

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 4542 OF 2024

Krishna Developers Pvt. Ltd. Petitioner

Versus

The District Deputy Registrar Co-op. Respondents
Soc. And Ors.

Dr. Uday Warunjikar a/w Mr. Abhilesh Chitre, Ms. Sonali Dalvi and
Mr. Rehan Ghojaria i/b Mr. Deepak Chitnis Chiparikar & Co.,
Advocates for the Petitioner.

Mr. Arun Panickar a/w Mr. Vinay Nair, Advocate for Respondent
No.2.

Ms. A. A. Nadkarni, AGP, for the State.

CORAM : R. M. JOSHI, J.

DATE : 20th AUGUST, 2024.

P.C. :

1. Heard.
2. Learned counsel for the Petitioner submits that the authority under Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (for short “**MOFA**”) has granted deemed conveyance in ignorance of

the fact that there was agreement between the parties that the common access/right of way shall remain with the Promoter/Developer. It is his further submissions by relying upon Clause No.9(b) to claim that the developer is entitled to consume F.S.I. as may be available in respect of the said property or any part thereof. It is submitted that irrespective of the fact as to whether such F.S.I. is available as on the date of the construction or even thereafter, the right of the promoter to avail the said F.S.I. can not be taken away. It is his submissions that in such circumstances the order passed of deemed conveyance cannot be allowed to be executed.

3. Learned counsel for the contesting Respondent opposed the said submission. It is his submission that Clause Nos.23, 24 and 28 pertains to the right of access to the developer for the purpose of development of entire plot. He has drawn attention of this Court to the facts that already entire development on the plot is complete by issuance of last O.C. in the year 2007. It is his further submission that there is a certificate issued by the Architect indicating that the entire F.S.I. available on the plot has been exhausted.

4. It is sought to be canvassed on behalf of the Petitioner that now further F.S.I. is available which would be the property of the

Petitioner/Developer. This contention is opposed by the counsel for the Respondent by submitting that immediately within four months of the completion of project, conveyance was ought to have been executed in favour of the society and the said contention of Petitioner about the right to be claimed in respect of F.S.I. which may be approved in future, does not hold any water.

5. This Court does not wish to record any findings on the aforesaid submission at this stage. Suffice it to say that no prima facie case is made out to stay order of deemed conveyance. However execution/registration of conveyance document pursuant to the order impugned shall be subject to the outcome of this petition.

6. It would be the responsibility of the Respondents to inform the subsequent purchaser, if any, of the units about pendency of this petition and order passed by this Court.

7. Issue notice to the Respondents, returnable on 27th September, 2024.

8. Learned AGP waives service on behalf of the State.

(R. M. JOSHI, J.)