO. 4668 OF 2014

Panch Ratna CHS Ltd. ... Applicant

In the matter between

Vibhushan Estate Pvt. Ltd. ... Petitioner

Versus

District Deputy Registrar Co-operative Societies, ... Respondents
Mumbai IV and the Competent Authority & Ors.

Mr. Chetan Kapadia, Senior Advocate a/w. Mr. Vishu Shah, Mr. Gautam Ankhad, Mr. Sunny Shah, Viral Shukla, Priti Shukla, Jalaja Nambiar i/b. M/s. Shukla & Associates for the petitioner.

Mr. Mayur Khandeparkar a/w. Mr. Mani Thevar, Mr. Jenil Shah i/b. Ganesh & Co. for respondent no. 2 in WP/9296/2015.

Mr. Mayur Khandeparkar a/w. Mr. Suray Iyer, Mr. Mani Thevar i/b. Jenil Shah for respondent no. 7 in WP/4886/2014.

Mr. Girish Godbole, Senior Advocate a/w. Priyanka Fadia i/b. Mr. Shashank Fadia for respondent no. 12 in Wp/4668/2014 for respondent no. 13 in WP/9296/2015.

Mr. Ashish J. Dubey for respondent no. 11 in WP/4668/2014 and for respondent no. 12 in WP/9296/2015.

CORAM: G. S. KULKARNI, J.
DATED: 02 March, 2023

P.C.

1. These are two petitions, which assail an order passed by the Competent Authority under section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 whereby a deemed conveyance granted in favour of respondent no. 2-Cooperative Societies is the subject matter of challenge.

2. I have heard learned counsel for the parties for sometime. It is seen from the record that in Writ Petition No. 4668 of 2014 there was an ad-interim order granted by the co-ordinate Bench of this Court on 5 May, 2014 while issuing notice to the respondents. The said order reads thus:

"ORDER

1. *Heard Mr. Dhakephalkar, learned senior counsel for the petitioner, Mr. Rayrikar, AGP for respondent no. 1 and Mr. Thatte, learned counsel for respondent no. 2.*

2. *Issue notice to rest of the respondents, returnable on 23 June, 2014.*

3. *Till the next date, the conveyance shall not be executed."*

3. Similarly, in Writ Petition No. 9296 of 2015, an ad-interim order was passed by the co-ordinate Bench of this Court on 21 September, 2015, which reads thus:

ORDER

1. *Heard the senior counsel for the petitioner on behalf of M/s. Vibhushan Estate Pvt. Ltd.*

2. *Issue notice to the respondent, returnable after 4 weeks.*

3. *In the meantime, the operation of the impugned order dated 28th June, 2015 in “Exhibit-A” to the petition shall remain stayed and no conveyance will be executed. Reply to be filed on or before 19th October, 2015. To be heard along with Writ Petition No. 4668 of 2014”*

4. Both the ad-interim orders have continued to operate till date. As the petitions were in fact not listed for admission, by an order dated 14 February, 2023, a report from the office was called for as to why the petitions were not listed. In pursuance of the said order, Registrar (Judicial) has placed on record his report dated 22 February, 2023 explaining the reasons thereof.

5. The Registrar (Judicial) shall place the report before C & I.T. Committee along with the order dated 14 February, 2023 passed by this Court.

6. Be that as it may, after the proceedings were heard for sometime, Mr. Kapadia, learned senior counsel for the petitioners, on instructions, makes a statement that without prejudice to the rights and contentions of the petitioners, the petitioners are willing to file a Civil Suit in regard to the subject matter of the present proceedings. He submits that to enable the petitioners to file a suit, ad-interim protection granted by this Court vide orders dated 5 May, 2014 and 21 September, 2015 (supra), which has continued to operate for a long time, be continued for a period of 5 weeks.

7. Mr. Murthy and Mr. Khandeparkar, learned counsel appearing for the respective Cooperative Societies, in whose favour conveyance has been granted

by the impugned order, are not averse to the petitioners taking recourse to such remedy. Mr. Murthy and Mr. Khandeparkar would, however, submit that the petitioners ought not change their position and shall not utilize the FSI and TDR in respect of the area of which conveyance has been granted in favour of the petitioners, by the orders impugned in the present petitions. In my opinion, such suggestion as made by Mr. Murthy and Mr. Khandeparkar is required to be accepted.

8. By keeping open all contentions of the parties in that regard, the petitions are accordingly disposed of by the following order:

ORDER

- (i) Liberty to the petitioners to file a Civil Suit in regard to the subject matter of the proceedings. Let the suit be filed before the appropriate Court within a period of five weeks from today.
- (ii) To enable the petitioners to file a Civil Suit, for a period of 5 weeks from today, the ad-interim protection granted by this Court by orders dated 5 May, 2014 and 21 September, 2015 (supra), shall continue to operate for a period of 7 weeks from today, subject to the petitioners not changing their position, namely, that the petitioners shall not utilize FSI and TDR in respect of the area in regard to which conveyance has been

granted in favour of the respondent/Society, by orders of deemed conveyance as impugned in the present petitions.

(iii) All contentions of the parties on merits are expressly kept open.

(iv) It is clarified that in the event, no suit is filed within a period of 5 weeks from today, ad-interim protection continued by this order shall stand forthwith vacated.

9. Disposed of in the above terms. No costs.

10. At this stage, Mr. Murthy, learned counsel for the respondent-Society has brought to the notice of the Court that the condition of the building in regard to his client is extremely dangerous, hence, it would be necessary to vacate the building as also commence redevelopment. Mr. Kapadia states that the contentions of Mr. Murthy are not correct and in fact the building is repaired. Be that as it may, all contentions of the parties in that regard are expressly kept open.

11. Needless to observe that the residents of the said building will have to take appropriate call whether to continue to occupy the building and if they desire to occupy the building, they shall do so at their own costs and consequences, and without holding any party/officials liable in the event of an

unfortunate collapse. In such context, it is also required to be clarified that the dispute in the present proceedings concerns only the conveyance rights and it shall not affect any rights of the residents of the said building to have any alternate premises in the event a decision for redevelopment of the building is being taken.

12. All contentions of the parties in regard to any issue on redevelopment are expressly kept open.

13. In view of disposal of Writ Petition No. 4668 of 2014, Interim Application would not survive and the same is accordingly disposed of.

(G. S. KULKARNI, J)