

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

WRIT PETITION NO.850 OF 2024

Hemraj Ambalal Singhvi }
 Age-75 years, Occupation-Business }
 R/at 101, 1st Floor, Mahavir Darshan, }
 L & T Road, Mulund (East), }
 Mumbai-400 081. } **Petitioner**

V/s.

1. State of Maharashtra, }
 Thr. Ministry of Cooperative Affairs, }
 Mantralaya, Mumbai-400 031, Thr. }
 Government Pleader, High Court, }
 Mumbai. }

2. District Deputy Registrar, }
Co-operative Societies (2), }
 Mumbai City Eastern Suburb, }
 Having Office at 201, 2nd Floor, Kokan }
 Bhavan, Navi Mumbai-400 614. }

3. City Survey Officer, Mulund }
 First Floor, Mulund Court, Near MCC }
 College, Mulund (West), Mumbai-400080 }

4. Mulund Ashok Co. Op. Hsg. Ltd. }
 Mahatma Phule Road, Near Deshmukh }
 Garden, Mulund (East), Mumbai-400081 }

5. M/s.Veena Developers }
 Having Its Officer at 701, 17.19 Dalal }

Street, Fort, Mumbai-400023 }
 Through Its Proprietor }
 Mr.Hemchandra Chachani & Ors. }

6. Hemchandra Chachani }
 M/s.Anu Builders, Thr Jesthabhai }
 Chachani }
 31, Dhiraj Apartment, J. Dosa Road, }
 Mulund (W), Mumbai-400 080. } **Respondents**

Mr.Pushkar Naik, for the Petitioner.
 Mr.Hamid Mulla, AGP, for Respondent Nos.1 to 3-State.
 Mr.Swapnil R. Patil, for Respondent No.4.

CORAM : R.M. JOSHI, J.

DATE : 23rd AUGUST 2024

P. C. :-

. By consent of both sides heard finally at the stage of admission.

2. After 10 years of passing of impugned order, this Petition takes exception to order dated 13th December 2013 passed by Respondent No.2 under Section 11(3) of the The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer), Act 1963 (for short 'Act') granting Deemed Conveyance to the Respondent

No.4-Society.

3. It is the case of the Petitioner that, he is the Successor of Respondent Nos.5 and 6 i.e. then owners of Plot of land bearing Survey No.152B and 159D having CTS No.473 admeasuring 740 sq.mts. Respondent No.4 is Co-operative Housing Society duly registered under the Maharashtra Co-Operative Housing Societies Act. According to the Petitioner, Respondent No.5 is Developer and Builder who developed the Plot in favour of Respondent No.4-Society. It is case of the Petitioner that, he has acquired the rights in respect of the said property together with structure standing thereon known as Chawl (Tenanted premises) situated at Mahtma Phule Road, Mulund (East), Mumbai-400081. It is his claim that, Development Agreement dated 11th October 1981 was duly executed between Anandan Trust and M/s.Meena Developers. It is further stated that, Respondent No.5 commenced development of the entire land and constructed two wings by retaining existing structures known as chawl. The purchasers of the Flats and Commercial Units forms Respondent No.4-Society and it was

registered on 6th October 1981. It is claimed by the Petitioner that, the area of the said Society on which the said building was constructed and the land pertaining thereto is admeasuring 3684.34 sq.ft. mts. only, out of the larger property i.e. subject property. It is also the case of the Petitioner that, while selling the flats in Co-operative Housing Society Respondent No.4 has clearly disclosed in the Purchase Agreement about the area admeasuring 4570 sq.mts., so also the plans were also sanctioned by the Municipal Corporation accordingly.

4. Thus, it is a case of the Petitioner that the Respondent-Society is entitled for the Deemed Conveyance only in respect of 3684.34 sq.mts. out of the 4491 sq. mts. and not in respect of the remaining portion of 740 sq.mts. It is also contended that, the Authority under the Act has failed to take into consideration the said aspect and granted Deemed Conveyance in favour of Society to the extent of the land admeasuring 4062.10 sq.mts. The Petitioner therefore, challenged the impugned order on the grounds specifically set out in Clause No.(A) to (K) of the Petition.

5. The learned counsel for the Petitioner who appeared through Video Conferencing sought to make submission with regard to the Authority under the act having not complied with the provisions of law while passing the order impugned. It is his contention that, the Petitioner has right, title and interest in respect of the area which is under the structure known as chawl. Thus, it is his contention that, on the basis of the said claim of the Petitioner the order impugned cannot sustained. He also sought to draw attention of the Court to the plans approved by the Municipal Corporation for construction of the buildings.

6. The learned counsel for the contesting Respondent-Society supported the impugned order by placing reliance on the documents which were placed before the authority while seeking Deemed Conveyance. It is his contention that, the proceedings were filed after giving notice to the Developer and since the conveyance was not issued, in accordance with the provisions of Section-11 of the Act, an Application was filed. It is also submitted that, a due notice was issued for the compliance of the necessary documents by the concerned Authority and after the

verification of the documents placed on record, order of Deemed Conveyance came to be passed.

7. During the course of the hearing specific query was made to the counsel for the Petitioner as to what is the right, title and interest of the Petitioner in the subject property and to substantiate the same on the basis of the documentary evidence on record. The learned counsel for the Petitioner could point out an agreement not under the provisions of MOFA Act nor a Sale Deed in respect of the portion of the property known as chawl. Except for this, there is no other document is indicated from record to show that any right, title and interest in the said property is validly transferred in favour of Petitioner.

8. At the outset it needs to be considered that the Petitioner is seeking to challenge order dated 13th December 2013, after a period of more than 10 years. No doubt there is no period of limitation prescribed for filing Writ Petition but as per settled law of must be done with a reasonable period. Thus, this is a case of delay and laches on the part of Petitioner. In absence of providing any reasonable explanation the Petition must fail.

9. Even otherwise, it is the case of the Petitioner that, he has right, title and interest in the subject property, the initial burden is on him to substantiate his contention on the basis of the documentary evidence. In this regard, perusal of the record indicates that, there is no Sale Deed in respect of the property which is claimed to have been purchased by the Petitioner to the extent of 740 sq.mts. land and chawl constructed thereon. The document titled as Agreement of Development is sought to be relied upon. Even perusal of the said document does not indicate that any right, title or interest has been created in favour of the Petitioner by the original owner of the subject property. As against this, the Petitioner has not made dispute about the fact that the original owners on the basis of Development Agreement have developed the subject land and two building were constructed on subject land. It is further not in dispute that, the purchase flats/unit purchasers formed Co-operative Housing Society under the provisions of the Societies Act on 6th October 1981. So also there is no denial of the fact that, the society before moving an Application under Section-11 of the Act had issued

notice to the Developer/Promoter for giving conveyance. Since, the said request was not considered, the Society was within its right to move an Application before the Competent Authority under the Act under Section-11.

10. Perusal of the record placed before this Court by the Petitioner himself indicate that, the original owners as well as the Developers were party to the proceedings before the Competent Authority, but none appeared before Competent Authority to oppose Application. Not only notices were issued to the Respondents therein but notices were also published in two newspapers. Thus, it cannot be said that order impugned has been passed without compliance of requirement of issuance of notice for giving opportunity of hearing.

11. The Competent Authority while passing impugned order has taken into consideration certificate of Registration of Society, approved Construction Plan, Commencement Certificate, Completion/Occupation Certificate etc. Thus, the order passed by the Competent Authority is after due compliance of the provisions of Section-11 of the Act.

12. With regard to the issuance of the Certificate of Deemed Conveyance to the extent 4026.10 sq.mts. is concerned it is specifically observed in Clause 6 of order as follows :-

"६) बृहन्मुंबई महानगरपालिकेकडील कार्यकारी अभियंता इमारती प्रस्ताव पुर्व उपनगर यांचे कार्यालयाने सीई/२२४५/बी.एस.III/ए.टी. अन्वये सी.टी.एस.क्र.४७३, महात्मा फुले रोड, मुलूंड (पू.) वरील इमारतीस दिलेल्या इमारत बांधकाम मंजूरीच्या नकाशाची प्रत सोबत जोडली आहे. सदर नकाशाचे अवलोकन करता एकूण प्लॉटचे क्षेत्रफळे, हे ४४९९.६० चौ. मीटर इतके असून त्यातून ४६५.५० चौ. मीटर इतके सेट बॅकचे क्षेत्रफळ वजा जाता एकूण ४०२६.३० चौ. मीटर इतका नेट प्लॉट एरिया शिल्लक राहतो. परंतू सदर प्लॉटवर अर्जदार संस्थेच्या इमारतीशिवाय (बांधकाम १ व बांधकाम-५) बांधकामे असून सदर नकाशात नमूद असलेप्रमाणे स्ट्रक्चर-१ चे क्षेत्रफळ १४०६.३२ चौ. फूट व स्ट्रक्चर-२ चे क्षेत्रफळ १५२४.४८ चौ. फूट असे दोघांचे मिळून एकूण २९३०.८०० चौ. फूट /२७२.२४ चौ. मीटर इतके क्षेत्रफळाची एक्झिटींग फ्लोअर एरिया म्हणून नोंद आहे."

This observation is in consonance with the material placed before Authority.

13. In so far as the structure in the property known as chawl is concerned in Paragraph 6 of the order it is held thus :

" ६) सदर अर्जाबाबत आनंदन ट्रस्टचे मुख्य विश्वस्त श्री मंघत शिवशंकरन यांनी दि.१२/१२/२०१३ रोजी दिलेल्या प्रतिज्ञापत्रात (Affidavit) सदर ट्रस्टने सिटी सर्व्हे क्र. ४७३, सर्व्हे क्र. १५२ बी व १५९ डी प्लॉट क्र. एक्स

व वाय या मिळकतीचे वा यावर असणारी मुलूंड अशोका को-ऑप. हौसिंग सोसायटी लि. यांचे सर्व हक्क हे मूळ विकासक विणा डेव्हलपर्स पांचेकडून करारनाम्याने घेतलेले असून जर सदर मिळकतीवर असणा-या भाडेकरू यांचे सर्व हक्क भविष्यात अबाधित राहणार असतील तर उपरोक्त नमूद मिळकतीचे अर्जदार संस्थेच्या नावे मानीव अभिहस्तांतरण त्यांची करण्यास काहीही हरकत नसेल व भविष्यात जर सदर भाडेकरूंचे बाबतीत काही वाद झाला तर त्याची संपूर्ण जबाबदारी सदर ट्रस्टची व अर्जदार संस्था यांची असेल अशा प्रतिज्ञापत्राची प्रत सादर केलेली असल्याने अर्जदार संस्थेने मागणी केलेल्या एकूण ४०२६.१० चौ. मीटर इतक्या क्षेत्रफळाचे (सदर मिळकतीत असलेल्या भाडेकरू यांच नावे राखीव ठेवलेल्या २७२.२४ चौ. मीटर सहीत) अर्जदार संस्थेच्या मानीव अभिहस्तांतरण देणे योग्य होईल अ वाटते तरी सदर मिळकतीत असणारे भाडेकरू यांचे सर्व हक्क भविष्यात अबाधित राहणार आहेत.”

14. Since in the light of afforested facts, Conveyance has been granted in respect of area admeasuring 4026.10 sq. mts, in considered view of this Court, the order passed by Competent Authority is just legal and in accordance with the provisions of Section 11 of MOFA Act and hence Petition deserves to be dismissed and accordingly stands dismissed.

15. All pending Civil/Interim Applications are disposed of.

(R.M. JOSHI, J.)