

Vidya Amin

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

WRIT PETITION NO. 12438 OF 2022

M/s. Naupada Highway CHS Ltd. ... Petitioner

Versus

Competent Authority cum District Dy. Registrar ... Respondents
Co-op. Society & Ors.

Mr. Nikhil V. Adkine for the petitioner.

Ms. S.S. Bhende, AGP for respondent no. 1.

Mr. Abhishek Nagade i/b. Mr. Karan Gajra for respondent no. 2.

CORAM: G. S. KULKARNI, J.

DATED: 2 February 2023

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith. Learned counsel for the respondent nos. 1 and 2 waives service. By consent, the petition is heard finally.

2. This petition impugnes an order passed by the Competent Authority dated 24 December, 2018 whereby a deemed conveyance has been granted by the Competent Authority under the provisions of Section 11 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 in favour of respondent no. 2-Society.

3. At the outset, it needs to be observed that the petitioner had created a lease in favour of respondent no. 3-Gajanan Mahadeo Shingwekar and

respondent no. 4-Digambar Shivram Kadekar. In the course of adjudication of the application filed by respondent no. 2 before the Competent Authority, respondent nos. 3 and 4 were not represented as also in the present proceedings, despite notice they are not represented.

4. The only contention as urged on behalf of the petitioner is that the authority as pointed out to the Competent Authority that the land in question in respect of which deemed conveyance has been granted in favour of respondent no. 2 was a land which was leased for 998 years in favour of the petitioner. On page 2 last paragraph of the said order this fact has been infact noted by the Competent Authority. A perusal of this impugned order shows that there is no discussion whatsoever to the said contention of the petitioner that once the land itself is a leasehold land, there cannot be deemed conveyance in favour of respondent no. 2 and at the most it can be assignment.

5. Learned counsel for respondent no. 2 is agreeable to have assignment of the land and not the deemed conveyance.

6. If that be so, the Competent Authority ought to reconsider the said position and such basic rights of the parties in exercising jurisdiction under section 11 of the Act. As respondent no. 2 has consented and has also contended it would be agreeable for assignment and not for a conveyance as

ordered in the impugned order and consequent certificate issued in favour of respondent no. 2, the impugned order in this circumstances will be required to be set aside. It is accordingly set aside. The parties are directed to appear before the Competent Authority within a period of 15 days from the date a copy of this order is available and request the authority to pass appropriate orders.

7. All contentions of the parties in that regard are expressly kept open.
8. Rule is made absolute in the above terms. No costs.
9. Disposed of in the above terms. No costs.
10. Parties to act on the authenticated copy of this order.

(G. S. KULKARNI, J)