

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.738 OF 2024

Madhuwan Andheri Co-operative ...Petitioner
Housing Society Limited

Versus

The Competent Authority District Dy. Registrar ...Respondents
Co-operative Society Mumbai (3) & Ors.

WITH
INTERIM APPLICATION (L) NO.10504 OF 2023
IN
WRIT PETITION NO.738 OF 2024

Madhuwan Andheri Co-operative ...Applicant
Housing Society Limited

IN THE MATTER BETWEEN :

Madhuwan Andheri Co-operative ...Petitioner
Housing Society Limited

Versus

The Competent Authority District Dy. Registrar ...Respondents
Co-operative Society Mumbai (3) & Ors.

Mr. Shanay Shah a/w Mr. Vijay B. Dhingreja, for the Petitioner.

Mr. Vikrant Parshurami, AGP a/w Mr. Mohit Jadhav, Addl. GP & Mr. Manish Upadhye, AGP, for the Respondent Nos.1 & 15 – State.

Mr. Piyush Raheja a/w Mr. Jimish Shah, Mr. Nitesh Menon & Mr. Anand Iyer i/b Divya Shah Associates, for Respondent Nos.2(b) to 2(e).

CORAM: MADHAV J. JAMDAR, J.

DATED: 16 OCTOBER 2024

P.C.:

1. Heard Mr. Shanay Shah, learned Counsel for the Petitioner, Mr.

Piyush Raheja, learned Counsel for Respondent Nos.2(b) to 2(e), and Mr. Vikrant Parshurami, AGP, for the Respondent No.1 and 15 – State.

2. In the present Writ Petition filed under Article 226 of the Constitution of India the challenge is to the legality and validity of the Order dated 14th October 2019 passed by the Respondent No.1 – Competent Authority *alias* District Deputy Registrar, Co-operative Societies (3), Mumbai (“**impugned Order**”). By the impugned Order, the Competent Authority has rejected the Application filed by the Petitioner - Society for rectification and correction in the Order dated 17th May 2017 passed in Deemd Conveyance Application No.103 of 2016 correcting the CTS Numbers.

3. Mr. Shanay Shah, learned Counsel for the Petitioner submitted that the Deemed Conveyance has been granted by Order dated 17th May 2017 on the basis of the description of the property in question as contained in the Agreement for Sale executed in the year 1976 with the flat purchasers i.e. MOFA Agreement. However, he states that it has been subsequently found that the CTS Numbers in Schedule of the MOFA Agreement are incorrectly mentioned and therefore the Application has been filed for modification. He states that no review has been sought on the merits and only the correction in CTS Numbers as mentioned in the Certificate of Deemed Conveyance is sought.

4. During the pendency of this Writ Petition, the Petitioner has also

filed an Application dated 4th July 2024 with the City Survey Authorities for carrying out detailed survey of land bearing CTS Nos.130A, 133, 133/1 to 29, situate at Village – Gundavali, Taluka – Andheri, Mumbai. Pursuant to the said Application, the City Survey Officer has carried out the survey and submitted a Report dated 2nd September 2024 in this Court.

5. Mr. Piyush Raheja, learned Counsel for Respondent Nos.2(b) to 2(e) states that in view of MOFA Agreement which has been executed by the father of the said Respondents and in the light of the Survey Report which has been submitted by the City Survey Officer, the Writ Petition be disposed of.

6. Mr. Shanay Shah, learned Counsel for the Petitioner and Mr. Piyush Raheja, learned Counsel for Respondent Nos.2(b) to 2(e) state that the Writ Petition be disposed of in terms of the Minutes of Order prepared on the basis of said Report of City Survey Officer.

7. The said Minutes of Order are signed by the respective Advocates of the contesting parties for the purpose of identification. Accordingly, said Minutes of Order are taken on record and marked 'X' for identification. The Said Minutes of Order read as under:-

“MINUTES OF ORDER

1. By this Petition, the Petitioner Society has challenged the Order dated 14th October 2019 (“**Impugned Order**”) passed by Respondent No.1 rejecting its application for

correction/rectification of the errors in the CTS numbers in the Unilateral Deemed Conveyance Order dated 17th May 2017.

2. Respondent No.2 had executed an Agreement for Sale in respect of the flats with Flat Purchasers (now members of the Petitioner Society) under Section 4 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction Sale Management and Transfer) Act 1963 (“MOFA”). Under the said Agreement for Sale, the property described in the First Schedule was required to be conveyed to the Petitioner. The First Schedule of the said Agreement for Sale (at page 37 of the Petition) reads thus:-

“All that pieces and parcels of land ground bearing Survey No.59A and Survey No.60, Hissa No.3 and 3 situate at Old Nagardas Road, Village Gundavli, Andheri (East), Bombay in the Registration Sub-District and District of Bombay City-4 Suburban District admeasuring about 2238.50 sq.yrds. or equivalent to 1871.61 sq.mtrs. and bounded as follows that is to say, on or towards East by a Plot belonging to New Aarti Co-operative Housing Society Ltd., (Sub-Divided Plot A) on the West by Indralok Andheri Co-operative Housing Society Road (Sub-divided Plot 2) on the North by 22 ft Access Road to Indralok Andheri CHS Ltd., and Andheri Anuradha CHS Ltd. On the South by Plot belonging to Parshottambhai Lallubhai Patel and Kashibai Parshottambhai Patel CTS Nos. 135(pt), 136 (pt) and 141(pt).

3. The First Schedule of the Agreement for Sale records that subject property is lying, situate at Survey Nos.59A and 60, Hissa No.3 and 3. Further, the First Schedule reflects handwritten notings of CTS Nos. being CTS Nos. 135(pt), 136 (pt) and 141(pt). It is the contention of the Petitioner that the said CTS Numbers corresponding to Survey No.59A and.60, Hissa No.3 and 3 were incorrectly mentioned in the said Agreement for Sale.

4. In or about 1984, the Flat Purchasers formed and got registered the Petitioner Society under Maharashtra Co-operative Societies Act, 1960.
5. The Petitioner filed an Application under Section 11(3) of MOFA to obtain Unilateral Deemed Conveyance in respect of the subject property. The subject property in the Application before Respondent No.1 was described as under:-

<i>S. No.</i>	<i>H.No.</i>	<i>FP No.</i>	<i>Area in sq.mtrs.</i>
<i>59A</i>		<i>135(P)</i>	<i>1871.61</i>
<i>60</i>	<i>3/3</i>	<i>136(p)</i>	
		<i>141(p)</i>	
		<i>TOTAL AREA</i>	<i>1871.61 sq.mtrs.</i>

of Village Gundavli, Taluka Andheri, Mumbai Suburban District. The Original Respondent No.2 filed his Affidavit dated 18 January 2017 objecting to grant of Deemed Conveyance.

6. After hearing the parties, Respondent No.1 by its Order dated 17th May 2017 granted Unilateral Deemed Conveyance in respect of the said plots in favour of the Petitioner subject to Petitioner's obligation to grant a lease of land to the promoter of the land comprised in survey number 59A. In the said Order, the corresponding CTS Numbers to the Survey numbers 59A and 60, Hissa No.3 and 3 were mentioned as CTS Nos. 135(pt), 136 (pt) and 141(pt) as described in the schedule to the Agreement.
7. On perusing the *Kami Jasti Patra* of the subject plots, it is the Petitioner's contention that the said CTS Numbers as mentioned in the said Order dated 17th May 2017 are

incorrect and that the correct CTS numbers of the said plots are CTS No. 133, 133/1 to 29 corresponding to Survey No.59A and CTS No. 130A corresponding to Survey No.60/Hissa No. 3 and 3 as reflected in the Kami Jasti Patra (which are annexed to the Petition at page nos.115 and 116).

8. In view thereof, the Petitioner by its application dated 2nd January 2019 applied to Respondent No. 1 for correcting the errors in the CTS Number in the Unilateral Deemed Conveyance Order dated 17 May 2017.
9. Respondent No.1 by the Impugned Order rejected the application for correction/rectification made by the Petitioner on the grounds that Respondent No.1 had already by its Order dated 17 May 2017 granted Unilateral Deemed Conveyance in favour of the Petitioner Society and therefore, the application for correction/rectification cannot be entertained.
10. During the pendency of this petition, and with a view to put to rest the controversy of the correct corresponding CTS numbers, this Court directed the Office of the City Survey to conduct survey of the plots bearing nos. 59A and 60 in order to ascertain and identify the correct corresponding CTS Nos.
11. By its report dated 2nd September 2024, the City Survey Office has reported that Survey No. 60A Hissa No. 1B(P) corresponds to CTS NO. 130(A) P and Survey No.59A/1A Hissa No.3 corresponds to CTS No.133,133/1 to 29.
12. In view thereof, the following Order is passed:

Respondent No.1 is directed to rectify/correct the Unilateral Deemed Conveyance Certificate dated 17th May 2017 in accordance with the Report dated 2

September 2024 submitted by the office of the City Survey before this Court and which reads as under:

SURVEY NOS.	CTS NOS.
60A HISSA NO. 1B(P)	130(A) P
59A/1A HISSA NO.3	133,133/1 to 29

13. The Petitioner states that after execution and registration of the conveyance deed in their favour, the Petitioner shall within 4 weeks execute a lease in perpetuity in respect of CTS Nos. 133 and 133/1 to 29 in favour of successors - in – title of Original Respondent No.2.
 14. The Impugned Order dated 14th October 2019 is accordingly set aside.
 15. The Writ Petition stands disposed of in the above terms with no order as to costs.”
- 8.** Accordingly, the Writ Petition is disposed of in terms of the Minutes of Order with no order as to costs.
- 9.** In view of disposal of the Writ Petition, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]