

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4235 OF 2021

Link Tower Co-operative Hsg. Society
Limited.

...Petitioner.

Versus

Girishchandra P. Sadh and Others.

..Respondents.

Mr. Girish Godbole, Senior Advocate along with Mr. Rakesh Mandavkar i/ b Mr. Bhavesh V. Panjani of Mulla & Mulla and Craigie Blunt & Caroe for the Petitioner.

Mr. P. P. Pujari, AGP for Respondent-State.

Mr. Mayur Khandeparkar, Mr. A. P. Stenson, Mr. Utkarsh Sanadi i/b APS Law Associates for Respondent No. 12.

Coram : Sharmila U. Deshmukh, J.

Date : March 24, 2023.

P. C. :

1. By this petition, the challenge is to the orders passed by respondent No.14 in Application No.438 of 2013 and Application No. 3242/2017 filed by Respondent Nos.12 and 13 respectively seeking deemed conveyance under the provisions of The Maharashtra Ownership Flats (Regulations Of the Promotion of Construction, Sale, Management And Transfer) Act, 1963 (for short "**MOFA**") and to the order dated 15th February, 2021 passed by the Respondent No.14 in the Application No 83 of 2020 rejecting the application filed by the Petitioner

seeking deemed conveyance.

2. The Petitioner has challenged the orders of deemed conveyance passed in favour of Respondent Nos.12 and 13 by the Respondent No 14-competent authority for the reason that by virtue of the orders granted, the petitioner's application under section 11 of the MOFA came to be rejected. The rejection came by taking into consideration the area forming part of the deemed conveyances granted to respondent Nos.12 and 13 inasmuch as after considering the area so granted, the competent authority came to the conclusion that there is no area left which can be conveyed by way of deemed conveyance to the petitioner.

3. Mr. Godbole, learned Senior Counsel appearing for the petitioner submits that the said reason is not available to the competent authority to reject the application for deemed conveyance. He would further contend that it is for the competent authority to consider the application on merits and pass appropriate orders granting deemed conveyance in favour of the Petitioner. He would further submit that the deemed conveyance granted in favour of respondent Nos.12 and 13 have been challenged as the order itself indicates that the said challenge can

be made before this Court. He would further submit that the impugned orders passed in favour of Respondent Nos.12 and 13 have resulted in an imbalance of FSI.

4. It is not disputed that the Society of the petitioner as well as respondent Nos.12 and 13 formed part of common layout. This Court is informed that a development agreement has been executed by the Respondent No.12.

5. From the contentions advanced by Mr. Godbole, it is evident that disputed questions of fact as regards the built up area of the Petitioner, Respondent No.12 and Respondent No.13, the FSI consumed and the consequent entitlement by way of conveyance are raised. This Court in exercise of powers under Article 227 of Constitution of India is not expected to enter into disputed questions of fact requiring detailed evidence to be led. Considering the various decisions of this Court, it is settled position that the order of deemed conveyance does not conclude the right, title and interest of the parties in the property and appropriate remedy is to file substantive suit. In the present case, it is apparent from the pleadings and the submissions advanced that disputed facts are raised which can be effectively adjudicated in a civil suit upon leading of

necessary evidence.

6. In view thereof, there is no reason to interfere in writ jurisdiction. Writ Petition stands dismissed. Needless to state that all contentions of all parties are expressly kept open for adjudication in appropriate proceedings.

[Sharmila U. Deshmukh, J.]

[Order is corrected pursuant to the speaking minutes order dated 28th April 2023 and paragraph 4 is modified.]