

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

WRIT PETITION NO.1220 OF 2024

M/s Dange Builders and Developers V/s. Dange Tower Co-operative Housing Society Limited and ors.	... Petitioner ... Respondents
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Mr. S. Nachan with *Mr. A. S. Khan and Ms. A. Khan i/by M/s Judicare Law Associates, Advocates for the Petitioner.*

Ms. Aloka A. Nadkarni, AGP with *Mr. S. P. Kamble, AGP with for the State.*

Mr. Mandar Limaye with *Ms. Kavisha Shah, Ms. Hamza Lakhani and Mr. Prathmesh Bhosale i/by M/s Inida Law Alliance, Advocates for the Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Dated : 10 February, 2025.

P.C. :

1. The Petition challenges order dated 4th July, 2023 passed by the Competent Authority issuing certificate of unilateral deemed conveyance of land admeasuring 1204.18 sq. meters and building constructed thereon in favour of Respondent No.1-Society.

2. I have heard Mr. Nachan, learned counsel appearing for Petitioner, Mr. Limaye, learned counsel appearing for Respondent No.1-Society and Ms. Nadkarni, learned AGP appearing for State.

3. The first ground raised by Mr. Nachan to set up a challenge to the order of deemed conveyance is non-service of any personal notice on the Petitioner in respect of the application filed by Respondent No.1-Society.

4. It appears that Petitioner was impleaded as Opponent No. 1 before the Competent Authority with the address “Supreme Shopping Centre, Station road, Nallasopara (W), Taluka Vasai, District Palghar-401203.” This appears to be the same address as reflected in the flat purchase agreement dated 20th February, 2002. Mr. Nachan fairly does not dispute the position that the Petitioner does own an office in Supreme Shopping Centre. Alongwith the affidavit-in-reply filed by Respondent No.1-Society, copies of the postal receipts by which notices were dispatched to all the Opponents are placed on record. It appears that a personal notice addressed to the Petitioner at the above address was dispatched through registered post on 29th July, 2022. Petitioner alleges that he never received this notice. Inviting my attention to the Roznama, Mr. Nachan would contend that after the alleged dispatch of notice on 29th July, 2022, the proceedings were listed for hearing before the Competent Authority on 24th August, 2022 and after noticing absence of the Petitioner, the Competent Authority straight away proceeded to direct issuance of public notice on 16th November, 2022.

5. In my view, there appears to be sufficient steps taken by Respondent No.1-Society with a view to ensure the presence of the Petitioner before the Competent Authority. Record indicates that the notice was dispatched to the Petitioner at his admitted address. Additionally, steps were taken for issuance of public notice for ensuring appearance of the Petitioner before the Competent Authority.

6. If the merits of the present petition are considered, no valid ground is made out for interfering in the order of the Competent Authority. Perusal of the Articles of Agreement dated 20th February, 2002 would indicate that the Petitioner did not carve out or exclude any portion of land from development. The building was to be constructed on the entire portion of land admeasuring 1259.43 sq. meters. There is nothing on record to indicate that after securing the Commencement Certificate and after completion of construction of the building, any F.S.I. remained unutilized. The agreement does not exclude any unutilized F.S.I. for forming part of the flat purchase agreement. The agreement contains a vague clause as under :-

“Clause 43 : It is also hereby agreed that in case any additional F.S.I. is sanctioned for the said property, Builder alone has right to develop the said additional F.S.I. as per his choice and purchaser shall have no right to raise any objection and shall not raise any objection.”

7. Thus under clause 43 the Petitioner reserved its right to carry out additional construction *“in case any additional F.S.I. is sanctioned for the said property”*. Clause 43 thus makes it quite clear that no F.S.I. was balance as on the date of execution of the agreement.

8. Mr. Nachan would rely staneously on the Memorandum of Understanding executed by all the flat purchasers. Though the MOU does not bear any specific date one of the signatories has apparently signed the same on 23rd September, 2003. Mr. Nachan would clarify that the MOU has been executed on 8th June, 2003. According to Mr. Nachan, all the flat

purchasers had agreed for construction of additional floors on the existing building. I am afraid the Competent Authority could not have taken notice of the said MOU which is not part of agreement executed under provisions of Section 4 of Maharashtra Ownership of Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (**the Act**). As per Section 11 of the Act, the Petitioner-promoter is under legal obligation to transfer his right, title and interest in the land and building in accordance with agreement executed under Section 4 of the Act. Therefore, any document executed over and above the agreement under Section 4 of the Act becomes meaningless for exercise of jurisdiction by the Competent Authority under Section 11 of the Act.

9. Mr. Nachan has also relied upon resolutions dated 19th July, 2021 and 26th September, 2021 adopted by the Society and communicated to the Petitioner vide letter dated 30th September, 2021 in support of his contention that the Society itself has agreed for permitting the Petitioner to construct additional floors on the building. In my view, this would at the highest constitute a private contract between the Petitioner and the Society for putting up additional construction upon receipt of certain amenities by the Society in return. Those resolutions or Society's letter dated 30th September, 2021 could not otherwise have been taken into consideration by the Competent Authority while deciding proceedings under Section 11 of the Act. If the Petitioner believes that there is any contract between it and the Society permitting it to carry out any additional construction, it would be open for the Petitioner to file suit before the Civil Court seeking specific performance of such contract.

10. Upon being queried as to how the F.S.I. became available for construction of additional floors, Mr. Nachan would fairly concede to the position that the same is an additional F.S.I. after completion of the building in accordance with the Commencement Certificate. It appears that the Commencement Certificate for construction of building was issued on 23rd June, 1998 and construction of the building was complete on 26th April, 2000. The Society was registered on 16th September, 2003. Thus upon formation and registration of the Society, the Petitioner was under legal obligation to transfer its right, title and interest in the land and the building in favour of the Society. Any additional F.S.I. sanctioned by the planning authority subsequent to completion of the building cannot be a ground for withholding conveyance in favour of the Society. The promoter cannot be permitted to take benefit of his own wrong by delaying the conveyance under the hope of sanction of additional F.S.I. in the future.

11. In my view, therefore even if the Petitioner was to be granted opportunity of hearing before the Competent Authority, it would not have defeated the application of the Society merely by relying on clause 43 of flat purchase agreement or MOU.

12. Mr. Nachan has relied upon judgment of this Court in the case of *Audumber Chaya Co-operative Housing Society Limited Vs. District Deputy Registrar, Co-operative Society and ors.*¹ in support of his contention that the proceedings deserve to be remanded on account of non-service of notice on the Petitioner. Perusal of the judgment in *Audumber Chaya Co-operative Housing Society Limited* (supra) would indicate that the case

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involved presence of multiple societies and dispute about proportionate share of land by various societies on larger portion of land. In the present case, there is absolutely no contesting claim between the Respondent No.1-Society and any other Society. This is not a case involving layout development. The case involves construction of single building on one plot of land. In my view, therefore, no fruitful purpose would be served in remanding the proceedings only on the technical ground that Petitioner allegedly did not receive notice of the proceedings. The Respondent No. 1-Society did adopt appropriate steps for ensuring presence of the Petitioner before the Competent Authority by dispatching the notice by registered post at the correct address and thereafter by publishing a public notice.

13. No case on merits is made out for interference of the impugned order.

14. Writ Petition is devoid of merits and is accordingly rejected without any order as to costs.

(SANDEEP V. MARNE, J.)