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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
INTERIM APPLICATION NO. 16065 OF 2023  
IN  
WRIT PETITION NO. 8064 OF 2023**

Nityanand Co-operative Housing ... Applicant  
Society Limited

**In the matter of**

M/s. Dattani Construction and Others ... Petitioners

VS.

The District Deputy Registrar and Others ... Respondents

Mr. Mandar Limaye i/b. Mr. Vijay V. Nene for the Applicant.

Mr. Ram Apte, Senior Advocate a/w. Mr. Rahul Soman, Mr. Ayaz Bilawala and Ms. Disha Mehta i/b. M/s. Bilawala & Co. for the Petitioners.

Mr. Manish N. Jain a/w. Mr. Ritu G. Gehlot i/b. S. M. Jain Associates for Respondent Nos. 4 to 8 and 10 to 12.

Ms. M. P. Thakur, AGP for the State.

**CORAM : GAURI GODSE, J.**

**DATE : 15<sup>th</sup> APRIL 2024**

**P.C.**

1. Affidavit in rejoinder tendered on behalf of the petitioners is taken on record.

2. Heard parties. This application is filed for vacating the ad-interim relief granted by order dated 19<sup>th</sup> July 2023. The petition is filed for challenging the unilateral deemed conveyance in favour of the applicant-society. The petition is admitted on 19<sup>th</sup> July 2023. Though the unilateral deemed conveyance in favour of the applicant-society is not stayed, this court after hearing the applicant and considering the facts and circumstances of the case directed that no third party rights shall be created in the disputed area admeasuring 625 square meters. Learned counsel for the applicant submits that being aggrieved by the said order the applicant-society had approached the Apex Court. By Order dated 25<sup>th</sup> August 2023 the Apex Court disposed of the SLP, however, granted liberty to the applicant to file counter affidavit and apply for vacating / modification of order dated 19<sup>th</sup> July 2023.

3. Learned counsel for the applicant submits that pursuant to the said liberty the applicant has filed affidavit in reply and also filed the present application for vacating the interim relief granted by order dated 19<sup>th</sup> July 2023.

4. Learned counsel for the applicant submits that once it is held that the petitioners has not made out any case for grant of stay to the

unilateral deemed conveyance there is no reason to impose any condition on the applicant for not creating any third party interest in the disputed area admeasuring 625 square meters. He submits that the building is in dilapidated condition and hence this condition is causing difficulty to the applicant for redeveloping the building.

5. Learned counsel for the applicant further submits that MOFA agreement executed in favour of the members of the flat purchasers who were members of the society creates an obligation on the petitioners / developer/promoter to convey the entire area in favour of the society as described in the flat purchase agreement. He further submits that the law with regard to grant of unilateral deemed conveyance is well settled that it does not decide the title of the parties qua the property.

6. He submits that there are two buildings occupied by the members of the applicant-society i.e. flat purchasers. The third building i.e. Building No. C is occupied by tenants. Pursuant to the deemed conveyance the society has admitted the tenants as members of the society. He thus submits that the structure of the building being in a dilapidated condition, the applicant-society is required to redevelop the

buildings including Building No. C occupied by the tenants.

7. Learned counsel relies upon the relevant clause of the flat purchase agreement in support of his contention that the entire area including area of Building No. C is required to be transferred in favour of the society. He therefore submits that the interim relief granted by order dated 19<sup>th</sup> July 2023 be vacated.

8. Learned counsel for the petitioners submits that the society is entitled to only the area in proportion to the construction of the applicant - society. He submits that the society is formed only with regard to the two buildings occupied by the flat purchasers and the building occupied by the tenants was never part of the formation of the applicant-society.

9. Learned counsel for the petitioners relies upon clause 34 of the flat purchase agreement which reserves the rights of the builders with regard to unsold flats and shops. He submits that in any event the Building No. C occupied by the tenants were never part of the formation of the applicant-society and hence there is no question of transferring the area of Building No. C in favour of the applicant-

society. He submits that considering the aforesaid facts of the case this court by order dated 19<sup>th</sup> July 2023 has protected the rights of the applicant-society by not granting any stay to the execution of order under Section 11. However, an equitable order has been passed by protecting the rights of the petitioner by directing that the parties shall not create any third party right in respect of the disputed area of 625 square meters. He thus submits that the interim relief granted by order dated 19<sup>th</sup> July 2023 is equitable relief protecting the rights of both the parties and hence the same may not be disturbed,

10. I have considered the submissions. Perused the papers. It is not disputed that the third Building No.C though occupied by the tenant was not made part of the formation of the applicant-society. It is only after grant of unilateral deemed conveyance that the tenants have been admitted as members of the applicant-society, by passing a resolution for admitting tenants as members of the society.

11. It is further also not in dispute that the Building No.C was already constructed before the two buildings of the society was developed. Learned senior counsel for the petitioner has therefore also relied upon the documents at the time of registration of the applicant-society

which indicates that the old building with ground plus first floor consisting of tenants would not be part of the proposed society and the building occupied by the tenants would continue to be a separate building and the tenants would not be required to be admitted as members of the society. The documents with regard to the formation of the society whereby the third building was agreed to be kept separate and not part of the applicant-society is not disputed by the applicant -society.

12. Since it was argued on behalf of the applicant that due to the injunction granted with regard to disputed area of 625 square meters applicant -society is facing difficulty in redevelopment, a specific query was made to the learned counsel for the applicant as to in what manner applicant-society would protect the interest of the petitioners in the event the petitioner succeeds in the petition. Learned counsel for the applicant is unable to point out any effective measures that can be adopted by the applicant-society.

13. The petitioners have challenged the unilateral deemed conveyance based on the contention that the third building was always to be kept as a separate building and not made part of the applicant-

society by order dated 19<sup>th</sup> July 2023. This court has thus protected rights of the applicant-society by not granting stay to the implementation of the order granting unilateral deemed conveyance. However, considering the aforesaid facts with regard to formation of the society restricting to only two buildings in my view order dated 19<sup>th</sup> July 2023 protects the right of both the parties. It is an equitable order by which the rights of the society as well as the petitioners stand protected as the restriction to create third party rights is only with regard to the disputed area. The said interim order does not indicate that the applicant-society is restrained from redeveloping their own property.

14. Hence, in view of the aforesaid facts, I do not see any reason to modify and/or vacate the interim relief granted by order dated 19<sup>th</sup> July 2023. In the event the applicant-society is permitted to create third party interest the same will cause prejudice to the rights and contentions of the petitioners. I do not see any valid reason to entertain the application for vacating the interim relief granted by order dated 19<sup>th</sup> July 2023, after hearing the applicant.

15. For the reasons stated above application is dismissed.

16. Needless to clarify that the interim relief granted on 19<sup>th</sup> July 2023 stands confirmed.

**[GAURI GODSE, J.]**