

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2034 OF 2024

Maneesh Bawa & Ors. ...Petitioners

Versus

B.P.S. Aastha Co-Operative Housing Society Ltd.
& Anr. ...Respondents

Mr. J. S. Kini a/w. Mr. Aum Kini i/b. Ms. Sapna Krishnappa,
Advocates, for the Petitioners.

Mr. Sham Walve a/w. Mr. Manish Kenia, Ms. Ankita Sovani, Mr.
Bhavik Chheda, Advocates, i/b. Legal Spectrum, for the
Respondent No.1.

Mr. Mohit Jadhav, Addl. G.P, Ms. Gaurangi Patil, AGP, for the
Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED : 22nd NOVEMBER 2024

P. C.:

1. Heard Mr. Kini, learned Counsel appearing for the
Petitioners, Mr. Walve, learned Counsel appearing for the
Respondent No.1-Society and Mr. Jadhav, learned Addl. G.P,
appearing for the Respondent No.2-State.

2. By 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 10th February 2022 passed by the Respondent No.2

i.e. the Competent Authority and District Deputy Registrar, Eastern Suburban, Mumbai.

3. The main contention raised by Mr. Kini, learned Counsel appearing for the Petitioners is that as per the settled position unless statute so permit, Review Application is not maintainable in case of judicial and quasi judicial orders. He also relied on the decision of the learned Single Judge in the case of *Kashish Park Reality Pvt. Ltd. & Anr. vs. State of Maharashtra & Ors.*¹

4. On the other hand, it is the contention of Mr. Walve, learned Counsel appearing for the Respondent No.1-Society that MOFA agreement is with respect to 1733.33 sq.yards i.e. 1499.28 sq.mtrs. Deemed Conveyance has been granted by order dated 31st October 2015 for an area of 1329.92 sq.mtrs. He therefore, submitted that Corrigendum Application is maintainable. He further points out the observations in the impugned order on page 27, wherein it is stated that the area is corrected as per the sanctioned plan. Mr. Walve, learned Counsel therefore submitted that the correction done in the area of the order granting Deemed Conveyance by the

1 2021 (3) Mh.L.J. 778

impugned order is permissible as the same amounts to rectification of clerical mistake.

5. Accordingly, arguable questions are raised. Hence, **Rule.**

6. Although, learned Single Judge granted ad interim relief by order dated 31st August 2023 directing that the Respondent No.1-Society not to take further steps with respect to Deemed Conveyance, however, Mr. Walve, learned Counsel appearing for the Respondent No.1-Society points out that the earlier Deemed Conveyance is granted by order dated 31st October 2015 and the said Deemed Conveyance is registered on 24th April 2017 and the Deemed Conveyance as corrected by the impugned order dated 10th February 2022 has been registered on 20th April 2020 by Deed of Rectification. Thus, he submitted that the said exercise was completed before the learned Single Judge passed the said order dated 31st August 2023.

7. It is the further submission of Mr. Walve, learned Counsel of the Respondent-Society that the Petitioners were the earlier land owners and they have executed Development

Agreement/Collaboration Agreement dated 27th September 2003 in favour of the Developer and therefore, the Petitioners are not having any right, title and interest in the property in question. He further submits that this is a case where the Petitioners have entered into the transaction with the developer and the developer has accordingly developed the property and the developer is not raising any dispute with respect to the order of Deemed Conveyance or order by which corrigendum is issued with respect to the Deemed Conveyance. He therefore, submits that the Petitioner has no locus to challenge the impugned order and therefore, also ad interim relief granted in favour of the Petitioner be not continued.

8. It appears that when the learned Single Judge passed the ad interim order granted on 31st August 2023, these aspects were not pointed out to the learned Single Judge.

9. Apart from the above aspects, it is settled legal position that order granting Deemed Conveyance doesn't conclude the issue of title and the Petitioners who claims to be the owners, can file substantive Suit to establish their title.

10. Thus, no case is made out for granting any ad-interim/interim relief or to continue ad-interim relief granted by order dated 31st August 2023.

11. However, it is clarified that steps, if any, taken by the Respondent No.1-Society on the basis of the Deemed Conveyance as rectified pursuant to the impugned order are subject to the result of the Writ Petition.

12. In the facts and circumstances of this case, the hearing of the Writ Petition is expedited.

[MADHAV J. JAMDAR, J.]