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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12758 OF 2023**

Solitaire Cooperative Housing Society Ltd ... Petitioner

vs.

Vertex Newton Projects Private Ltd and Anr ... Respondents

Mr. A.S. Khandeparkar, Senior Advocate i/b. Mr. S.S. Modak and Mr. K.J. Jain a/w. Farhan Shaikh, for petitioner.

Mr. Cherag Balsara a/w. Ms. Laveena Tejwani, Ms. Neha Bhosale i/b. NDB Law for respondent no.1.

Mr. P.P. Pujari, AGP for respondent nos. 2 and 3-State.

CORAM : GAURI GODSE, J.

DATED : 23rd JANUARY, 2024

P.C. :-

1. This petition is filed by the Society challenging the order passed on the application filed by the petitioner society under Section 11 of the Maharashtra Ownership Flats (Regulations Of The Promotion Of Construction, Sale, Management and Transfer) Act, 1963('MOFA'). By the impugned order the application filed by the petitioner is allowed and it is held that the petitioner is entitled to the Unilateral Deemed Conveyance of land admeasuring 7306.815 square meters and proportionate share in the Club House for

24.179 comprising of 7330.994 square meters, out of 8910.75 square meters of Survey No. 78, Hissa No. 1(pt) and Survey No. 67, Hissa No.1(pt) in Revenue Village Kalyan, Taluka Kalyan and District Thane along with the access to the common amenities situated thereon.

2. Learned senior counsel appearing for the petitioner submits that the Competent Authority has not taken into consideration the specific clauses in the flat purchase agreement where the promoters/developers have agreed to convey plot 'A' as described in the flat purchase agreement. He submitted that the petitioner society had submitted an Architect's certificate containing the calculations showing the entitlement of the petitioner society for the grant of deemed conveyance in terms of clauses of the flat purchase agreement. He submits that once the promoter/developers had agreed to convey the entire plot 'A' to the society the competent authority should have granted deemed conveyance as per the specific clause in the agreement. Learned senior counsel specifically points out the clauses (J), (N), (S) and clauses (10) and 12 read with the schedule in the agreement which describes plot 'A'. He submitted that as per the specific clauses in the agreement, the promoter/developer had agreed to transfer plot 'A' i.e. 8910.75

square meters. However, the competent authority has granted deemed conveyance of a lesser area of 7330.994 square meters. He thus submitted that the competent authority has completely ignored the clauses of the agreement and has granted deemed conveyance based on the calculations as reflected in the impugned order. He further submitted that as per the agreement, a commercial building was to be constructed and if the entire plot 'A' is not transferred to the society two separate societies will be required to be formed. Hence, it is necessary to convey the entire plot 'A' to the petitioner society in compliance with the terms and conditions of the flat purchase agreement. He therefore submits that the petitioner society is entitled to the entire area of plot 'A' to be conveyed in favour of the petitioner society.

3. Learned counsel appearing for respondent no.1, supports the impugned order on the ground that the competent authority has taken into consideration the requirement of the petitioner society by specifically calculating the required area in terms of the procedure laid down in the form of guidelines to be followed to issue deemed conveyance as per Government Resolution dated 22nd June 2018('GR').

4. Learned counsel for respondent no.1 points out the relevant clauses in the agreement i.e. clause 10, clause (J) and (N) read with clause 20 of the agreement. He submitted that clause (N) specifically refers to the building being constructed on plot 'A' i.e. two residential wings and one commercial building within plot 'A'. He submits that the society is registered for two residential wings and the commercial building is not a part of the formation of the petitioner society. He submitted that construction permission is with respect to the entire layout of plot 'A' consisting of two residential wings and one commercial building. He therefore submits that the entitlement of the FSI is also specifically dealt with in the agreement in clause (10) and further clause (22) of the agreement provides for executing conveyance and transfer of plot 'A' consisting of residential plots and commercial units. However, he submits that only two residential wings are completed and society is formed only for two residential wings, and that commercial building is not made part of the petitioner society.

5. Learned counsel relied upon the GR and in particular the procedure prescribed in the said GR for issuance of the deemed conveyance certificate. He submitted that the competent authority has followed the said guidelines issued by way of the said GR and

all calculations for entitlement of the unilateral deemed conveyance of the petitioner society is examined by the competent authority and specifically recorded in clause (h) of the impugned order. He submits that so far as the petitioner's contention of entitlement of the conveyance about the entire plot 'A' is concerned, the same is a question of interpretation of the clauses of the agreement, which the competent authority could not have gone into. He submits that the agreement specifically provides an arbitration clause and the petitioner society is always free to adopt appropriate proceedings for redressal of its grievance and entitlement of the higher area than is granted by the deemed conveyance order.

6. I have perused the papers. A perusal of the impugned order indicates that the competent authority has followed the procedure as prescribed in the GR. In view of the said guidelines, the competent authority has verified the entitlement of the petitioner society for the grant of a unilateral deemed conveyance. The submissions made on behalf of the petitioner society are with regard to the entitlement of the petitioner society for the entire plot 'A' in terms of the clauses in the agreement. Petitioner society has not raised any dispute with respect to the calculations made by the competent authority in terms of the procedure required to be adopted as per the GR.

7. So far as the submission made on behalf of the petitioner society regarding their entitlement to a particular area in terms of the clauses in the agreement is concerned, in my view the scope of the proceedings under section 11 of the MOFA is no more *res integra* and it is a well-established principle of law that the deemed conveyance issued by the competent authority does not create any conclusive title in respect of the property in favour of the society and that such order of deemed conveyance is subject to final adjudication of title in appropriate civil proceedings either before the civil court or before the Arbitral Tribunal, in the event, there is any arbitration clause in the agreement. It is also a well-established principle of law that in view of the provisions under MOFA, the order passed by the competent authority under section 11 of the MOFA is not final in respect of the title of the property and that any of provisions does not bar any civil court and/or arbitral tribunal from issuing title independently.

8. Even otherwise, the procedure under section 11 for grant of the Unilateral Deemed Conveyance by the Competent Authority is not a final adjudication. Sub section 4 of section 11 of MOFA empowers the competent authority on being satisfied that it is a fit case for issuing certificate of deemed conveyance shall issue

certificate to Sub Registrar or any other appropriate Registration Officer under the Registration Act, certifying that it is a fit case for enforcing the unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant as deemed conveyance. Sub section 5 of section 11 of MOFA empowers the Registration Officer to make an enquiry by issuing summons to the promoter and after giving the promoter and the applicant a reasonable opportunity of being heard, may, on being satisfied that it was a fit case for the Unilateral Deemed Conveyance register the instrument as deemed conveyance. Thus, considering sub section 5 of section 11, it is clear that even after the deemed conveyance certificate is issued by the competent authority, the concerned Registration Officer shall register the instrument as Deemed Conveyance only after being satisfied that it was a fit case for the Unilateral Conveyance. Plain reading of sub section 5 of section 11 of MOFA indicates that in a given case the concerned Registration Officer if not being satisfied that it is a fit case may even refuse to register the instrument as deemed conveyance. Thus, the procedure contemplated under section 11 of MOFA is not a final adjudication by the Competent Authority. Hence, it is always open for the parties to get their rights towards title adjudicated by adopting appropriate remedies as

permissible in law.

9. Learned senior counsel for the petitioner relied upon the decision of this Court in the case of ***ACME Enterprises and Another v. Deputy Registrar, Co-operative Societies and Ors***¹ and submitted that the procedure to be followed by the competent authority is to be in consonance with the terms of the agreement and the terms of the agreement cannot be ignored. He thus, submitted that the competent authority could not have conveyed lesser area by ignoring clauses of the agreement.

10. I have perused the decision in the case of ***ACME Enterprises***. This Court in the said decision has specifically held that an inquiry in the proceedings for deemed conveyance is of a limited nature and that the competent authority cannot delve into the aspect of the title. It is also observed that the finding of the competent authority does not preclude a party from agitating the grievance as to the entitlement of the organization of purchasers to have the conveyance before the civil court. This court further held that the remit of enquiry by the competent authority, is thus, whether the conditions stipulated for enforcement of the obligation to execute the conveyance have been satisfied and, if yes, order an unilateral

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deemed conveyance.

11. The scope of inquiry in deciding the application for Unilateral Deemed Conveyance is explained in various decisions of our Court by following the principles laid down in the decision of ***Mazda Construction Company and Ors v. Sultanabad Darshan CHS Ltd and Ors***².

12. Learned counsel appearing for respondent no.1 thus in support of the said well-settled principle of law relied upon the decisions in the case of ***Mazda Constructions*** and in the case of ***M/s. Shree Siddharth Construction Vs Shree Saraswati Apartment and Ors***³ and the recent decision of this Court in case of ***Ashok Manohar Shete and Ors v. Parvati Sadan Co-operative Housing Society Ltd and Ors***⁴.

13. After examining the aforesaid submissions made on behalf of both parties and after going through the order passed by the competent authority, I do not find any error in the order of the competent authority. The reasons recorded by the competent authority indicate that the procedure laid down in the GR is followed

2 2013 (2) ALL MR 278

3 Writ Petition no. 1439 of 2012, dated 17th October 2013

4 Writ Petition no. 3809 of 2021, dated 5th January 2024

by the competent authority. Even, otherwise, there is no dispute raised on behalf of the petitioner to the calculations for the area made by the competent authority for grant of the unilateral deemed conveyance.

14. Thus, if the petitioner society is aggrieved by the order on the ground that a lesser area is conveyed to the petitioner, it is always open for the petitioner society to file a suit or initiate arbitration proceedings, as permissible in law, for claiming additional area in terms of the agreement. It is well well-settled principle that the order of the unilateral deemed conveyance does not adjudicate rights and entitlement of the parties qua the title. Hence, in view of the well-settled principle of law, I do not find any reason to exercise power under Article 227 of the Constitution of India to interfere in the impugned order.

15. For the reasons stated above, I do not find any merit in the petition, hence the petition is dismissed.

(GAURI GODSE, J.)