

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1686 OF 2022**

Achita Ramesh Madhvi and anr.

...**Petitioners**

V/s.

Deputy Registrar Co-op. Soc.

Thane and Ors.

....**Respondents**

Mr. Vivek Salunkhe, for the Petitioners.

Mr. P.P. Pujari, AGP for Respondent No.1.

Mr. Dnyaneshwar Deshmukh, for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

Dated : 4 December 2023.

P.C.:

1. The challenge in the present Appeal is to the Orders dated 22 October 2013 and 6 December 2021 passed by the District Deputy Registrar, Co-operative Societies, and Competent Authority, Thane granting unilateral deemed conveyance of land in favour of the Respondent-Society. The application for grant of Certificate of

deemed conveyance was apparently filed by the Society by impleading the Developer and Mr. Ramesh Waman Madhvi as Respondents. It appears that as on the date of filing of application for deemed conveyance, Mr. Ramesh Waman Madhvi was already dead. The application for deemed conveyance came to be allowed by the District Deputy Registrar by Order dated 22 October 2023.

2. It appears that during the course of hearing of the application for deemed conveyance, the Society realized that Mr. Ramesh Waman Madhvi was no more. Nonetheless, the application for deemed conveyance came to be allowed by the District Deputy Registrar by Order dated 22 October 2013. It appears that in pursuance of Order dated 22 October 2013, the Society registered Deed of Conveyance dated 17 September 2020. Subsequently, the Society filed an application before the Competent Authority for modification/review of Order dated 22 October 2013 by including the names of legal heirs of Ramesh Waman Madhvi. Petitioners who are legal heirs of Mr. Ramesh Waman Madhvi appeared before the Competent Authority and filed written objections. The Competent Authority has proceeded to allow the application of the Society and passed a modified Order dated 6 December 2021 once again granting deemed conveyance of the land by taking into consideration the names of the Petitioners as Respondents to the proceedings. Another Deed of Conveyance is apparently registered in view of modified Order dated 6 December 2021.

3. Petitioners are aggrieved by the earlier Order dated 22 October 2013 as well as subsequent modified Order dated 6 December 2021 and have filed the present petition.

4. I have heard Mr. Salunkhe, learned counsel appearing for the Petitioner and Mr. Deshmukh, learned counsel for the Respondent No.2.

5. After hearing the rival contentions of the parties, it appears that Mr. Ramesh Waman Madhvi was the original owner of the land and he had executed an agreement with M/s. Jaffar Enterprises on 27 August 1992. There appears to be dispute amongst the parties about the nature of that agreement. According to Mr. Deshmukh, the agreement resulted in sale of the property by Mr. Ramesh Waman Madhvi in favour of M/s. Jafar Enterprises. On the other hand, it is Mr. Salunkhe's contention that the said document did not have the effect of transfer of title in favour of the Developer.

6. Perusal of the objections raised by Petitioners before the Competent Authority would indicate they claim to be the owners of the conveyed land. It is their contention that the Society's building is an unauthorised construction as development permission was not granted by the Planning Authority for construction of the building. It is also sought to be contended that no registered agreements as required under Section 4 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and

Transfer) Act, 1963 (**MOFA**) were executed in favour of the flat purchasers. *Prima-facie*, it is questionable as to whether the Petitioners can be permitted to raise the issue of the building being unauthorized in view of the fact that Mr. Ramesh Waman Madhvi was allotted two flats under the agreement executed with the developer. It appears that, Mr. Ramesh Waman Madhvi has sold the said two flats in favour of Dinesh Balkrishna More and Deepti Dinesh More by Agreement for Sale dated 21 June 2006 and alongwith the said agreement, Mr. Ramesh Waman Madhvi produced copy of the development permission. Since Mr. Ramesh Waman Madhvi represented to the flat purchasers that building is constructed in accordance with the development permission, it is now questionable as to whether his legal heirs can raise the issue of non-grant of development permission for construction of building. *Prima-facie*, the Petitioners cannot be allowed to approbate and reprobate. *Prima-facie*, it is also questionable as to whether the Petitioners would continue to hold any right, title or interest in the land in question after having accepted the amount of consideration as well as two flats under the Agreement dated 21 June 2006.

6. Be that as it may, the Competent Authority appears to have committed twin technical errors. Firstly, it has no jurisdiction to entertain the application for review as the power of review is not conferred by MOFA on the Competent Authority. Secondly, while passing the second order of deemed conveyance dated 6 December 2021, it appears that the Competent Authority has not dealt with the

various objections raised by the Petitioners. It is for these technical reasons, both the Orders of deemed conveyance dated 22 October 2013 and 6 December 2021 are liable to be set aside and the application filed by the Society is required to be restored for being decided afresh.

7. Accordingly, the Writ Petition is disposed of by setting aside the Orders dated 22 October 2013 and 6 December 2021. Needless to say that, the instruments of unilateral deemed conveyance executed by the Society in pursuance of the Orders dated 22 October 2013 and 6 December 2021 shall also stand set aside. The application of the Society for grant of deemed conveyance is restored on the file of the Competent Authority. The Petitioners shall be considered to have been added as party Respondents to that application. They shall file their objections to the applications within a period of four weeks from today. The parties shall appear before the Competent Authority on 15 December 2023 and obtain further directions. The Competent Authority shall decide the application for deemed conveyance afresh after hearing both the sides as expeditiously as possible, preferably within a period of six months from today.

8. All the contentions of the parties on merits of the case are kept open.

9. With the above directions, the Writ Petition is **disposed of**.
All pending interim application therein also stand disposed of.

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.12.06
10:24:38 +0530

SANDEEP V. MARNE, J.