

AGK

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

WRIT PETITION NO.10340 OF 2016

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Subodh Gajanan Gore

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Ajit Kenjale with Mr. Azharuddin Khan i/by Mr.
Umesh V. Dhumal for the petitioner.

Mr. J.P. Patil, AGP for respondent Nos.1 & 2 – State.

Mr. Sanjeev Sawant with Ms. Samiksha S. Mane i/by
Mr. Heramb S. Kadam for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 17, 2024

RC.:

1. The petitioner – owner of a property who executed a development agreement in favour of a promoter, who in turn executed agreement under Section 4 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“the Act” for short) in favour of the purchasers is challenging order passed by the Competent Authority in exercise of powers under Section 11(3) of the Act mainly on the ground that the promoter was conferred with limited rights in the property saving right of the petitioner to exclusively possess open spaces and, therefore, the effect of

conferment of unilateral deemed conveyance would take away petitioner's right to enjoy open spaces as agreed by the promoter.

2. The law in relation to conferment of unilateral deemed conveyance has been settled by various judgments of Single Judge and Division Bench of this Court including judgment in **Mazda Construction Company v. Sultanabad Darshan CHS Ltd.**, reported in 2012 SCC OnLine Bom 1266, **Zainul Abedin Yusufali Massawala & Ors. v. The Competent Authority** reported in 2016 SCC Online Bom 6028, and **Acme Enterprises & Anr. v Deputy Registrar, Cooperative Societies** reported in 2023 (4) AIR 817. Consistent view adopted by the Division Bench in **Zainul Abedin Yusufali Massawala** (supra) is that if the Competent Authority has in any manner travelled beyond the stipulations in the agreement while granting deemed conveyance and larger property is allowed to be claimed by the society contrary to covenants and recitals in the agreement, remedy of the aggrieved person is to approach competent Civil Court and establish his rights, title and interest in relation the larger property.

3. In the facts of the case, learned Advocate for the petitioner invited my attention to the agreement executed by the petitioner – owner in favour of the promoter, which specifically reserves right of the vendor of exclusive possession and use and occupy the open space shown in bounded green in plan at Annexure-I to the agreement dated 6 January 2002.

4. As it is held earlier, the society can claim only those rights which are available with the developer. The conferment of

unilateral deemed conveyance shall not confer more rights on the promoter and resultantly on the society formed by the purchasers than the rights conferred on the promoter. Therefore, in case the petitioner is aggrieved by the claim of the society in excess of the rights conferred on the promoter, the petitioner will have to approach competent Civil Court for ventilating his grievance.

5. Therefore, keeping the contentions raised by the petitioner open to be agitated before the competent Civil Court in an appropriately instituted suit, the Writ Petition stands disposed of.

6. No costs.

(AMIT BORKAR, J.)