

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

WRIT PETITION NO.7270 OF 2023

Chandrakant Bhogilal Mistry & Anr.	...Petitioners
Versus	
District Deputy Registrar	
Co-operative Societies, Mumbai City (4) & Ors.	...Respondents

Ms. Siddhi Bhosale, for the Petitioners.

Mr. S. D. Rayrikar, AGP, for the Respondent-State.

Mr. Shripad Murthy i/b. Mr. Abhishek Patil, for Respondent No.2.

CORAM : MADHAV J. JAMDAR, J.

DATED : 28th AUGUST 2023

P.C. :

1. Heard Ms. Siddhi Bhosale, learned counsel appearing for the Petitioners, Mr. Shripad Murthy, learned counsel appearing for Respondent No.2 and Mr. S. D. Rayrikar, learned AGP appearing for the Respondent-State.

2. In the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 1st March 2023 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4)-Competent Authority under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction,

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Sale, Management and Transfer) Act, 1963 granting deemed conveyance.

3. It is the contention of Ms. Bhosale, learned counsel appearing for the Petitioners that although the Architect Certificate states that only conveyance of land admeasuring 805.39 sq.mtrs. can be granted in favour of the Respondent No.2-society, by the impugned order conveyance has been granted of the entire land. On the other hand, Mr. Murthy, learned counsel appearing for Respondent No.2 supported the impugned order.

4. The factual position on record shows that although in the Architect's Certificate, it has been mentioned that the conveyance in favour of Respondent No.2-society be granted only with respect to land admeasuring 805.39 sq.mtrs., however, perusal of the agreement dated 6th November 1993 executed by promoter in favour of one of the purchasers shows that the total land as described in 1st schedule is 2148 sq.mtrs. The recital Nos.(x), (xi) and (xii) of said agreement are very relevant and the same read as under:-

“(x) The Purchaser/s is/are informed and are aware that **portion of the said property admeasuring**

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1342.61 Sq. meters or thereabouts is occupied by the tenants and/or unauthorised occupants and more particularly described Thirdly in the First Schedule hereunder written and which is shown on the plan hereto annexed in Yellow Colour, hereinafter referred to “as the said demise premises”.

(xi) The Promoter has retained the said demise premises and more particularly described Thirdly in the First Schedule hereunder written and the Purchaser/s his/her/ their nominees, successors and assigns (including a Co-operative Society) shall immediately simultaneously therewith to execute and registering an Indenture of perpetual Lease in favour of the Promoter in respect of the said demise premises more particularly described Thirdly in the First Schedule hereunder written, at the month lease rent of Rupee One per year, if demanded. A draft of the proposed lease is seen varified and approved by the flat purchaser/s.

(xiii) The Promoter has proposed to construct on the portion of the said property admeasuring 805.39 Sq. mtrs. or thereabouts, a new multy storied buildings of ground plus four or more upper floors (hereinafter referred to as the “said Building/s”) and more particularly described Fourthly in the First Schedule hereunder written and which is

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shown in the plan hereto annexed in Green Colour
(hereinafter referred to as the said “land”).”

(Emphasis added)

5. The descriptions set out in the said schedule in the said agreement is set out hereinbelow:-

Sr. No.	C.T.S. No.	Area as per Approved Plan (in Sq.mt.)	Reservation Area Deductions if any (in Sq.mt.)	Balance Net Plot Area for Calculations (in Sq.mt.)	Remarks/Observations/ Reservation
1.	399 (Part)	805.39	---	805.39	Land Under Development
2.	399 (Part)	17.77	17.77	---	Land Under Development
3.	399 (Part)	433.22	433.22	---	Land Under Access Road
4.	399 (Part)	559.72	559.72	---	Land Under HD
5.	399/1 to 29	337.60	337.60	---	Land Under HD
TOTAL AREA		2153.70	1348.31	805.39	---

6. Therefore, the Competent Authority by taking into consideration the Architect Certificate as well as the above recitals of the agreement has passed the impugned order. Therefore, there is no substance in the contention to Ms. Bhosale, learned counsel appearing for the Petitioners.

7. Mr. Murthy, learned counsel appearing for Respondent No.2 at this stage, states that not only the conveyance but also the lease deed in accordance with the impugned order has also been executed.

8. However, in the light of decisions in **Mazda Construction**

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Company & Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.¹ **M/s. Shree Chintanami Builders vs. State of Maharashtra & Ors.**² **Angeline Randolph Pereira & Ors. vs. Suyog Industrial Estate Premises Co-operative Society Ltd. & Ors.**³, it is settled legal position that the order granting deemed conveyance doesn't decide the title. Therefore, although no interference under the writ jurisdiction is warranted, the Petitioners are at liberty to file appropriate proceedings for establishing their title to the said property. It is clarified that the said proceedings shall be decided on its own merits and uninfluenced by this order as well as order granting deemed conveyance.

9. It is further clarified that all the contentions of both the parties on merits are expressly kept open.

10. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]

1 2012 SCC Online Bom 1266

2 2016 SCC Online Bom 9343

3 Writ Petition No.4373 of 2017