

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

WRIT PETITION NO.6462 OF 2018

M/s. Paramount Builders and Developers
A partnership Firm through its Partners
Vaibhav S. Sant & Anr.

... Petitioners.

Versus

The State of Maharashtra & Ors. 11

... Respondents.

...

Mr. Shailesh Kanetkar for Petitioners.

Mr. P. P. Pujari, AGP for Respondent Nos.1 to 3 State.

Mr. Rohan P. Surve, for Respondent No.4.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 14 SEPTEMBER 2023.

P. C. :

Petitioner challenges order dated 05 May 2016 passed by the competent authority granting unilateral deemed conveyance of land Adm.5777.83 sq. mtr. and constructed area adm. 6113.80 sq. mtr. situated at Survey No.39/4, village Baner, Tal. Haveli, Dist. Pune in favour of Respondent No.4-Society.

2. I have heard Mr. Kanetkar the learned counsel appearing for Petitioner. He would submit that the competent authority could not have conveyed the entire land in favour of Society which far exceeds its

entitlement. Inviting my attention to the reply filed before the competent authority he would submit that Petitioner is in possession of vacant plot adm. 2107.39 sq. mtr which is available for future development. That the impugned order results in the said plot adm. 2107.35 sq. mtr also being conveyed to the Society. He would submit that under the MOFA agreement, specific discloser was made to the flat purchasers that the developers had retained the right enjoying balance F.S.I. and TDR. He would submit that considering the TDR potential, the balance FSI available on the plot is 3055.90 sq. mtr which falls to the entitlement of the Petitioner. That in such circumstances this was not a building comes to competent authority could have been granted unilateral deemed conveyance in favour of the Society. Alternatively Mr. Kanetkar submit that even if deemed conveyance was to be granted to the society, the same ought to have been only in respect of area admeasuring 4965.10 sq. mtr. That the Respondent No.2 has erroneously granted deemed conveyance of area adm. 5777.83 sq. mtr. He would therefore prayed for setting aside the order passed by the competent authority.

3. Mr. Survey would appear on behalf of Respondent No.4 Society oppose the petition. He would submit that in pursuance of order of deemed conveyance passed by the competent authority, the instrument of unilateral deemed conveyance dated 03 April 2017 has already been registered by the Sub-Registrar, Haveli, Dist. Pune. Society has already acquired ownership in respect of the land in question. He would further submit that under the MOFA agreement the clear representation was

made to the flat purchasers that the entire area has been taken up for development. No separate plot carved out for carrying out any other further development. That there is entire land was meant for construction of the Society's building. He would submit that the competent authority has rightly calculated area coming to the share of the Society for grant of deemed conveyance and since there is no perversity in the findings of the competent authority, interference by this Court in the order is not warranted.

4. I have also heard Mr. Pujari AGP for State of Maharashtra.

5. After having heard the submissions canvassed by the learned counsels for the parties, it is seen that the Petitioner was initially opposed to formation of co-operative society by the flat purchasers. Litigation has taken place between Petitioner-Developer and the Society on the issue of formation of Society. By order dated 13 November 2014 the competent authority permitted registration of the Society. This Court upheld the order of competent authority by order dated 09 December 2015 passed in Writ Petition (Stamp) No.13347 of 2015.

6. The possession of the flats has been handed over to the flat purchasers on or about 01 April 2012. The Society was required to approach competent authority for grant of unilateral deemed conveyance on account of failure on the part of Petitioner to convey the land. It appears that the total area of the land as per the revenue record is 6856.27 sq. mtr. However the area of land taken up for development

under the sanctioned plan is 5777.83 sq. mtr. The competent authority has therefore granted deemed conveyance of land only in respect of area admeasuring 5777.83 sq. mtr. and not in respect of entire land admeasuring 6856.27 sq. mtr. As per the calculations submitted by Petitioner, it was suggested that there is TDR potential of 2979.06 sq. mtr. However for the purpose of considering entitlement of the Society for conveyance of the land, the exact area of the land used for grant of development permission is required to be taken into consideration and the potential towards TDR, insentive FSI, etc. become irrelevant. The Petitioner also attempted to deduct various areas towards open space, amenity space, internal road, transfer of the area without providing any base for such deduction. Once it is proved that the area shown for obtaining development permission is 5777.83 sq. mtr, no error can be found in the order of the competent authority in ordering unilateral deemed conveyance in respect of area adm. 5777.83 sq. mtr. Mr. Kanetkar's reliance on Clause-8 of the MOFA agreement would also no cut any ice as the agreement did not carved out any specific area / plot for future development. There is no discloser in the agreement of the flat purchasers that the Petitioner was proposing to carry out further development of any specified portion of land. Therefore mere vague covenant in the agreement about entitlement of the developer to enjoy available FSI or TDR would not entitle it to deny conveyance to the Society of flat purchasers.

7. I therefore do not find any patent error in the order of the competent authority granting unilateral deemed conveyance. It is otherwise well settled law that the order of unilateral deemed conveyance is not determinative of any rights and entitlement of parties in respect of land in question and that the parties are free to adopt remedies available under the law to establish their rights. Reference in this regard can be made to the judgment of Division Bench of this Court in **Tirupati Shopping Center Premises Co-operative Society Ltd. Vs. Shabayesha Construction Company Pvt. Ltd.**, Writ Petition (Stamp) No.9105 of 2021 decided on 22 April 2021.

8. Accordingly all the rights and contentions of the parties in any such proceedings, if initiated, are kept open.

9. Writ Petition is accordingly dismissed with no order as to costs.

SANDEEP V. MARNE, J.

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