

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17351 OF 2024.

Vijay Devrao Patil and Others.

...Petitioners.

Versus

Om Ram Co-operative Housing Society Ltd.
and Others.

...Respondents.

*Mr. Rajesh Kanojia and Ms. Prachi Pawar i/b Res Juris for the Petitioner.
Mr. Kedar Dighe, Addl. Govt. Pleader and Ms. T. J. Kapre, AGP for Respondent-
State.*

Coram : Sharmila U. Deshmukh, J.

Date : December 4, 2024.

P. C. :

1. Heard.
2. By this petition, exception is taken to the order dated 15th July, 2024 passed by the Competent Authority under Sections 11(3) and 11(4) of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 [for short, "***the Act***"] and under Rules 11, 12 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 [for short, "***the Rules***"] granting deemed conveyance in favor of Respondent No.1-Society of land admeasuring 1520 sq. mtrs bearing New Survey No.181, Hissa No.3 along with building situated thereof.

3. As primary contention raised by learned counsel for the petitioner was that the Notice was not served upon the petitioner, instead of remanding the matter back, this Court has heard the learned counsel appearing for the petitioner.

4. Learned counsel for the petitioner would object to the grant of deemed conveyance on the ground that the documents which were produced, for perusal of the competent authority in adjudication of the deemed conveyance application are fraudulent documents and none of the documents would indicate a flow of title as regards the ownership of the property. He would further submit that the documents did not indicate as to who is the owner of the property and in the absence of determination of the ownership of the property, the order of deemed conveyance could not have been passed. He would further submit that the petitioners have filed criminal complaint claiming ownership of the subject property and various representations were made to the authorities.

5. I have considered the submissions and perused the record.

6. Alleging non-compliance of the statutory obligations of Section 11 of the Act, an Application came to be filed by Respondent No.1-Society impleading not only the Developers but the owners which also includes the present petitioner. The order records that the hearing was conducted on various dates and notice was issued in Form VII and

Public Notice was also issued and after giving opportunity, the order of deemed conveyance has been passed. The Competent Authority has observed that Respondent No.1-Society consists of 48 tenants and as per 7/12 extracts copy submitted by the Applicant, name of the Opponent Nos. 2 to 36 and 41 appears as land owners. The Competent Authority has further considered various clauses of MOFA Agreement and has held that the land owners have sold their right, title and interest in the land to the Builder-Developer who have thereafter, constructed the property and entered into Section 4-MOFA Agreement.

7. The limited extent of inquiry contemplated under Section 11 of the Act is to ascertain whether the obligations of the promoters have been complied with and if there is non-compliance, the Competent Authority is required to step into the shoes of Promoter and to convey the right, title and interest of promoter's land and building in accordance with the Flat Purchasers Agreement. The recitals in the Flat Purchasers Agreement which is annexed at Page 200 would indicate that the flow of title including the execution of Development Agreement and thereafter, the building was constructed and Flat Purchasers Agreement was entered into in accordance with MOFA. The Flat Purchasers Agreements refers to the various documents pursuant to which Development was carried out and it is not necessary

that all the documents pertaining to title should be placed for examination of the Competent Authority for simple reason that the Competent Authority is not examining any title, dispute or any right in the subject-property. Respondent No.1-Society is registered in the year 2006 and considering the provisions of the Act, right to the conveyance of right, title and interest of the Promoters triggered within 4 months of registration of the Society. Perusal of the order would indicate that the Competent Authority has confined itself to the jurisdiction contemplated under Section 11 of the Act and having satisfied itself about the non-compliance of the obligations have thereafter, granted the certificate for execution of unilateral deemed conveyance.

8. The contention of learned counsel for the Petitioner is that the documents are fraudulent documents and the promoters did not have any title are all issues which are required to be adjudicated in civil proceedings. The building has been registered in the year 2006 and till the year 2024, no steps have been taken by the petitioner to adjudicate their right, title and interest in the property. It is well-settled law by the decision in the case of ***Mazda construction Company vs. Sultanabad Darshan CHS Ltd***¹ and in ***Shree Chintamani Builders vs. State of Maharashtra***² where it was clarified that the grant of unilateral deemed conveyance does not conclude the issue of right,

1 2012 SCC OnLine Bom 1266

2 (2016) SCC OnLine Bom 9343

title and interest in property and it is open for the petitioner to file substantial suit to claim their interest in the property. In the present case, even if the petitioners would have been heard before the Competent Authority, the contentions which are sought to be raised before this Court, could not have gone into by the Competent Authority considering the limited remit of inquiry. The issue of right, title and interest is required to be adjudicated in civil proceedings and under the garb of examining the validity of the order of deemed conveyance, this Court under Article 227 cannot adjudicate the issue of right, title and interest.

9. In light of the above, I find no reason to interfere with the order of Competent Authority granting unilateral deemed conveyance to Respondent No.9-Society which has been registered in the year 2006.

10. In light of the above, there is no infirmity in the order. Petition is devoid of merits and stands disposed. Needless to clarify that it is open for the Petitioner to file substantial civil suit for adjudicating their right in the subject property and the grant of unilateral deemed conveyance will not create an impediment in the civil proceedings which is required to be decided on its own merits and in accordance with law.

[Sharmila U. Deshmukh, J.]