

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8514 OF 2018

Prashanti Co-operative Housing Society Limited ...Petitioner

Versus

District Deputy Registrar of Cooperative Society
and Ors. ...Respondents

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Mr. Akash Rebello a/w Ms. Purvi Asheri, Ms. Sayali Puri, Mr. Mohammed Lokhandwala i/by Mansukhlal Hiralal & Co. for Petitioner.

Mr. Piyush Raheja i/by Mr. Rajesh Parwani, for Respondent Nos.2 to 5.

Mr. Sandeep Maurya, for Respondent No.6.

Mr. P. P. Pujari, A.G.P. for Respondent No.1.

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CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 25 2023.

P.C.:

1. Petitioner-Society has filed this Petition challenging order dated 31 May 2016 passed by District Deputy Registrar, Co-operative Societies, Mumbai City (4) and Competent Authority rejecting the application filed by Petitioner-Society for grant of unilateral deemed conveyance.

2. I have heard Mr. Rebello, the learned counsel appearing for Petitioner, Mr. Raheja, the learned counsel appearing for Respondent Nos. 2 to

5, Mr. Maurya, the learned counsel appearing for Respondent No.6 and Mr. Pujari, the learned A.G.P. appearing for Respondent No.1.

3. Perusal of the impugned order dated 31 May 2016 would indicate that the main reason why the Competent Authority had rejected the application for deemed conveyance is the alleged amalgamation of plot of Petitioner-Society with the neighbouring plot of Nirmal's Nest Cooperative Housing Society. ("**Nirmal's Nest**"). Another ground for rejection is non-impleadment of Nirmal's Nest Society. I find both the grounds of rejection to be totally untenable. Firstly, there is no concrete evidence of two plots being amalgamated. Reliance is placed on a communication issued by the Municipal Corporation on 19 October 2007 for the purpose of arriving at a conclusion that there is amalgamation of plots bearing C.T.S. No.2403 of Plot Eksar and C.T.S. No.436 of Village Borivali. The relevant portion of the communication reads thus:

“ Your plans submitted of the layout/amalgamation of above plot along with your letter dated 20.10.2006 are approvable as they are as per Development Control Rules, subject to the terms and conditions already registered under No.BDR2-06908-2007 dated 16.10.2007. These terms and conditions of the layout shall be binding not only on the Owners for the time being but also on their heirs executors, administrators, assignees and every person deriving title through or under them. Final approval to the

amalgamation/layout will be given after you construct the roads including lighting, drainage, sewerage, etc and recreation amenity spaces is developed by leveling and adequate number of trees are provided on the same. You will please make it clear to your client that in case of breach of any of the terms and conditions, the deposit amount is liable to be forfeited and the permission granted liable to be revoked.”

4. The communication of Municipal Corporation dated 19 October 2007 would indicate that the Municipal Corporation had merely stated that the proposal of amalgamation was "approvable". The communication does not approve the amalgamation nor effects such amalgamation. Furthermore, the amalgamation of plots will have to be done by Revenue Authorities and not by Municipal Corporation. Municipal Corporation, being a Planning Authority, may consider whether joint development could be carried out on two neighbouring plots. Actual amalgamation of two C.T.S. numbers will have to be ultimately approved by the revenue authorities. Furthermore even if such amalgamation was to take effect on the basis of communication dated 19 October 2007, the same would have no effect on right of Petitioner-Society to seek deemed conveyance in respect of plot bearing C.T.S No.436, Village Borivali. It is submitted that a common developer appointed by Petitioner and Nirmal's Nest Society, who had decided to construct building on both plots

and had moved a proposal before MCGM for sanctioning plans on amalgamated plots. That the said developer had already been removed and at present there is no proposal for effecting joint development on two plots. Be that as it may. The amalgamation has not actually been effected and even if it was to be effected, the same would not defeat the right of the Petitioner-Society to seek deemed conveyance.

5. The ground of non impleadment of Nirmal's Nest Society for rejection of unilateral deemed conveyance by the competent authority is also unfounded. The Petitioner-Society is claiming deemed conveyance of land on which its building is standing. For considering that application, why presence of neighbouring society is necessary is difficult to fathom. I am therefore of the view that the presence of Nirmal's Nest Society is not necessary while deciding application for grant of unilateral deemed conveyance in favour of Petitioner-Society.

6. I therefore find that the impugned order dated 31 May 2016 passed by the competent authority to be indefensible. The competent authority is required to ignore the aspect of amalgamation and reconsider the application filed by Petitioner-society for grant of deemed conveyance. Accordingly, order dated 31 May 2016 is set aside and the proceedings are

remanded to the competent authority for a fresh decision. All contention of parties, except on issues of amalgamation and joinder of Nirmal Nest Society, are let open.

7. The Writ Petition is accordingly partly allowed.

(SANDEEP V. MARNE, J.)