

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13564 OF 2016
WITH
INTERIM APPLICATION NO.16710 OF 2022
IN
WRIT PETITION NO.13564 OF 2016

Nityanand Co-op. Housing Society .. Petitioner.
v/s.
M/s. Dattani Construction & Others .. Respondents.

Mr. Sagar A. Joshi, for the Petitioner.
Ms. Nishtha Garg i/b. Mr. Karthik Garg, for Respondent No.1.
Mr. Pramod Bhosale with Mr. Praful Valvi i/b. Ms. Akshata B. Desai, for
Respondent No.5.

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CORAM: G.S. KULKARNI,J.
DATED : 17th FEBRUARY, 2023.

PC:-

This Petition under Article 226 of the Constitution of India, assails an order dated 27th May, 2014 passed by the Competent Authority under Section 11(3) of the Maharashtra Ownership of Flats Act (the “said Act”), whereby a ‘deemed conveyance’ in respect of an area ad-measuring 1202.06 sq. mtrs in plot No.133/2, 159-B and CTS No. 8 situated at Uthalsar, Taluka & Dist. Thane has been granted in favour of the Petitioner. What has not been granted to the Petitioner is an area ad-measuring 625.65 sq. meters in regard to which the Petitioner had made a claim.

2 It appears that as Respondent No.1 the original developer, did not provide a conveyance to the Petitioner-Society. The Petitioner-Society

was required to invoke the jurisdiction of the Competent Authority under Section 11(3) of the said Act, making a claim for a deemed conveyance for a total area of 1827.71 sq. metres. It also appears that the Respondent No.1 was claiming rights in respect of some area, ad-measuring 625.65 sq. mtrs. The rights of Respondent No.1 were ultimately assigned in favour of Respondent No.5.

3 Respondent No.5, however, in contesting the claim of the Petitioner, which was for a total area of 1827.71 sq. mtrs appears to have not placed on record its entitlement in making its claim of 625.65 sq. mtrs or even if the same was placed on record, there is no discussion in that regard in the impugned order, as to on what basis the assertion claimed by Respondent No.5. who has stepped in the shoes of Respondent No.1, was accepted. The only reasoning as set out in respect of such assertion of Respondent No.5 is seen in paragraph 5 of the impugned order which is nothing but referring to the case of Respondent and would not amount to any reasoning. Apart from what has been observed by the Competent Authority in paragraph 5, there is no discussion in the impugned order as to why the disputed area of 625. 65 sq. mtrs. was excluded from the Petitioner's claim.

4 It is informed by learned Counsel for the parties that Petitioner has also filed a Civil Suit before the Court of Civil Judge Junior Division at Thane bearing Civil Suit No.589 of 2013 claiming title in respect of area 1825.87 sq. mtrs in which Respondent No.1 as also Respondent No.5 are parties, which is pending adjudication.

5 Be that as it may, as it is clearly seen from the findings as recorded by the Competent Authority in paragraph 5 of the impugned

order that Respondent No.5 has taken a position before the Competent Authority that Respondent No.5 did not have any objection, for an area of 1202.06 being granted in deemed conveyance in favour of the Petitioner and accordingly, on the said position as taken by Respondent No.5, the impugned order granting deemed conveyance in favour of the Petitioner with regard to area of 1202.06 sq.mtrs. is granted. However, in so far as the Petitioner's claim in regard to 625.60 mtrs to be included in the deemed conveyance is concerned, there is no discussion and/or no reasons are attributed in the impugned order as to why the said area needs to be excluded, except reference to the case of Respondent No.5 in regard to area ad-measuring 625.60 sq. mtrs. For such reasons, the matter would be required to be re-considered by the Competent Authority and a fresh order would be required to be passed by the Competent Authority in respect of the claim as made by the Petitioner on their claim for area ad-measuring 625.60 sq. mtrs. for want of appropriate reasons in excluding the Petitioner's claim in this regard.

6 Thus, the impugned order only to the extent it does not grant deem conveyance to the Petitioner in respect of area ad-measuring 625.60 sq. mtrs, is required to be held to be illegal. The matter is accordingly remanded to the Competent Authority for a fresh decision to be taken on the Petitioner's application for deemed conveyance in respect of area ad-measuring 625.60 sq. mtrs, in the land in question.

7 All contentions of the parties in that regard are expressly kept open.

8 It is clarified that the present order in no manner has disturbed the certificate of deemed conveyance dated 21st November, 1979

granted in favour of the Petitioner with regard to area ad-measuring 1202.06 sq. mtrs.

9 Needless to observe that all contentions of the parties in the pending suit are also expressly kept open.

10 The Competent Authority is directed to hear the parties and make a fresh order as expeditiously, preferably within four months from the date of order.

11 Petition is disposed of in the aforesaid terms.

12 In view of disposal of the Petition, nothing survives in the Interim Application which is also disposed of as infructuous.

(G.S. KULKARNI,J.)