

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

WRIT PETITION NO. 11116 OF 2016

Shri. Ratanshi Napu Shah

...Petitioner

V/s.

Uttam Cottage Co-op. Housing
Society Ltd. And Ors.

...Respondents

Mr. Drupad Patil, for the Petitioner.

Mr. P.P. Pujari, AGP for State.

CORAM : SANDEEP V. MARNE, J.

Dated : 14 September 2023.

P.C. :

1. By this petition, Petitioner challenges order dated 16 July 2015 passed by the Competent Authority granting unilateral deemed conveyance of the land in favour of the Society.

2. Mr. Patil, learned counsel for the Petitioner would submit that Petitioner is one of the joint owners of the property in question having acquired the same by way of conveyance executed in his favour on 21 December 1963. He would submit that Petitioner never received notice of proceedings for grant of deemed conveyance and therefore could not raise any objection. That though Petitioner is a resident of Shivaji Park, Dadar, Mumbai, his address was erroneously stated as 'near Liberty Gardens, Malad (West), Mumbai' in the application for deemed

conveyance. He would further draw my attention to the letter dated 12 April 2014 addressed by Petitioner's son to the Competent Authority requesting not to entertain any application for deemed conveyance without considering the rights of the Petitioner. He would submit that the correct address of the Petitioner was conveyed to the Competent Authority by that letter dated 12 April 2014 and therefore the Competent Authority ought to have ensured that notice to Petitioner was addressed at the address stated in the letter dated 12 April 2014. That the impugned order is passed without grant of any opportunity of hearing to the Petitioners and the same is liable to be set aside and the proceedings are required to be remanded to the Competent Authority for being heard afresh after grant of opportunity of defence to the Petitioners.

2 . It is seen that Petitioner claims right, title and interest in the property on the strength of registered Indenture dated 21 December 1963. Indenture of Conveyance dated 6 December 1973 was executed by various owners granting development rights in respect of the property in question in favour of the Developer. Petitioner however disputes execution of the said document. It appears that the Petitioner did not raise any objection to the said Indenture dated 6 December 1973 nor has challenged the same till date. Later, Commencement Certificate dated 3 December 1975 was obtained and construction of the building was carried out and Completion Certificate was issued on 11 December 1975. Though the Petitioner claims right, title and interest in the property in question, he saw the building come up on the land, but did not raise any objection to the said construction. In these circumstances, having not raised any objection for construction of the building on the land on which he allegedly has rights over the last 48 long years, it would be too late in a

day to set aside the order of the deemed conveyance passed by the Competent Authority only on the ground that Petitioner was not granted proper opportunity of hearing. It appears that since notices were not served on the Petitioner, the Competent Authority directed to publish notice by newspaper publication. Accordingly, the notice was published in Navshakti and Free Press Journal on 30 March 2015. This would be adequate service. The Petitioner however failed to appear before the Competent Authority. He was clairvoyant enough in addressing the letter dated 12 April 2014 to the Competent Authority even before filing of deemed conveyance proceedings. It therefore becomes incomprehensible as to why he did not thereafter appear before the Competent Authority even after publication of notice in the newspapers.

3. Be that as it may, it is well settled law that unilateral certificate of deemed conveyance is not a final adjudication of rights of the parties. Reference in this regard can be made to the recent judgment of this Court in **Tirupati Shopping Center Premises Co-operative Society Ltd. Vs. Shabayesha Construction Company Pvt. Ltd.** If the Petitioner indeed has any right, title or interest in the land in question, it would be open for him to adopt necessary remedies in respect thereof. All contentions of the parties in the present petition are kept open to be raised in appropriate proceedings.

4. As far as the order of deemed conveyance is concerned, no error can be traced in the same. It appears that the Certificate of deemed conveyance has already been acted upon by registration of conveyance deed and the redevelopment work of the building has commenced. Therefore, it would not be possible for this Court to interfere in the order

of deemed conveyance at this distant date. The Writ Petition, being devoid of merits, is **dismissed** without any orders as to costs.

SANDEEP V. MARNE, J.

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