

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5912 OF 2016**

Clara Simon Mendoza and Ors.

...Petitioners

V/s.

State of Maharashtra and Ors.

...Respondents

Mr. Akshay Patil a/w. Ms. Devika Medkar, Mr. Mohan Salian, Ms. Harshita Kotian i/by. MGS Legal, for Petitioners.

Mr. C.D. Mali, AGP for Respondents No.1 to 3.

Mr. Sandesh Deshpande a/w. Mr. Bhavesh Bhatia for Respondent No.4.

CORAM : SANDEEP V. MARNE, J.

DATED : 6 SEPTEMBER 2023.

P.C. :

1. By this petition, Petitioners challenge order dated 30 September 2014 passed by the Competent Authority granting deemed conveyance of the property in favour of Respondent No.4-Society.

They also challenge order dated 21 November 2014 rejecting the Review Petition.

2. There is a dispute between Petitioner-original owners of the land-and the Society over conveyance of the land admeasuring 1855.10 sq.mtrs at C.T.S. No.900, 903 and 901 at Village-Kanjur, Bhandup, Mumbai. Petitioners are also members of the society holding 11 flats in the Society's building under the Agreement of Sale dated 25 November 1980. They however contend that the entire land was never meant to be used for development and an area admeasuring 2000 sq. ft was to be kept out in their ownership. The Competent Authority has granted deemed conveyance of the entire land in Society's favour vide order dated 30 September 2014. Petitioners' Review Petition is rejected on 21 November 2014. Hence the present petition.

3. I have heard Mr. Akshay Patil, the learned counsel appearing for Petitioner. He would submit that under the Agreement of Sale dated 25 November 1980 executed between the original owners (whom Petitioners represent) and the Developer, it was specifically agreed that out of the total land admeasuring 1855.10 sq.mtrs at C.T.S. No.900, 903 and 901 at Village-Kanjur, Bhandup, Mumbai, the land admeasuring 2000 sq.ft alongwith the structures standing thereon was kept out of the development. Inviting my

attention to Clauses-1, 2, 3, 8 and 9(b) of the Agreement to Sale dated 25 November 1980, Mr. Patil would contend that the land admeasuring 2000 sq.ft was not the part of the development agreement and the same was to remain in ownership of Petitioners. He would further place reliance on additional Agreement for Sale dated 5 November 1999 and inviting my attention to Clauses-2 and 4 thereof, he would contend that the said additional Agreement to Sale would leave no matter of doubt that the area admeasuring 2000 sq.ft remained in the ownership of Petitioners. He would submit that the Competent Authority has erroneously granted deemed conveyance in favour of the Society in respect of the entire land admeasuring 1855 sq.mtrs.

4. *Per-contra*, Mr. Deshpande the learned counsel appearing for Respondent No.4-Society would oppose the petition and support the order passed by the Competent Authority. I have also heard the learned AGP appearing for Respondents No.1 to 3.

5. After considering the submissions canvassed by the learned counsels appearing for the parties, it is seen that the Petitioners have sought to create a dispute about the exact area of land that was given for development under Agreements for Sale executed on 25 November 1980 and 5 November 1999. The said dispute is sought to be created by the Petitioners on the basis of covenants of the said two

agreements. However, perusal of the two replies filed by the Petitioners before the Competent Authority would show that the contention of area of 2000 sq.ft being kept out of development in those Agreements was not raised before the Competent Authority in any manner. Therefore, there was no occasion for the Competent Authority to consider the said defence of the Petitioners. Petitioners themselves are members of the Society since the original owners were allotted 11 flats in the constructed building. Before the Competent Authority, the main defence adopted by the Petitioner-Alex Simon Mendoza- was that he wanted to undertake the development of the land in his capacity as the landlord. He never contended that an area admeasuring 2000 sq.ft is owned by him nor he urged before the Authority to carve out land admeasuring 2000 sq. ft from deemed conveyance. Another reply appears to have been filed by Mr. Alex Mendoza on 21 May 2014 in which he contended that the Developer did not complete the project and did not utilize the entire available FSI and that FSI of 264 sq.mtrs is still available which is owned by him. Thus, the defence taken before the Competent Authority is of altogether different nature than the case which is now sought to be projected in the petition.

6. In that view of the matter, no error can be traced in the order of the Competent Authority granting deemed conveyance of the property in favour of the Society.

7. It is well settled that order of deemed conveyance passed by the Competent Authority does not create title in respect of the property conclusively in favour of the society. A reference in this regard can be made to the Division Bench Judgment of this Court in ***Tirupati Shopping Centre Premises Coop Society Ltd. Vs. Shabayesha Construction Company Private Limited***, Writ Petition (St.) No. 9105 of 2021 decided on 22 April 2021

55. In our view, the proceedings under Section 11 of the MOFA are filed in view of the default committed by the promoter to execute a Deed of Conveyance in favour of the society by complying with its application under the provisions of the MOFA by executing a Deed of Conveyance. The Competent Authority is thus empowered to pass an order of Deemed Conveyance ex-parte. Such order passed by the Competent Authority does not create title in respect of such property conclusively in favour of the society. Such an order of Deemed Conveyance is subject to the final adjudication of title in the appropriate Civil proceedings either before the Civil Court or by Arbitral Tribunal in case of their being an Arbitration Agreement between the parties. There is no such provision under MOFA that the order passed by the Competent Authority under Section 11 of the MOFA is final in all respect including on the issue of title in the property and bars the Civil Court or the Arbitral Tribunal from deciding the issue of title independently.

8. If Petitioners have any claim of ownership to any portion of the land in respect of which deemed conveyance is granted, it is always open for the Petitioner to adopt appropriate civil remedies by

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filing a suit to claim such ownership rights. As far as the order of Competent Authority granting deemed conveyance is concerned, the same cannot be set aside only on the ground that Petitioners have now claimed ownership in respect of the land admeasuring 2000 sq.ft. Petitioner will have to independently establish the right of alleged ownership in that piece of land.

9. I therefore do not find any merit in the petition. The Writ Petition is accordingly **dismissed**. However, it will be open for the Petitioner to agitate their right, title or interest in any portion of land by filing appropriate proceedings before the appropriate forum.

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SANDEEP V. MARNE, J.