

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7061 OF 2018
WITH
INTERIM APPLICATION NO. 14998 OF 2023

Abdul Rahim Abdul Razak
Patel and Ors.
V/s.

.....Petitioners

Gokarn Co-op. Hsg. Society
Ltd. And Ors.

....Respondents

Mr. N.V. Bandiwadekar, Senior Advocate a/w. Mr. Vinayak Kumbhar
i/by. Ms. Ashwini N. Bandiwadekar for the Petitioners.

Mr. Sachin S. Punde, for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 October 2023.

P.C. :

1. By this petition, Petitioners challenge order dated 28 March 2018 passed by the Competent Authority granting deemed conveyance of land admeasuring 747.50 sq. mtrs in favour of Respondent No.1-Society.
2. I have heard Mr. Bandiwadekar, the learned senior advocate appearing for the Petitioners. His main challenge to the order dated 28

March 2018 is that the same is passed against Original Opponent Nos. 2 to 7 and 11, who were dead as on the date of filing of the application for deemed conveyance. He would submit that the factum of death of Original Opponent Nos. 2 to 7 and 11 was placed on record by the Original Opponent No. 8 by filing a specific application before the Competent Authority on 4 October 2017. He would submit that despite knowing the factum of death of Original Opponent Nos. 2 to 7 and 11, the Society failed to bring their legal heirs on record and the Competent Authority proceeded to hear and decide the application for deemed conveyance against dead persons thereby rendering the Order a nullity. He would therefore submit that since the order is passed against dead persons, the same is required to be set aside.

3. *Per-contra*, Mr. Punde the learned counsel appearing for Respondent No.1-Society would place reliance on order dated 17 October 2023 passed by this Court in Writ Petition No. 13427 of 2022 (***Smt. Khatija Rahim Patel & Ors. V.s. Srushti Co-op. Housing Soc, Ltd.***) submitting that the Society involved in Writ Petition No. 13427/2022 is a part of the same layout. He would submit that since Writ Petition No. 13427/2022 filed by same owners is rejected by this Court in respect of Srushti Co-op. Hsg. Society Ltd., the present petition also deserves to be rejected.

4. I have considered the submissions canvassed by the learned counsel for the parties.

5. So far as the first objection of Mr. Bandiwadekar about death of Original Opponent Nos. 2 to 7 and 11 is concerned, it appears that the Society had brought on record the legal heirs of Original Opponent No.7 by amending the application. After amending the application, the legal heirs of Original Opponent No.7 (Opponent Nos. 7/1 to 7/6) filed their reply before the Competent Authority on 26 March 2018. Therefore, the objection about death of Opponent No. 7 appears to be totally misplaced. So far as failure on the part of the Society to bring on record the legal heirs of Original Opponent Nos.2 to 6 and 11 are concerned, Mr. Punde had submitted that a paper publication was made by the Competent Authority so that any interested person could appear before the Competent Authority and contest the application for issuance of deemed conveyance Certificate. The Petitioners now want to take benefit of technical error in failure on the part of the Society to bring on record the legal heirs of Original Opponent Nos.2 to 6 and 11 and on that ground, it is contended that the entire order of deemed conveyance passed by the Competent Authority would be rendered a nullity. I am unable to agree. The Original Opponent Nos. 2 to 12 were the original owners who had engaged the services of Original Opponent No.1 (M/s. Petkar Construction) as a developer. The land was apparently jointly owned by Original Opponent Nos.2 to 12. Out of the Original Opponent Nos.2 to 12, Original Opponent Nos.7, 8, 9, 10 and 12 appeared before the Competent Authority and filed their reply raising various objections to the application filed by the Society for issuance of a Certificate of deemed conveyance. Thus, the exact objection that the

joint owners could have raised to the application for issuance of Certificate for deemed conveyance was raised by Original Opponent Nos. 7 to 10 and 12. It is incomprehensible as to what other objections the legal heirs of the deceased Opponent Nos. 2 to 6 and 11 could have raised before the Competent Authority.

6. It must be borne in mind that the entire objective behind enacting Section 11 of the Maharashtra Ownership of Flats Act and making provision for grant of certificate of deemed conveyance is to ensure that the land is conveyed to the Society where the developers and/or owners indefinitely delay conveyance of the land. It is equally well settled that the issuance of Certificate of deemed conveyance does not finally determine rights and entitlements of parties in respect of the land sought to be conveyed. It is always open to the affected persons to adopt appropriate civil remedies for claiming right, title and interest even in respect of the land which is conveyed by Certificate of deemed conveyance. Considering the objective behind enacting the provisions for deemed conveyance and the broad statutory scheme, it cannot be stated that the order dated 28 March 2018 would be rendered nullity only on account of the fact that the legal heirs of Original Opponent Nos.2 to 6 and 11 were not brought on record by the Society.

7. It is also pertinent to note that the present petition is not filed by legal heirs of Original Opponent Nos. 2 to 6 and 11. The Writ Petition is filed by the parties who participated in the proceedings

before the Competent Authority and now they seek setting aside the order of the Competent Authority by taking aid of a technicality of death of Original Opponent Nos.2 to 6 and 11. In my view, it is not open for the Petitioners to raise the ground of death of Original Opponent Nos.2 to 6 and 11 or failure of the Society to bring their legal heirs on record. If the legal heirs of Original Opponent Nos.2 to 6 and 11 feel that the order of deemed conveyance would not bind them, it would be open for them to file appropriate civil proceedings to seek a declaration to that effect. Therefore, the objection of failure on the part of the Society to bring legal heirs of Original Opponent Nos.2 to 6 and 11 raised by the Petitioners, deserves to be repelled.

8. So far as merits of the challenge to the order of deemed conveyance is concerned, similar challenge was raised by the owners in respect of the order of deemed conveyance dated 31 March 2020 issued by the Competent Authority in favour of Srushti Co-op. Hsg.Society. It is common ground that Srushti Co-op. Hsg. Society and Respondent No.1-Society are two out of the five buildings constructed on the land. In case of Srushti Co-op. Hsg. Society also similar objections were sought to be raised by the owners such as registration of the Society being in a different name and the entitlement of the owners to the balance FSI. This Court passed the following order in the case of Srushti Co-op. Hsg. Society on 17 October 2023:

1. The challenge in the present Petition is to the order dated 31 March 2020 passed by the Competent Authority cum

District Deputy Registrar Co-operative Societies, Raigad-Alibaug granting unilateral deemed conveyance in respect of land admeasuring 686.62 Sq. mtrs. in favour of the Respondent-Society.

2. I have heard Mr. Kumbhar, the learned counsel appearing for the Petitioners and Mr. Chavan, the learned counsel appearing for Respondent No.1-Society as well as Mr. Tripathi, the learned counsel appearing for Respondent No.2.

3. It appears that the present petition is filed on behalf of the owners, who had filed written reply dated 15 January 2020 before the Competent Authority. I have gone through the said reply. In their reply Petitioners vaguely contended that there was some balance FSI on the plot, which the Petitioners will not be in a position to utilize if deemed conveyance of land is granted. Another grievance raised by the Petitioners in their reply was about registration of society of Respondent No.1 in a different name than the one agreed in the agreement.

4. To my mind both the objections raised by the Petitioners for opposing the issuance of certificate of unilateral deemed conveyance are totally misplaced. So far as the ground of utilization of balance FSI is concerned, no attempt is made by the Petitioners to demonstrate as to how conveyance of land admeasuring 686.62 Sq. mtrs. would come in the way of Petitioners utilizing the alleged balance FSI. Petitioners ought to have produced some material before the Competent Authority to demonstrate that such additional FSI flows out of the land admeasuring 686.62 Sq. mtrs. or that they have a right to carry out any construction on land admeasuring 686.62 Sq. mtrs. So far as registration of Society in a different name than the one specified in the agreement is concerned, the same cannot be a ground for refusal of certificate of unilateral deemed conveyance.

5. In order dated 31 March 2020, the Competent Authority has clearly directed that if any right is established in the conveyed land in future, it would be incumbent upon the Society to handover such land regardless of issuance certificate of deemed conveyance. It is also well established position of law that unilateral deemed conveyance certificate is not determinative of rights and entitlements of parties to the land in question. Reference in this regard can be made to the Judgments of this Court in **Mazda Construction Company & Others Vs. Sultanabad Darshan CHS Ltd. & Others** 2012 SCC Online Bom 1266 & **Tirupati Shopping**

Centre Premises Co-operative Society Ltd. Vs. Shabyesha Construction Company, Writ Petition (St.) No.9105 of 2021 decided on 22 April 2021.

6. Thus, if the Petitioners have any grievance with regard to the area of land which is conveyed by the impugned order dated 31 March 2020, they have remedy of filing a suit to claim ownership and possession in respect of such land. Reserving the liberty in favour of the Petitioners to initiate civil proceedings, the Writ Petition is disposed of without any order as to costs.

9. In the present petition also, similar grounds are raised. The only additional ground canvassed by Mr. Bandiwadekar is with regard to the death of Original Opponent Nos.2 to 6 and 11. The said objection has already been dealt with hereinabove.

10. I am not persuaded to take a different view than the one taken while deciding Writ Petition concerning Srushti Co-op. Hsg. Society. I therefore do not find any merit in the present petition. The Writ Petition is **dismissed**. With dismissal of the Petition, Interim Applications if any do not survive. The same also stand disposed of.

11. It is however clarified that it would be open for the Petitioners, as well as legal heirs of Original Opponent Nos. 2 to 6 and 11 to file such proceedings as are available in law with a view to claim right, title or interest in the land conveyed in favour of the Society.

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SANDEEP V. MARNE, J.