

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

WRIT PETITION NO.9468 OF 2021

Jayanti Bhalchandra Patkar and Anr.

...Petitioners

Versus

Ishanay Co-operative Housing Society Ltd and Ors.

...Respondents

- Mr. Pradeep Thorat a/w Mr. Viren Vashi and Rupesh Mandhare, for the Petitioners.
- Mr. Prakash R. Raskar, for Respondent No.1.
- Mr. D.S. Mhaispurkar, for the Respondent No.2.
- Smt. V.S. Nimbalkar, AGP for Respondent No.3 – State.

CORAM : MADHAV J. JAMDAR, J.

DATE : 29th AUGUST 2023

ORAL JUDGMENT

1. Heard Mr. Thorat, learned counsel appearing for the Petitioners, Mr. Prakash Raskar, learned counsel appearing for the Respondent No.1, Mr. Mhaispurkar, learned counsel appearing for the Respondent No.2, Smt. Nimbalkar, learned AGP appearing for the Respondent No.3.

2. The impugned order in the present Writ Petition is order dated 30th July 2020 passed by the Competent Authority @ District Deputy Registrar, Co-operative Societies, Thane in Application No.305

of 2019. The said application No.305 of 2019 has been filed by the Respondent No.1 – Society seeking deemed conveyance under section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as “**MOFA**”). By the impugned order dated 30th July 2020, the Competent Authority has granted deemed conveyance in favour of the Respondent No.1 – Society.

3. It is the contention of Mr. Thorat, learned counsel appearing for the Petitioners that the impugned order passed is contrary to the principles of natural justice. He further submitted that by said order deemed conveyance has been granted by the Competent Authority with respect to the area which is much larger than the area as contemplated to be conveyed to the Society under the Development Agreement dated 30th December 2000 executed between the Petitioners i.e. the owners of the plot in question and the Developer i.e. Respondent No.2. He further submitted that under section 11(5) of the MOFA before registration of the deemed conveyance, summons is required to be issued to the Promoter and as the same has not been issued, registration of deemed conveyance is also illegal.

4. The learned counsel appearing for the Respondent No.1 –

Society submitted that the Petitioners have submitted written reply to the application seeking deemed conveyance and the said reply is specifically considered. He submitted that in fact, the learned Advocate appearing for the Petitioners is also heard by the Competent Authority as reflected in the impugned order. He submitted that the deemed conveyance which has been granted is in accordance with the Development Agreement. Alternatively, he submitted that even if it is assumed that the deemed conveyance has been granted for the larger property contrary to the terms and conditions of the Development Agreement, the Petitioners have the remedy to file a suit. As far as the notice which is contemplated under sub-section (5) of Section 11 is concerned, he submitted that Respondent No.1 – Society has complied with all the requirements.

5. Mr. Mhaispurkar, learned counsel appearing for the Respondent No.2 i.e. Developer supports the case of the Petitioners.

6. Smt. Nimbalkar, learned AGP supported the impugned order.

7. Before considering the rival submissions, it is necessary to set out certain factual aspects. The Petitioners are the owners of Survey

No.91-A 1/1 CTS No.8422 total admeasuring 2068 sq. mtrs. The Development Agreement executed between the present Petitioners and Yash Construction Company - presently represented by Respondent No.2 contemplated two separate buildings on Plot A and Plot B. The relevant terms as contained in the said Development Agreement dated 30th December 2000, are set out hereinbelow:-

[A] The first recital is as follows :-

“a. SMT. JAYANTI BHALCHANDRA PATKAR AND Dr. SAU SHRADDHA OJAS DAVE are THE OWNERS of property viz. (i) S.No.91-A 1/1 C.T.S. No.8422 **admeasuring 278 sq. mts. (hereinafter called ‘Plot A’)** and (ii) S. No.91-A 1/1 C.T.S. No.8422 **admeasuring 1790 sq. mts. (hereinafter called ‘Plot B’)** both situated at Dombivli and jointly referred to as “The Said Property” and more particularly described in the schedule hereunder written.”

[B] Clause No. 1 of the Development Agreement reads as under :-

“(1) The Owners shall allow the developers to develop the property i.e. Plot A and Plot B (described in schedule A) by demolishing the existing structures and constructing new buildings consisting of shops, offices, residential flats etc. by utilizing the total available F.S.I. of both the plots at the entire cost of the developers. In consideration of this, the owners shall give to the developers an exclusive right to sell shops, offices and

residential flats as also open parking places and/or garages, to the extent of 50% of the total built up area on Plot B only, on ownership basis and which is clearly demarcated on the final plans sanctioned by the KDMC and are initiated by both the parties and are annexed to this agreement. The owners shall have exclusive rights to deal with the entire building on Plot A and also the balance area of 50% of the residential flats on the building on Plot B as well as the open parking spaces and/or the garages on Plot B. The roadside shops on the ground floor of the building on Plot B shall be shared as follows :

Developers : 60%

Owners : 40%

“The said portions shall be referred to as “**Owners Portion**” and “**Developers portion**”. For the sake of clarification, the owners shall not own to the developers any money be it the cost of construction or anything else towards the development of the buildings on Plot A and Plot B.

- b) For calculating the 50% sharing, on the Plot B, **the total area of Plot A & B is added and then divided into half (i.e. 50 : 50)**
- i. e. **Area of Plot A : 251.06 S.M. and Area of Plot B : 1816.94 S.M.**

Total Area of Property : 2068.0 Sq. Meters.

Owners Share : 12987.0 Sq. Feet

Developers Share : 12014.0 Sq. Feet.

The allotment of built-up area to the owners is indicated

on the separate sheet and annexed hereto this agreement as Annexure 'A'.

The Owners shall have full & exclusive right to deal with the shops/flats/ stilts/ open parking/ garages etc. allotted to them as per Annexure 'A' and the Developer shall in no way interfere with the same."

(Emphasis added)

[C] Clause No. 9 of the Development Agreement reads as under :-

"9. As soon as sufficient numbers of shops, offices and flats are sold, in building on 'Plot B' the Developers shall take steps to form a Co-operative Housing Society of all such purchasers and the Owners. The Owners shall convey the property on Plot B to such Co-op. Housing Society, subject to the following Reservations:

- (a) That the name of the building as suggested by the owner shall be adopted by the society;
- (b) **The F.S.I & T.D.R. and any such rights shall exclusively belong to the Owners.**
- (c) **Members shall not object, in case the ground floor stilt portion coming to the Owners is used as a Marriage Hall, or a Hall where Social functions may be held or used for Gymnasium of Gymkhana or Shopping Centre or a Bank or any other venture as the Owners may desire from time to time. It would exclusively belong to the Owners. Prospective Purchaser or Developer or any other person or society shall have no rights whatsoever in the said**

ground floor (stilt) portion.

- (d) It is mutually agreed by both the parties that the ground floors shops will not be sold or let out etc. to any person or company or any other person for starting a fast food joint, restaurant, hotel, milk parlour, or any venture for selling perishable goods as well as hospitals on any of the floors.”

(Emphasis added)

[D] Sub Clause Nos. (e), (f), (g) and (h) of Clause No. 11 are also relevant and are as under :-

“11(e) Upon completion of building on Plot B the Developers shall put the Owners in exclusive possession of the Owners portion therein TOGETHER WITH the rights-in common, to the common facilities and amenities. The proportionate share of M.S.E.B. meter deposits, water connection deposits, society formation charges, any other charges becoming payable to the appropriate authority etc. shall be paid by the Owners to the Developers, as and when required, before taking possession of the portions allotted to the Owners. The society formation charges for the shops/flats etc. retained by the Owners shall be borne by the Developers.

- (f) **The Owners and the Developers shall be exclusively entitled to their respective shares or portions in the Building on ‘Plot B’ with exclusive right to transfer or otherwise deal with or dispose of the same without any**

interference whatsoever of the other nor will either party disturb the quiet and peaceful possession of the other.

- (g) All dealings by the Developers in respect of the building on 'Plot B' including agreements for Sale or Transfer concerning Developer's portion shall be done in the name of the Owners for which purpose the Owners undertake to give to the Developers such other Powers of Attorney in such form and manner as may be required by the Developers PROVIDED HOWEVER the same shall not create any financial liability upon the Owners in any manner whatsoever.
- (h) **The owners shall execute a deed of conveyance or conveyances excluding the right to balance or further FSI and TDR, staircase and balcony FSI and any other rights present or future and subject to reservation mentioned in Clause (10) above and a right over the well mentioned in Clause (26)(D) in favour of the Co-operative Housing Society to be promoted by the developers with all unit purchasers and the owners and/or their nominees as members.** All costs and expenses including stamp duty and registration charges will be borne and paid by the developers/owners and/or the purchasers of the units proportionately to the exclusion of area retained by the owners."

(Emphasis added)

[E] Clause No. 12 is as follows :-

"12. As soon as the respective buildings are complete, the Developers shall give written notice to the Owners

requiring the Owners to take possession of the Building on 'Plot A' and Owner's portion in the building on 'Plot B' and after 30 days from the date of service of such notice and at all times thereafter the Owners shall be exclusively responsible for payment of all Municipal and Property taxes, rates, duties, other public outgoings and impositions whatsoever, payable in respect of the shops/flats etc. allotted to the Owners. PROVIDED THAT the said rates shall be apportioned pro rata with reference to the Saleable space in the buildings on 'Plot B' if they are levied on the entire building as whole."

(Emphasis added)

[F] Sub Clause (e) of Clause No. 26 is very relevant and reads as under :-

"26(e) After the Developers complete the construction of both the Buildings, the Developers will form the Co-operative Housing Society of all unit Purchasers on 'Plot B' and all other legal formalities shall be completed as may be required. However if the Developers are prevented from starting the Construction or from completing the construction and other work to be done by Developers due to any act on the part of the Owners or their agents, servants, representatives or any person claiming any right under the Owners, then and in that case the Developers shall have the right to claim reimbursement of all amounts paid or deposited with various authorities. Further if the Developers are unable to complete the

construction work as per the terms & conditions of the agreement, within the stipulated time then the owners shall have the right to notice of termination of these presents.”

(Emphasis added)

[G] The schedule of the property as set out in Schedule A of the said Development Agreement dated 30th December 2000 is as follows :-

**SCHEDULE – A
SCHEDULE OF PROPERTY**

ALL THAT piece and parcel of land bearing revenue survey No.91/A C.T.S. No.8422 **admeasuring 2068 Sq. Mts.** Situated at Rajaji Path, Cross lane No.2, Opp. Chandrakant Patkar School, Dombivli (East), Mouje Ayre, Taluka – Kalyan, District – Thane and sub-Registration District – Thane within the local limits of Kalyan – Dombivli Municipal Corporation and bounded as follows:

East :- C.T.S. No.8397

West :- C.T.S. No.8435, 8738/1K

South :- C.T.S. No.8735/B, 8738/1D, 8738/1B

North :- C.T.S. No.8396, 8447”

(Emphasis added)

[H] The detailed break-up of built up area allotted to the owners is set out in Annexure – A of the Development Agreement. The same

shows that aggregate built up area of both the plots i.e. Plot A and Plot B are considered as 24,981 sq. ft. and the area allotted to the owners is 12,967 sq. ft.

8. It is significant to note that admittedly, Plot A is only of 278 sq. mtrs. and Plot B is 1790 sq. mtrs. As per the Development Agreement 60% : 40% sq. ft. of built up area is shared between the owners and the developers. However, it is clear that the area of Plot A only admeasures 278 sq. mtrs., whereas Plot B admeasures 1790 sq. mtrs.

9. One agreement dated 28th April 2006 executed by the Promoters/Builders i.e. Yash Construction Company in favour of one of the purchasers shows that in the 1st Schedule the entire property i.e. 2068 sq. mtrs. of Survey No.91-A 1/1 C.T.S. No.8422 is mentioned. Clause No.13 regarding conveyance in the purchasers agreement is as follows :-

“13. Unless it is otherwise agreed to by and between the parties hereto the Developer shall, within six month after registration of the society or Limited company/Apartment, as aforesaid cause to be transferred to the society or limited company, all right, title and interest of the Vendor/Original Owner/Developer and/or the Owners in the part of the said land together with the

building/s, by obtaining or executing the necessary conveyance of the said (or to the extent as may be permitted by the authorities) and the said building in favour of such society or Limited company, or Apartment as the case may be and such conveyance shall be in keeping with the terms and provisions of this agreement.”

(Emphasis added)

10. The relevant dates for deciding the Writ Petition are as follows :-

- (i) The Petitioners i. e. owners executed Development Agreement dated 30th December 2000 with the Developer – Yash Construction Company;
- (ii) The Building Permission concession was issued on 04.12.2000 and 26.08.2002 by Kalyan – Dombivali Municipal Corporation;
- (iii) The Developer sold 28 residential flats and 10 shops;
- (iv) On 07.02.2004, Building Completion Certificate was issued by Kalyan – Dombivali Municipal Corporation;
- (v) The Respondent No. 1 – Society was formed and registered vide Registration Certificate dated 03.06.2005.

11. It is significant to note that the present Petitioners as well as the said Yash Construction Company i.e. the Builders are the

Promoters as per the definition of “Promoter” as defined in Section 2(c) of the MOFA. The said Section 2(c) reads as under :-

“2(c). "promoter" means a person and includes a partnership firm or a body or association of persons whether registered or not] **who constructs or causes to be constructed** a block or building of flats of apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and **where the person who builds and the person who sells are different persons, the term includes both.”**

Thus, it is clear that the person who constructs or causes to be constructed a block or building of flats, etc. for the purpose of selling some or all of them to other persons, and where the person who builds and the person who sells are different persons, the term includes both. Thus, it is clear that the person who causes a building or flats to be constructed is also “promoter” within the definition of section 2(c) of the MOFA. Thus, the said Yash Construction Company as well as the present Petitioners are also Promoters. It is the statutory responsibility of the Promoters to execute the conveyance in terms of section 11(1) of the MOFA within four months of the registration of the Society. Thus, it is clear that the Petitioners have failed to perform their statutory duty.

12. In this particular case, Promoter i.e. builder as well as

Petitioners i. e. owners failed to perform their statutory duty for about 14 years and therefore, application seeking deemed conveyance was filed on 12th October 2019. It is admitted position that the reply has been filed to the said deemed conveyance application by the Petitioners. There is some dispute whether the oral hearing is given to the Petitioners, however, the correspondence on record shows that the learned Advocate appearing for the Petitioners has sought time to file written submissions on 30th March 2020. Thereafter, the matter is closed for order on 23rd June 2020. It does not appear that for said three months written arguments were filed by the Petitioners with the Competent Authority.

13. The Competent Authority has granted deemed conveyance for total area of 1471.92 sq. mtrs.. The deemed conveyance was granted on the basis of Certificate dated 10th September 2019 issued by M/s. Bhirud Associates which is at page 45 of the Writ Petition compilation. The said Certificate dated 10th September 2019 is as follows :-

"Sr. No.	Item	Description
1	Survey Nos./C.T.S. Nos.	S. No.91-A, H. No.1/1. C.T.S. Nos.8422 Tikka No.39.
2	Name of Village/Taluka/District.	Village Ayare, Taluka Kalyan, Dist. Thane.
3	Total plot area	As per 7/12 extract = 2,400 – 480 = 1920 Sq. M. As per C.T.S. recod = 2,068.90 Sq. M.

	AND	Area under D.P. road = 505.36 Sq. M. Area under Reservation = 91.62 Sq. M. Net area = 2068.90 – 505.36 – 91.62 = 1471.92 Sq. M.
	Land area to be conveyed.	Land area to be conveyed to “Ishanay Co. Op. Hsg. Soc. Ltd.” : C.T.S. Nos.8422 Tikka No.39. =1,692.71 Sq. M. inclusive of garden.
4	Permissible F.S.I.	One + TDR.
5	Total existing Built up area of society building.	2384.86 Sq. M (Inclusive of TDR)
6	F.S.I. Balance (if any)	No balance FSI.”

14. The factual position on record clearly shows that the said plot is divided into Plot A and Plot B, as there exists a DP road passing through the said property. However, it is also true that Plot A admeasures only 249 sq. mtrs. whereas Plot B admeasuring 1198.06 sq. mtrs. It is also admitted position that the area which has been allotted to the owners under the Development Agreement has been sold by the owners and therefore, obligations of the developer in favour of the owners under the Development Agreement have been performed. It is significant to note that both the builder i.e. Yash Construction Company presently represented by Respondent No.2 as well as the Petitioners who are the owners have obtained benefit under the Development Agreement. However, they have failed to perform their statutory duty by executing conveyance in favour of the Respondent No.1 – Society.

15. The submissions advanced by Mr. Thorat, learned counsel appearing for the Petitioners are required to be examined in view of the above factual position. His first submission is that the impugned order has been passed contrary to the principles of natural justice. It is admitted position that the reply has been filed by the present Petitioners before the Competent Authority. The impugned order also records that Advocate K.S. Patil has made the oral submissions and the said oral submissions are recorded in the impugned order. In fact, as set out hereinabove, the learned Advocate appearing for the Petitioners sought time to file written arguments, however, said written arguments were never filed. Therefore, there is no substance in the contention raised by Mr. Thorat, learned counsel appearing for the Petitioners that the impugned order has been passed by not following the principles of natural justice.

16. The second submission of Mr. Thorat that the area which has been allotted by deemed conveyance is even larger than as contemplated under the Development Agreement executed between the owners and the developer. The terms and conditions of the Development Agreement as set out hereinabove clearly show that, in fact, what is contemplated between the owners and the developers is

sharing of the FSI available for construction. It is further significant to note that the agreement which has been executed with the purchaser does not specifically state that there will be two separate conveyances; first with respect to Plot A and second with respect to Plot B. In fact, Clause 11(e) of the Development Agreement clearly shows that there will be one society of the entire plot.

17. In any case, it is settled legal position that the order granting deemed conveyance does not conclude the issue of right, title and interest between the parties and for establishing the title to the property, owners can file a civil suit. In the decision of Division Bench of this Court in the matter of *Zainul Abedin Yusufali Massawawala Vs. Competent Authority District¹, Mumbai* in paragraph 9, it has been held as follows:-

“9. It is not necessary to make a detailed reference to the decisions or to interpret the legal provisions, once we understand the essential controversy. The essential controversy is that the **petitioners** claiming to be the heirs of one Batul Zainul Abedin Massawawala, also known as Batul Kurban Hussein Zaveri, further **claim to be entitled to the land admeasuring 1791.96 sq. mts.,** more particularly described in Exhibit A to the petition and in paragraph 1. That is claimed to be a “said Larger Property.” **The respondent no. 3 is the Co-operative**

1. 2016 SCC OnLine Bom. 6028

Housing Society of the flat purchasers. The first and the second respondent are the statutory authorities. In the petition, how Batulbai acquired the properties has been set out and how an agreement for development was executed on 1st June 1984 with a partnership firm. Pertinently, and from the narration in the petition, as also one of the annexures on which Mr. Joshi relied, it is apparent that the legal heirs namely one of the legal heir - petitioner no. 3 is associated with the Developer-partnership firm as well. According to the petitioners, the partnership firm is claimed to have been dissolved and against that dissolved firm for enforcement of the obligations under the agreement, styled as MOFA Agreement, the proceedings were commenced by the society. It is stated that the petitioners were partners of the Developer Firm. This is a clear averment in paragraph 3 of the petition. It is stated that the firm was dissolved. However, it is also stated that on 9th December 1985, a Agreement for Sale which is subsequent to the Development Agreement, was executed and which enabled the sale of flats in the building of ground plus six floors styled as “Jamali” building. It is also stated in the petition itself that the developer sold flats on what is commonly known as ownership basis to several purchasers. Therefore, the existence of a Development Agreement, a MOFA Agreement is undisputed. What is disputed is that the firm of developers and now styled as promoter under MOFA was not granted the rights to deal with and dispose of the larger property. They were

entitled to develop a portion of the property and to construct building thereon and dispose of the units or flats therein. The writ petition goes in great details as to how the MOFA and Development Agreement were restricted and they could not have been in any way brushed aside by the society as the society was aware of the same. We are of the clear opinion that the society approached the Competent Authority with a limited request, namely, that having formed a legal entity namely the co-operative housing society of the flat purchasers, it is the obligation now of the promoter to convey the right, title and interest in the building and the land beneath, so that the legal entity will be entitled to enjoy the right, title and interest in the property. **If while granting the deemed conveyance, the Competent Authority has in any manner, traveled beyond the stipulations in the agreement, and the grievance of the petitioners is that a larger property is allowed to be claimed by the society contrary to the covenant and recitals of the two agreements, then the remedy of the petitioners even in terms of two decisions of this court in Tushar Jivram Chauhan v. State of Maharashtra (2015) 4 Mah LJ 867 and Mazda Construction Company v. Sultanabad Darshan CHS Ltd., 2012 SCC OnLine Bom 1266 relied upon by Mr. Khandeparkar is not to file a writ petition under Article 226 in this court, but to approach competent civil court and establish this right, title and interest in relation to the larger property. While establishing and seeking to prove it, the petitioners can**

also allege that contrary to the Development Agreement and a MOFA Agreement, the society claimed a larger property and relying upon those submissions the Competent Authority has granted the relief in relation thereto. That is the prejudice caused and which the petitioners can seek a redressal thereof by approaching such a court. During the course of such proceedings, the petitioners can highlight the alleged wrongful conduct of the society in firstly bringing a suit and withdrawing it and for the same relief namely for failure to discharge MOFA obligations, then approaching the Competent Authority belatedly and obtaining the Deemed Conveyance in the absence of the petitioners. Therefore, that adjudication, if at all one can term it, and the order therein, would not be binding on the petitioners, ought to be the eventual declaration. That, they can claim irrespective of any application under Section 11 of MOFA, which has been made in this case. From the contents thereof or the observations and conclusions in the impugned order, we are of the opinion that the jurisdiction of the competent civil court is not barred, despite such document being placed on record and relied upon by respondent no. 3. The Civil court will adjudicate the issue of right, title and interest of the petitioners in the larger property by independently applying its mind and on a total appraisal of the oral and documentary evidence before it. Once all such remedies are intact, then, we do not think that in writ jurisdiction we should entertain such a dispute.”

(Emphasis added)

18. Thus, what has been held by the Division Bench is that if while granting deemed conveyance, the Competent Authority has in any manner, traveled beyond stipulations in the agreement, and the grievance of the Petitioners is that a larger property is allowed to be claimed by the Society contrary to the covenants and recitals of the agreements, then the remedy of the Petitioners is not to file Writ Petition under Article 226 of the Constitution of India in this Court, but to approach competent civil Court and establish their right, title and interest in relation to the larger property.

19. Thus, although in the facts and circumstances of this case, I am of the view that the Competent Authority has properly granted deemed conveyance, it is for the Petitioners to file suit establishing their right to the property.

20. Mr. Thorat, learned counsel appearing for the Petitioners has relied on the decision of the learned Single Judge in the matter of *ACME Enterprises and Anr. vs. Deputy Registrar, Co-operative Societies & Ors.*². He relied on paragraphs 30 and 31 of the said decision which read as under :-

² 2023 SCC OnLine Bom.1102

- “30. From the above statutory provisions and enunciation, the position which emerges can be summarized as under. The authority to grant deemed conveyance is conditioned and controlled by the primary obligation of the promoter to convey to the organization of flat purchasers right, title and interest in the land and buildings, in accordance with the agreement executed under Section 4. **Competent authority cannot convey more than what the promoter had agreed to convey under the agreement executed under Section 4. What competent authority is thus required to consider is, the extent of the obligation incurred by the promoter, whether the obligation to execute the conveyance became enforceable and whether the promoter committed default in, or otherwise disabled himself from, executing the conveyance.**
31. The enquiry is thus of limited nature. The competent authority cannot delve into the aspects of title. Nor the finding of the competent authority precludes a party from agitating the grievance as to the entitlement of the organization of purchasers to have the conveyance, before the Civil Court. The remit of enquiry by the competent authority is, thus, whether the conditions stipulated for enforcement of the obligation to execute the conveyance have been satisfied and, if yes, order an unilateral deemed conveyance.”

(Emphasis added)

The said decision only shows that inquiry contemplated by the

Competent Authority is of limited nature and the Competent Authority cannot delve into the aspects of title. In fact, the Division Bench of this Court in various judgments including *Mazda Construction Company & Ors. vs. Sultanabad Darshan CHS Ltd. & Ors.*³, *M/s. Shree Chintamani Builders vs. State of Maharashtra & Ors.*⁴ as well as in the aforesaid decision of *Zainul Abedin Yusufali Massawawala* (supra), has clearly held that the Competent Authority does not decide the issue of title and it is for the Civil Court to adjudicate the issue of right, title and interest of the party to the property in question. Therefore, the said judgment of the learned Single Judge in the case of *ACME Enterprises and Anr.* (supra) will not assist the Petitioners in their submission to set aside the order passed by the Competent Authority. In fact, learned counsel appearing for the Respondent No.1 is right in pointing out that in the said judgment of *ACME Enterprises and Anr.* the Writ Petition challenging order of deemed conveyance is dismissed, however, the Petitioner was granted liberty to institute the suit to agitate their claim of title. Therefore, there is no substance in the said contention.

21. Mr. Thorat submitted that the Sub-Registrar or the appropriate registration officer appointed under the Registration Act, 1908 has not issued any notice to the Petitioners or Respondent No.2

3 2012 SCC Online Bom 1266

4 2016 SCC OnLine Bom. 9343

i. e. the Promoters.

22. In this particular case, as held herein-above, the society was formed in the year 2005, it is the statutory responsibility of the Promoters i. e. owners as well as Developer to convey the title in favour of the Society. The Promoters have failed to perform their statutory duty. The Society was required to file application for deemed conveyance after 14 years. Said deemed conveyance has been granted by the impugned order dated 30th July 2020 and thereafter, the said deemed conveyance has been registered on 8th October 2020. Although there is a procedural lacuna of not issuing notice by the Registering Authority, however, there exists an alternate remedy of filing suit by the Petitioners for establishing their title to the suit property.

23. In the facts and circumstances, this is not a case where interference of this Court is warranted under Articles 226 and 227 of the Constitution of India. Writ Petition is dismissed.

24. It is clarified that the observations made in the present order as well as in the order of the Competent Authority granting deemed conveyance are the observations made for the purpose of only granting deemed conveyance and for examining of order granting deemed conveyance and all the contentions of the parties with respect

to title are expressly kept open.

25. However, it is clarified that the Petitioners can institute a substantive suit to establish their title to the suit property. All the contentions on merits of both the parties to be agitated in such suit, if any, are expressly kept open.

[MADHAV J. JAMDAR, J.]