

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1421 OF 2024

M/s. Nikunj Enterprises

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. Vishal Kanade with *Mr. A.R. Shaikh i/b. M/s. ASD Associates for the Petitioner.*

Mr. S.D. Rayrikar, AGP for Respondent Nos.1, 2 and 4-State.

Ms. Vishaki Bhatia for Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

Dated : 5 February 2025.

P.C. :

1) Petition challenges order dated 13 June 2023 passed by the Competent Authority under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 granting Certificate of Unilateral Deemed Conveyance of land admeasuring 1954.85 sq.mtrs. out of larger land admeasuring 2110.30 sq.mtrs. as well as proportionate rights in the FSI advantage of D.P. Road area admeasuring 374.35 sq.mtrs out of 404.12 sq.mtrs. together with the buildings in favour of Respondent No.3-Society.

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2) I have heard Mr. Kanade, the learned counsel appearing for the Petitioner, Ms. Bhatia, the learned counsel appearing for Respondent No.3 and Mr. Rayrikar, the learned AGP appearing for Respondent Nos.1, 2 and 4. I have also gone through the findings recorded by the Competent Authority in his order dated 13 June 2023 as well as relevant records of the case placed alongwith the Petition.

3) It appears that Petitioner has secured development rights from the original developer (Respondent No.12). After securing the development rights, Petitioner got sanctioned plans for construction of buildings with Wings – ‘A’, ‘B’ and ‘C’. It appears that under the plans so sanctioned, built-up area of 2329.20 sq. mtrs was sanctioned for Wing Nos. A and B whereas built up area of 185.22 sq.mts. was sanctioned for Wing -C Building. On account of inability of the Petitioner to rehabilitate the tenants in the old structure and demolish it, apparently it could not undertake construction of Wing ‘C’ building. Petitioner however, completed construction of Wings ‘A’ and ‘B’ buildings and accordingly Respondent No.3- Society was formed by the flat purchasers in Wings ‘A’ and ‘B’ buildings. Now the resistance of the Petitioner to conveyance of land in favour of the Society is inability to utilise the FSI potential in respect of the entire land while undertaking construction of Wing- ‘C’ building.

4) Mr. Kanade submitted that this is a layout development and ordinarily, conveyance cannot be granted unless the entire

development in respect of layout is complete. Mr. Kanade would fairly admit that under the provisions of Government Resolution dated 22 June 2018, it is permissible for the Competent Authority to convey part of the land in favour of Society of completed building even before the entire development in the layout gets completed. Mr. Kanade would then express a difficulty that conveyance of most portion of land in favour of Respondent No.3 would put a fetter on the Petitioner to construct Wing 'C' building by utilising the available FSI.

5) In my view, the FSI utilisation for Wing- 'C' building was already crystalised when plans for construction of all the three buildings were sanctioned by the planning authority. Therefore, the architect has divided the entire plot of land proportionate to the built-up area utilised/utilisable in respect of the three buildings. Since plans for construction of Wing 'C' building was sanctioned only for built up area 185.22 sq.mtrs., only the corresponding proportionate area of land needs to be carved out while conveying the balance portion of land in favour of Respondent No.3-Society. Luckily, in the present case FSI calculations at same point of time and at same percentage are available. Petitioner cannot be permitted now to take benefit of additional FSI sanctioned under the Development and Control Promotion Regulations 2034 by calculating the same in respect of the entire plot in the layout and load the same on Wing – 'C' building, which would clearly upset the apple cart for Wing -'A' and 'B' buildings. Proper course of action in such a case is to

carve out only such portion of the land as is proportionate to originally sanctioned for Wing- 'C' building. If Petitioner is in a position to avail any additional FSI in respect of balance land carved out for construction of wing 'C' building he could utilise the same for construction of that building. However, merely because construction of the third building is incomplete, the same would not make the Petitioner entitled to avail benefit of additional FSI in respect of entire plot of land. Petitioner cannot be permitted to take advantage of his own wrong. Merely because he failed to discharge his duty to convey his right, title and interest in the land and building in favour of Respondent No.3-Society despite completion of Wings – 'A' and 'B' buildings vide Occupancy Certificate issued in the year 1997, he cannot now calculate the additional FSI on the entire plot and load and utilize the same for construction of the third building.

6) In my view no palpable error can be traced in the order passed by the Competent Authority granting Unilateral Deemed Conveyance of proportionate land by taking into consideration the built-up area sanctioned for construction of all the three buildings.

7) Writ Petition is accordingly rejected.

[SANDEEP V. MARNE, J.]