

Dusane

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

WRIT PETITION NO.10200 OF 2019

Sahyog Industrial Premises Co-op. ...Petitioner
Society Ltd.

V/s.

M/s Sahyog Builder & Ors. ...Respondents

Mr. Shreepad Murthy a/w Mr. Sahil Wagh i/by Mr.
Abhishek Patil for Petitioner.

Mr. Ravi Kadam, Senior Advocate a/w Mr. Pranav
Narsaria and Ms. Arya Gadagkar for Respondent
No.3.

Mr. S.D. Rayrikar, AGP for Respondents 4 to 6-
State.

CORAM: MADHAV J. JAMDAR, J.
DATE: 12th December 2023

P.C.:

1. Heard Mr. Murthy, learned Counsel appearing for the
Petitioner, Mr. Ravi Kadam, learned Senior Counsel appearing
for Respondent No.3 and Mr. Sanjay Rayrikar, learned AGP for
Respondent No.4- State.

2. Mr. Murthy, learned Counsel and Mr. Kadam, learned
Senior Counsel state that the dispute between the Petitioner

and Respondent No.3 has been settled and accordingly tenders the Consent Minutes of Order. The same are signed by learned Counsel appearing for the Petitioner and the learned Counsel appearing for Respondent No. 3. The same are also signed by Mr. Ramkishor Singh, Committee Member of the Petitioner-Society who has been authorised to sign the same pursuant to the Resolution dated 23rd May 2023 passed by the Society, which is annexed to the Consent Minutes of Order. The said Consent Minutes of Order are also signed on behalf of Respondent No.2 by Harshkumar Seksaria, who is Director of Respondent No.3. He has been authorised to sign the Consent Minutes of Order by the Board Resolution. He states that said Board Resolution is also annexed to the Consent Minutes of Order. To the said Consent Minutes of the Order, the Resolution of the Petitioner-Society, Board Resolution of Respondent No.3- Company as well as self attested photocopies of Adhar cards of said Ramkishor Singh and Harshkumar Seksaria are annexed. Both of them are present and state that the dispute between the Petitioner and Respondent No.3 has been settled in terms of the Consent Minutes of Order. Accordingly, Consent Minutes of Order are

taken on record and marked 'X' for identification. The said Consent Minutes of Order reads as under:

(A) Respondent No. 1 constructed various industrial galas, in the Suit presently thereafter, Respondent No. 1 sold these industrial galas to various members of the Petitioner Society under diverse Agreements under MOFA. The gala purchasers formed a co-operative society and got it registered in the name of the Petitioner in the year 1996 and continued their occupation, possession and industrial work in the said galas.

(B) The Petitioner filed an application under section 11(3) of Maharashtra Ownership of Flats Act, 1963 dated 14th November 2017 before the Ld. Competent Authority against Respondent No.1 & 2 as Promoters under MOFA.

(C) On coming to know about the application, the Respondent No.3, the Estate Investment Pvt. Ltd., made an application claiming as a superior holder of the said plot of land mentioned in application under section 11(3) of MOFA.

(D) Respondent No. 3 in its application dated 1st June 2018 seeking intervention in the proceedings before the Ld. Competent Authority raised an objection to the grant of unilateral deemed conveyance to the Petitioner, *inter alia* on the ground that Respondent

No.3 the superior holder of the land and the Petitioner/ Respondent No.1 had not sought the consent of Respondent No.3.

(E) The Respondent No. 1 & 2 the original promoter, who sold the industrial galas did not contest nor remain present before the Competent Authority.

(F) In view of NOC of Estate Investment Pvt. Ltd. not being produced, the Ld. Competent Authority passed an order dated 27th November 2018 rejecting the Petitioner's application under section 11(3) of the said Act, *inter alia* for want of the no objection certificate of Respondent No. 3 with liberty to file fresh application after obtaining the no objection certificate of Respondent No. 3.

(G) Being aggrieved by the aforesaid order dated 27.11.2018 being Exhibit "E" to the Petition, the Petitioner filed the present Petition challenging the said order.

(H) This Hon'ble Court by its order dated 06.09.2022 directed the notice to the Respondents indicating that the petition would be taken up for final disposal at the stage of admission subject to constrain of time.

(I) The notices were served by publication in the local newspaper and thereby Respondent No.1 & 2 were served and Respondent No.3 filed the reply.

However, Respondent No.1 and 2 remained absent.

(J) The Petitioner Society and Respondent No.3 Estate Investment Pvt. Ltd. have arrived at a settlement with respect to and in relation to the proceedings u/s 11 (3) of MOFA Act and the present Petition and have agreed and recorded the terms and conditions of the settlement in a separate letter of even date exchanged between the parties and pursuant to the same Respondent No.3 record that it has no objection to the Petitioner for obtaining Deemed Conveyance.

(K) The Petitioner Society has accepted the rights of Respondent No. 3 as superior holder as recorded in the Revenue record of the said property, in view of the aforesaid and the settlement between the Petitioner and Respondent No.3, Respondent No.3 withdraws its objection and hereby consents for the Unilateral Deemed Conveyance for the application dated 14.11.2017 made before the Competent Authority with respect to the particulars of the land, the building and the area mentioned therein and have issued no objection letter to record the name of Petitioner Society in the Revenue Record by deleting the name as Superior holder in respect of the property in question.

(L) In light of the aforesaid settlement by consent the impugned order dated 27.11.2018 passed by the Competent Authority being Respondent No.4 stands set

aside and the Petition stands allowed and the application for deemed conveyance u/s 11(3) of MOFA stands allowed.

(M) Consequent to the aforesaid order, The Competent Authority is directed to issue the necessary certificate for registration of unilateral conveyance and execute the deemed conveyance for appropriate registration at the cost and expenses of the Petitioner. The Petitioner agrees to bear all stamp duty, registration charges and expenses in relation to these terms and the Deemed Conveyance, if any.

(N) Liberty to the Petitioner and Respondent No.3 to apply in case of any difficulty.

3. Accordingly, the Writ Petition is disposed of in terms of Consent Minutes of Order, with no order as to costs.

4. Respondent No. 4- Competent Authority and District Deputy Registrar of Co-operative Societies, Thane to take further steps expeditiously in accordance with this order.

BHALCHANDRA
GOPAL
DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.12.14
17:10:11 +0530

(MADHAV J. JAMDAR, J.)