

Shabnoor

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

WRIT PETITION NO.1418 OF 2016

Gangappa Kotappa Derbere
(Since Deceased) Through Legal Heirs ... Petitioners

V/s.

Jyoti Vidya Cooperative Housing Society
Ltd. & Ors. ... Respondents

Mr. Vishal Hegde a/w Mr. Akshay Naik, for Petitioners.

Mr. Jasbir Salaja a/w Mr. Mayur C. Sarode, Ms.
Rajashri B. Karande, for Respondent No.1.

Mr. V. S. Nimbalkar, AGP for State/Respondent Nos.4 &
5.

CORAM : AMIT BORKAR, J.

DATED : APRIL 2, 2024

P.C.:

1. Petitioners/owners are challenging the order passed by the Competent Authority under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963 (“MOFA”) granting deemed conveyance in favour of respondent No.1- Society.

2. According to the petitioners, the order of deemed conveyance confers excess area that the area which respondent No.1- Society is entitled under the agreement under Section 4 of MOFA.

3. The similar contentions were raised before the Division Bench of this Court in the case of **Zainul Abedin Yusufali Massawawala and Others Vs. Competent Authority District Deputy Registrar of Cooperative housing Societies, Mumbai and Others**, reported in 2016 SCC OnLine Bom 6028. This Court observed that if while granting the deemed conveyance, the Competent Authority has in any manner, traveled beyond the stipulations in the agreement, and the grievance of the petitioners is that a larger property is allowed to be claimed by the society contrary to the covenant and recitals of the two agreements, then the remedy of the petitioners even in terms of two decisions referred in the said decision is to approach the Competent Civil Court and establish this right, title and interest in relation to the larger property.

4. In view of the said decision, the remedy of the petitioners is to approach the Civil Court for adjudication of his rights. However, it is informed that the civil suit is already pending between the parties in relation to the property, which is the subject matter of deemed conveyance. Therefore, it is made clear that the rights of the parties in relation to subject matter of deemed conveyance under Section 11(3) of MOFA shall be subject to final decision of civil suit.

5. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)