

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7007 OF 2018

Shadmik Apartment Builders &
Developers & Ors.

....PETITIONERS

V/S

The State of Maharashtra & Ors.

....RESPONDENTS

...

WITH

CIVIL APPLICATION NO.1957 OF 2018

IN

WRIT PETITION NO.7007 OF 2018

M/s. Joshte Constructions Pvt. Ltd.

....APPLICANT/INTERVENER

IN THE MATTER BETWEEN

Shadmik Apartment Builders &
Developers & Ors.

....PETITIONERS

V/S

The State of Maharashtra & Ors.

....RESPONDENTS

...

Mr. Rajas Naik with Mr. Sunny Pardeshi i/b Ms. Sushma Mishra for the
Petitioners.

Mr. P.P. Pujari, AGP for Respondent Nos.1 to 4 and 6/State.

Mr. A.R. Gole for Respondent No.5.

Mr. Asadullah Shaikh i/b Mr. Sahilendra Singh for the Intervener in CAW.

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CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 01, 2023.

P.C.:

1 Rule. Rule is made returnable forthwith. By consent of the parties
the Writ Petition is taken for final hearing.

2 By this Petition, Petitioners challenge order dated 22 December 2017 passed by the District Deputy Registrar of Co-operative Societies & Competent Authority, Thane, granting unilateral deemed conveyance of land admeasuring 1806.44 square meters in favour of the Respondent-Society.

3 Perusal of the Reply filed by the Petitioner before the Competent Authority would indicate that the Petitioners had specifically pleaded in their Reply that there are total 10 constructions on the land. The learned Counsel appearing for the Petitioners has placed on record a map which also shows that in addition to two buildings of the Society, there are several other structures on the land in question. In the Reply it is further pleaded that most of tenanted structures have been demolished for the purpose of construction of the building.

4 Though the aforesaid contentions were raised before the Competent Authority, while passing order dated 22 December 2017, the Competent Authority has not applied his mind to these contention. The Competent Authority has only held that though suits are pending in Civil Court, there is no order of injunction. However, Competent Authority has completely glossed over specific objections raised by the Petitioners that there were other structures on the plot of land which need to be rehabilitated by construction of a fresh building. In fact, Mr. Gole appearing for the Respondent-Society has contended that in the year

1992 a commencement certificate was obtained by the Petitioners for construction of one more building on the plot of land. This contention on behalf of the Respondent-Society actually buttresses the case of the Petitioners that there are possible rights of other occupants in respect of the land conveyed to the Society

5 Mr. Gole's contention that if there are indeed any tenants on the plot of land in question, they can become tenants of the Society does not cut any ice. If at all there are any additional structures on the plot of land and any new construction is required to be put in for the purpose of accommodation of occupants of those structures, this objection ought to have been taken into consideration and dealt with by the Competent Authority. It appears that the Competent Authority has not applied his mind to the exact area out of the plot of land, which would be conveyed to the Respondent-Society. It appears that neither the Society nor the Developer produced any Architect's certificate to show the exact area of land required for the purpose of sustaining the FSI utilized for construction of the two buildings of the Society. All these aspects will have to be taken into consideration by the Competent Authority while deciding the issue of grant of unilateral deemed conveyance of the land in favour of the Society.

6 Mr. Gole had relied upon the judgment of this Court in ***Zainul Abedin Yusufali Massawawala & Others vs. The Competent Authority***

District Deputy Registrar of Co-operative Housing Societies, Mumbai & Ors. (Writ Petition No.2163 of 2014, OS, decided on 29 June 2016) in support of his contention that the dispute with regard to the area of land to be conveyed is beyond jurisdiction of Competent Authority and that the correct remedy available to the affected party is to file a suit. There can be no dispute to this proposition. However, in the present case the Competent Authority has not applied his mind to the specific objection raised by the Petitioners about existence of other structures in the plot of land who also may have claims in the land conveyed to the Society. For this limited purpose, the proceedings are required to be remanded to the Competent Authority for being decided afresh.

7 Accordingly, order dated 22 December 2017 passed by the Competent Authority is set aside and the application filed by the Respondent-Society for grant of deemed conveyance is restored on the file of District Deputy Registrar cum Competent Authority, Thane, who shall decide the same afresh without being influenced by any of the observations made in the order dated 22 December 2017 and in the present order.

8 The Competent Authority shall decide the remanded proceedings notwithstanding pendency of Writ Petition No.7571 of 2018.

9 With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute.

10 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.)