



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8526 OF 2022

Smt. Deepika Shrikant Shukla And Ors.

...Petitioners

vs.

Om Jagannath Apartment Co. Op.

Hsg. Soc. Ltd. And Ors.

...Respondents

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Mr. Subhradeep Banerjee, i/b. J.P. Jayswal, for the Petitioners.

Mr. Santosh Pathak, a/w. Mr. Kailash Pathak, for Respondent No.1.

Mr. C.D. Mali, AGP, for Respondent State.

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CORAM : SANDEEP V. MARNE, J.

DATE : 19th DECEMBER 2023

P.C. :

1. By the present petition, Petitioners challenge the order dated 6th February 2019 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4) and the competent authority granting unilateral lease assignment of land admeasuring 779.40 sq.mtrs. in favour of the Respondent Society.

2. The main contention of the Petitioners is that the application for deemed conveyance was filed in the name of dead persons by reflecting wrong address. It is contended that the society was aware of death of Devidas Amarnath Verma and Gulabdas Amarnath Verma and the Society had, in fact, filed an application before the City Civil Court for bringing legal heirs of Devidas Amarnath Verma and Gulabdas Amarnath Verma on

record in S.C. Suit No. 1424 of 1995. It is, therefore, contended that the certificate of deemed conveyance is obtained by practicing fraud on the competent authority. The learned Counsel for the Respondent Society does not dispute the position that Devidas Amarnath Verma and Gulabdas Amarnath Verma were dead as on the date of filing of the application. Since the society brought the legal heirs of Devidas Amarnath Verma and Gulabdas Amarnath Verma on record in S.C. Suit No.1424 of 1995, it cannot be contended by the society that it was not aware about their death. Thus, the action of the society in filing an application for deemed conveyance against the dead persons is required to be deprecated.

3. In ordinary course, this Court would have been justified in setting aside the order passed by the competent authority and in remanding the proceedings for decision afresh after bringing on record legal heirs of the deceased opponents. However, in the present case, the society had filed S.C. Suit No.1424 of 1995, which came to be decreed by order dated 5th November 2004 directing the defendants therein to execute lease in favour of the society. The decree is passed on account of mutual consent of plaintiff and defendants in that suit. Thus, there is already determination of rights and entitlements of the society to the land in question in view of decree dated 5th November 2004. It appears that the application for deemed conveyance was required to be filed on account of the defendants in the suit not acting as per the decree. Thus, in my view, the competent authority has performed a ministerial task of issuing deemed conveyance certificate on account of failure on the part of the owners to execute lease of the land as per the decree dated 5th November 2004. In that view of the matter, the Petitioners do not have any possible defence in respect of a deemed conveyance certificate. Thus, no purpose would be

served in setting aside the order of deemed conveyance dated 6th February 2019 and in remanding the proceedings for decision afresh after bringing the names of the Petitioners on record. Also of relevance is the fact that the unilateral deemed conveyance certificate has been acted upon by executing and registering the deed of lease in favour of the society and its name is already mutated to the revenue record.

4. Therefore, though the action of the society applying for issuance of certificate of deemed conveyance with full knowledge of death of the opponents is deprecated, I do not think it appropriate to set aside the order dated 6th February 2019 or to remand the proceedings afresh before the competent authority. The rights and entitlement of the parties would ultimately be governed by the decree dated 5th November 2004. Since the decree has remained undisturbed, the Petitioners cannot resist execution and registration of lease deed as per the decree. The certificate of deemed conveyance ensures execution and registration of such lease deed. I do not find any valid ground to interfere in the order passed by the competent authority.

5. Writ petition is devoid of merits and is dismissed with no order as to costs.

(SANDEEP V. MARNE, J.)