

Dusane

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

WRIT PETITION NO.5605 OF 2023

Nikunj Developers

...Petitioner

V/s.

State of Maharashtra & Anr.

...Respondents

Mr. Girish B. Kedia for Petitioner.

Smt. M.S. Srivastava, AGP for State- Respondent
Nos. 1 and 2.

Ms. Jonita D'Abreo i/by JRA Law Associates for
Respondent No. 3

CORAM: MADHAV J. JAMDAR, J.

DATE: 23rd August 2023

P.C.:

1. Heard Mr. Kedia, learned Counsel appearing for the Petitioners, Ms. Srivastava, learned AGP appearing for Respondent Nos. 1 and 2 and Ms. Jonita D'Abreo, learned Counsel appearing for Respondent No.3.

2. By the present Writ Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the legality and validity of the order dated 30th September 2013 passed by Respondent No. 2, the Competent Authority- District

Deputy Registrar, Thane (Now Palghar), by which deemed conveyance has been granted in favour of Respondent No.3-Society.

3. It is the contention of Mr. Kedia, learned Counsel appearing for the Petitioners that apart from two Wings, which are constructed by the Society, three row houses are also proposed to be constructed. To substantiate said contentions, he relies on permission by way of a Commencement Certificate dated 26th September 1995 issued by CIDCO and sanction plan.

4. Learned Counsel appearing for Respondent No. 3 submitted that the occupation certificate is issued in March 1999 for 'A' Wing and in January 2000 for 'B' Wing, part occupation certificate is granted. The Society has been registered on 20th October 2002. Admittedly, the Petitioner is a promoter, within the meaning of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("**MOFA**" for short). It is the statutory responsibility of the promoter to execute conveyance deed in favour of the Society within 4 months from the registration of the Society. The Society has been registered in the year 2002 and the Petitioner has given possession to the flat purchasers in the year 2000. As the Petitioner has failed in fulfilling their statutory duty, the Respondent No. 3 was constrained to approach the

Competent Authority i.e. District Deputy Registrar, Thane (Now Palghar) and accordingly the impugned order has been passed on 30th September 2013. Mr. Kedia states that the conveyance deed has been registered on 30th September 2002.

5. Therefore this is not the case where an interference of this Court is warranted in the impugned order under Articles 226 and 227 of the Constitution of India.

6. However, it is clarified that as held by this Court in number of cases including **Mazda Construction Co. Vs. Sultanabad Darshan Co-op. Housing Society Limited¹**, **M/s Shree Chintamani Builders Vs. State of Maharashtra & Ors.²** and **ACME Enterprises & Anr. Vs. Deputy Registrar, Co-operative Societies & Ors.³**, the order granting deemed conveyance will not conclude the issue of right, title and interest in immovable property and therefore the Petitioner is at liberty to file civil suit to establish their right to the property. All contentions in that behalf of both the parties including regarding limitation are expressly kept open.

7. Accordingly, the Writ Petition is dismissed subject to above clarification.

(MADHAV J. JAMDAR, J.)

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1 2012 SCC Online Bom 1266 : [2013 (2) All MR 278]
2 2016 SCC Online Bom 9343
3 2023 SCC Online Bom 1102